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Michigan Laws, 1820, 1821, etc.

MICHIGAN COMPILED LAWS 1970

COMPILED AND ARRANGED UNDER AUTHORITY OF PUBLIC ACT 193 OF 1970

STATE OF MICHIGAN



VOLUME IV

COMPILED AND PUBLISHED BY THE
MICHIGAN LEGISLATIVE COUNCIL

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CERTIFICATE OF THE LEGISLATIVE COUNCIL

We, the undersigned members of the Legislative Council directed by law to provide for the compilation without alteration of all the general laws in force in this state, hereby certify that the Council caused to be compiled the general laws of the state of Michigan enacted through December 31, 1970 and upon having examined and compared the compilation, further certify that the following, consisting of 6 volumes including index, meets the requirements of Act 193 of the Public Acts of 1970.

Dated: December 15, 1971

Lansing, Michigan

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ABBREVIATIONS

Add.	— Added.
Am.	— Amended.
Art.	— Article.
C.L.	— Compiled Laws.
C.R.	— Concurrent Resolution.
Ch. or Chap.	— Chapter.
Const.	— Constitution of 1963.
Eff.	— Effective.
How.	— Howells' Annotated Statutes (1882, 1890).
Imd. Eff.	— Immediate Effect.
J.R.	— Joint Resolution.
P.	— Page.
P.A.	— Public Act.
Pt.	— Part.
Renum.	— Renumbered.
Rep.	— Repealed.
R.S.	— Revised Statutes.
Sec.	— Act section number.
Stat.	— United States Statutes at large.
Subd.	— Subdivision.
Sup.	— Superseded.
§	— Compilers section symbol.

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CHAPTER 400. SOCIAL WELFARE

SOCIAL WELFARE ACT

Act 280 of 1939

STATE DEPARTMENT OF SOCIAL WELFARE

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Act 280, 1939, p. 513; Imd. Eff. Jun. 16.

AN ACT to protect the welfare of the people of this state; to provide general relief, hospitalization, infirmary and medical care to poor or unfortunate persons; to provide for compliance by this state with the provisions of the social security act; to provide protection, welfare and services to aged persons, dependent children, the blind, and the permanently and totally disabled; to administer programs and services for the prevention and treatment of delinquency, dependency and neglect of children; to create a state department of social services; to prescribe the powers and duties of the department; to provide for the interstate and intercounty transfer of dependents; to create county and district departments of social services; to create within certain county departments, bureaus of social aid and certain divisions and offices thereunder; to prescribe the powers and duties of the departments, bureaus and officers; to provide for appeals in certain cases; to prescribe the powers and duties of the state department with respect to county and district departments; to make an appropriation; and to pre-

scribe penalties for the violation of the provisions of this act. Am. 1950, Ex. Ses., p. 127, Act 42, Eff. Oct. 1;—Am. 1957, p. 110, Act 95, Eff. Sep. 27;—Am. 1965, p. 529, Act 283, Imd. Eff. Jul. 22;—Am. 1965, p. 804, Act 401, Imd. Eff. Oct. 27;—Am. 1967, p. 74, Act 58, Imd. Eff. Jun. 20;—Am. 1969, p. 765, Act 338, Imd. Eff. Dec. 8.

The People of the State of Michigan enact:

STATE DEPARTMENT OF SOCIAL WELFARE.

400.1 State department of social welfare; organization.

Sec. 1. There is hereby created a department of the state government which shall be known and designated as the "state department of social welfare," hereinafter called the state department, which shall possess the powers granted and perform the duties imposed in this act. Such state department shall consist of the Michigan social welfare commission hereinafter created, and of a director, and such assistants and employees as may be appointed or employed in such department.

Social welfare commission; institutions; rules and regulations; powers and duties.

The Michigan social welfare commission shall be responsible for the operation and supervision of the boys' vocational school, at Lansing, the girls' training school, at Adrian, and the Michigan children's institute, at Ann Arbor, the Michigan employment institution for the blind, at Saginaw, and such other institutions or facilities as shall by law be established within the department. The commission shall have the power to make and enforce its own rules and regulations, not inconsistent with the law governing the several institutions or facilities under its control, respecting the conduct of each such institution or facility, discipline therein, the care of property, and for the welfare of the inmates or wards thereof. The commission shall be, in all respects, the legal successor to the powers, duties and responsibilities of the juvenile institute commission. Immediately on the taking effect of this act, the said juvenile institute commission shall be abolished.

HISTORY: Am. 1943, p. 338, Act 208, Imd. Eff. Apr. 17;—Am. 1947, p. 324, Act 234, Imd. Eff. Jun. 17;—CL 1948, 400.1;—Am. 1957, p. 110, Act 95, Eff. Sep. 27.

CITED IN OTHER SECTIONS: Sections 400.1 to 400.90 are cited in §§ 16.552, 329.403, 400.202, 803.103, and 804.103.

400.1a Social welfare act; short title.

Sec. 1a. This act shall be known and may be cited as "The social welfare act".

HISTORY: Add. 1943, p. 114, Act 85, Eff. July 30;—CL 1948, 400.1a.

400.1b Prosthetic device; kidney machine; definition.

Sec. 1b. When used in this act "prothesis [sic] or "prosthetic device" includes hemodialysis or kidney machines.

HISTORY: Add. 1969, p. 519, Act 278, Imd. Eff. Aug. 11.

400.2 Michigan social welfare commission; members, appointment, qualifications, terms; organization; meetings, nonattendance; officers; compensation and expenses.

Sec. 2. The administration of the powers and duties of the state department shall be vested in a commission of 5 members to be known and designated as the "Michigan social welfare commission", hereinafter called the commission: Provided, That no member of the aforesaid commission shall be a member of any other commission or board, or hold any other position with any state institution or department. Members of the commission shall be appointed by the governor, by and with the advice and consent of the senate, for a term of 5 years each: Provided, That of the members first appointed, 1 shall be appointed for a term of 1 year, 1 for a term of 2 years, 1 for a term of 3 years, 1 for a term of 4 years, and 1 for a term of 5 years. Members of the commis-

sion shall be citizens and residents of the state of Michigan for not less than 5 years who possess and have demonstrated sincere interest, knowledge, and ability consistent with the responsibilities of the office, and not more than 3 of whom shall be members of the same political party. The governor shall be an ex-officio member of the commission. Each member of the commission shall qualify by taking and filing with the secretary of state the constitutional oath of office and shall hold office until the appointment and qualification of his successor. Members of the commission may be removed by the governor for misfeasance, malfeasance or nonfeasance in office, after hearing. Vacancies in the membership of the commission shall be filled for the remainder of the unexpired term, in the same manner as the original appointment. A majority of the members of the commission shall constitute a quorum for the transaction of business. The commission shall meet on the call of the chairman, or on a written request to the chairman signed by 3 members of the commission, or at such times and places as shall be prescribed by the rules and regulations of the commission: Provided, That the commission shall hold not less than 12 meetings each fiscal year, with an interval of not more than 1 month between any 2 meetings. The failure on the part of any member to attend 3 consecutive meetings of the commission, unless excused by a formal vote of the commission, shall be considered by the governor as ground for removal of such nonattending member, and upon such removal the governor may appoint his successor. The commission shall annually designate 1 of its members to act as chairman and 1 of its members to act as vice chairman of the commission. Members of the commission shall be reimbursed for necessary travel and other expenses, and shall be paid \$15.00 per day when in actual session, to be paid in the same manner as expenses of other state officers are paid.

HISTORY: CL 1948, 400.2.

CITED IN OTHER SECTIONS: The above section is cited in § 16.553.

400.3 State department of social welfare; director, appointment, qualifications, removal, salary, expenses.

Sec. 3. The director of the state department shall be appointed by the commission, and shall serve at its pleasure. He shall have been a resident of the state for not less than 5 years and shall be the executive officer of the department, shall be responsible to the commission for the performance of his duties and shall act as secretary of the commission. He shall devote his entire time to the performance of the duties of his office. He may be removed by the governor for misfeasance, malfeasance or nonfeasance in office, after hearing. The director shall receive such salary as shall be appropriated by the legislature, and shall receive actual and necessary traveling and other expenses incurred in the discharge of his official duties, to be paid in the same manner as salaries and expenses of other state employees are paid. Wherever reference is made in this act to the "bureau of social security" or the "state bureau", reference shall be deemed to be intended to be made to the state department. Whenever reference is made in this act to the "supervisor of the state bureau", reference shall be deemed to be made to the director of the state department. For counties having a population of 600,000 or less and for all cities regardless of population, whenever reference is made in this act to the "county bureau of social aid", reference shall be deemed to be made to the county or city department of social welfare.

HISTORY: Am. 1945, p. 288, Act 217, Eff. May 18;—CL 1948, 400.3;—Am. 1957, p. 110, Act 95, Eff. Sep. 27;—Am. 1965, p. 806, Act 401, Imd. Eff. Oct. 27.

CITED IN OTHER SECTIONS: The above section is cited in § 16.553.

400.3a State department of social welfare; advisory committee.

Sec. 3a. There is established in the state department an advisory committee to the state department consisting of 10 members appointed by the state association of

county welfare boards and directors in accordance with a plan adopted by a majority of the members of the association.

HISTORY: Add. 1965, p. 805, Act 401, Imd. Eff. Oct. 27.

400.4 Executive heads of state institutions; appointment; employees, salaries and expenses.

Sec. 4. The commission shall appoint the executive heads of all state institutions and facilities under the supervision of the state department, and such assistants and employees for them and the state department, and may incur such other expenses as may be necessary to carry out the provisions of this act. The executive head of each state institution under the supervision of the state department shall be responsible for the employment of all assistants and employees thereof. The compensation of all such assistants and employees, and the number thereof, shall be within the appropriations made therefor by the legislature. Such assistants and employees shall receive their actual and necessary traveling and other expenses incurred in the discharge of their official duties. All salaries and expenses shall be paid in the same manner as the salaries and expenses of other state employees are paid.

HISTORY: CL 1948, 400.4;—Am. 1957, p. 111, Act 95, Eff. Sep. 27.

400.5 Divisions within state department of social welfare; creation, abolition.

Sec. 5. The commission is hereby authorized and empowered to create or abolish divisions within the state department for the economic and efficient administration of the work of such department, and to allocate and re-allocate their several functions and duties.

HISTORY: CL 1948, 400.5.

400.6 Rules and regulations; adoption; director, executive duties.

Sec. 6. The commission shall adopt all rules and regulations governing the policies of the department. The director, subject to such rules and regulations, shall be responsible for such executive duties as shall be assigned to him by the commission or otherwise provided by law.

HISTORY: CL 1948, 400.6;—Am. 1957, p. 111, Act 95, Eff. Sep. 27.

400.7 Rules and regulations; publication, seal, certified copies as evidence; body corporate, powers.

Sec. 7. The commission may devise a seal, and the rules and regulations of the commission may be published over the seal of the commission. Copies of all records and papers in the office of the state department, certified by a duly authorized agent of the commission and authenticated by the seal of the commission, shall be evidence in all cases equally, and with the like effect, as the originals. The commission shall be a body corporate, and is hereby authorized to lease any lands under its jurisdiction and to do any other act or thing necessary in carrying out the provisions of this act.

HISTORY: CL 1948, 400.7.

400.8 Witnesses; compelled attendance, oaths; jurisdiction of courts.

Sec. 8. Any member of the commission or the director may issue a subpoena requiring any person to appear and be examined with reference to any matter within the jurisdiction of the commission and within the scope of the inquiry or investigation being conducted by the said commission or director, and to produce any books, records or papers, pertinent to such inquiry. Any member of the commission, the director, or their duly authorized agents, may administer an oath to a witness in any pending matter. In case of disobedience of a subpoena, the commission or director may by petition invoke the aid of the circuit court of the county in which the witness resides, or the circuit court of the county in which the inquiry is being held, to require the attend-

ance and testimony of witnesses and the production of books, papers and documents. Any such circuit court of the state, may, in case of contumacy or refusal to obey a subpoena, issue an order requiring such person to appear and to produce books, records, and papers if so ordered and give evidence touching the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

HISTORY: CL 1948, 400.8;—Am. 1957, p. 111, Act 95, Eff. Sep. 27.

400.9 Hearings on application for assistance; rules, review.

Sec. 9. In accordance with Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948, the commission shall prescribe rules and regulations for the conduct of hearings within the state department, and provide adequate procedure for a fair hearing of appeals and complaints, when requested in writing by any applicant for or recipient of assistance or service, financed in whole or in part by federal funds. Such hearing may be conducted by the director, or by any agent designated therefor. All decisions of the director in such cases shall be binding upon any county, city or district department of social welfare involved and shall be complied with by such department. The director may also upon his own motion, review any decision of a county, district or city department with respect to the granting of any assistance financed in whole or in part by federal funds, and may consider and pass upon any application for such assistance which has not been acted upon by the county, district or city department within a reasonable time.

HISTORY: CL 1948, 400.9;—Am. 1957, p. 111, Act 95, Eff. Sep. 27;—Am. 1965, p. 805, Act 401, Imd. Eff. Oct. 27.

400.10 Administration of federal social security act; social welfare commission, powers and duties.

Sec. 10. The commission is hereby designated as the state agency to cooperate with the federal government in the administration of the provisions of title 1, title 4, part 3 of title 5, and title 10 of the social security act passed by the congress of the United States of America, approved August 14, 1935, herein referred to as the "social security act", and any amendments thereto or supplemental thereof, including title 14 approved by the 81st congress. The commission is hereby authorized to cooperate with the proper departments or agencies of the federal government and with all other departments or agencies of the state and local governments, and to supervise the administration by local governmental departments or agencies of any plan or plans established by the state in cooperation with the federal government under the provisions of title 1, title 4, part 3 of title 5 and title 10 of the social security act, and any amendments thereto or supplemental thereof, including title 14 approved by the 81st congress and the rules and regulations issued thereunder and in compliance therewith. The commission shall make such reports, in such form and containing such information, as may be required from time to time under the provisions of the social security act, and shall comply with such requirements as may be made from time to time to assure the correctness and verification of such reports.

The commission, with the approval of the governor, shall have power to cooperate with the federal government, or any of its agencies or instrumentalities, in handling the welfare and relief problems and needs of the people of this state, to the extent authorized by the laws of this state.

To such end, the commission shall have power to adopt any plan or plans required or desirable to participate in the distribution of federal moneys or the assistance of the federal government, and the commission shall have power to accept on behalf of the state of Michigan any allotment of federal moneys. The commission shall be author-

ized and empowered to adopt any rules and regulations and enter into any agreement or agreements with local units of government as may be necessary to enable the state of Michigan, or such local units, or both, to participate in any such plan or plans as said commission may deem desirable for the welfare of the people of this state.

For the purpose of assuring full federal approval of the activities of the department and local departments with respect to the operation of any such plan or plans, the commission shall have the power to do all things reasonable and proper to conform with all federal requirements pertaining to methods and standards of administration. In the making of any rules and regulations with respect thereto, there shall be included such methods and standards of administration for the conduct of the work of local units, including the necessary supervision thereof, as may be required for the receipt of aid from the federal government.

HISTORY: CL 1948, 400.10;—Am. 1950, 1st Ex. Ses., p. 127, Act 42, Eff. Oct. 1.

400.11 Repealed. 1966, p. 581, Act 321, Eff. Sep. 1.

Section created irrevocable medical assistance account within the general fund.

400.12 Transfer of funds.

Sec. 12. All funds in the hands of the state treasurer or on deposit to the credit of any of the departments, boards, commissions and offices which are hereby abolished shall be transferred to and are hereby appropriated for the state department of social welfare, and shall be disbursed on its order.

HISTORY: CL 1948, 400.12.

400.13 Reciprocal agreements with other states; authorization, exception.

Sec. 13. The commission is hereby authorized, subject to the approval of the attorney general, to enter into reciprocal agreements with corresponding state agencies of other states, regarding the interstate transportation of indigent persons, and to arrange with the proper officials in this state for the acceptance, transfer and support of persons receiving any form of public aid or relief in other states in accordance with the terms of such reciprocal agreement: Provided, That this state shall not, nor shall any county or any county department of social welfare, in this state, be committed to the support of persons whom the commission determines are not entitled to public support under the laws of this state. This section shall be so interpreted and construed as to effectuate its general purpose to make uniform laws of such states as enact similar legislation.

HISTORY: CL 1948, 400.13.

400.14 State department of social services; additional powers and duties.

Sec. 14. The state department shall have and be vested with the following additional powers and duties:

Allocation of state and federal aid.

(a) To allocate and distribute to the several county, city and district departments of social welfare, as hereinafter provided in section 18, and in accordance with the rules and regulations promulgated by the director, moneys appropriated by the legislature or received from the federal government for the relief of destitution or unemployment relief within the state, or any political subdivision thereof.

Categorical assistance, distribution; rules.

(b) To distribute as hereinafter provided, subject to federal rules and regulations, and in accordance with the rules and regulations promulgated by the director, moneys appropriated by the legislature or received from the federal government for the granting of old age assistance, aid to dependent children, and aid to the blind and otherwise handicapped; for medical, dental, optometric, nursing, pharmaceutical, and burial relief, and the services furnished by professions under Act No. 162 of the Public Acts of

1903, as amended, being sections 338.101 to 338.109 of the Compiled Laws of 1948, Act No. 145 of the Public Acts of 1933, as amended, being sections 338.151 to 338.159 of the Compiled Laws of 1948, and Act No. 115 of the Public Acts of 1915, as amended, being sections 338.301 to 338.308a of the Compiled Laws of 1948; and for such other relief or welfare services as may be provided by law.

Juvenile detention facilities; costs; institutional care; programs.

(c) To operate, under rules promulgated by the department, regional juvenile detention facilities in order to detain and diagnose children under the age of 19 years committed to the department by the juvenile division of the probate court, or children under the age of 17 concerning whom an order of detention has been issued under the provisions of sections 14, 15 and 16 of chapter 12a of Act No. 288 of the Public Acts of 1939, as amended, being sections 712a.14 to 712a.16 of the Compiled Laws of 1948. The county from which a child is committed or an order of detention issued by the juvenile division of the probate court shall be liable to the state for 50% of the cost of care of the child.

The department shall assume responsibility for all children committed to it by the juvenile division of the probate court under the provisions of Act No. 185 of the Public Acts of 1925, as amended, being sections 803.101 to 803.113 of the Compiled Laws of 1948; Act No. 183 of the Public Acts of 1925, as amended, being sections 804.101 to 804.113 of the Compiled Laws of 1948; and Act No. 220 of the Public Acts of 1935, as amended, being sections 400.201 to 400.214 of the Compiled Laws of 1948. In order to provide service to children the department may provide institutional care, supervision in the community, boarding care, halfway house care, and other child welfare services necessary to meet the needs of such children; or may obtain appropriate services from other state agencies, local public agencies or private agencies. If the program of another state agency is deemed to best serve the needs of the child, the other state agency shall give priority to the child.

To operate child welfare programs including a day care program in rural and urban areas and assist in the development of sound programs and standards of child welfare by public organizations throughout the state; to cooperate with private child welfare organizations in programs mutually agreed upon; and provide a service of consultation and assistance to the juvenile probation service of the probate courts, if such consultation and assistance will not interfere with the jurisdiction of the juvenile division of the several probate courts maintaining a probation service. Whenever the director, commissioner or those officials responsible for enforcing any state or local building code determine that a dwelling unit fails to meet the standards of such code through fault of the landlord, the department may refuse to pay public assistance grants authorized under this act for payment of rent on such dwelling unit. A written notice of the refusal, stating the grounds therefor and listing the defects to be corrected, shall be mailed forthwith to the landlord by certified mail. During the period of refusal the landlord may bring an action against the department in the nature of quo warranto, but may not maintain an action for the rent or possession of the premises. If the defects have been corrected or if the department's refusal to pay is determined by a court of competent jurisdiction to be wrongful, the department shall pay the rent owing not to exceed the amount of the grants withheld.

Placement of children in foster homes.

(d) To approve the placing of a child in this state in a family home of persons unrelated to the child by a person not a resident of this state or in any family home of this state by an agency or organization with no place of business in this state. Written approval of the proposed placement shall be obtained from the state department. Such person, agency or organization shall furnish the state department with such informa-

tion as it may deem necessary regarding the child and the prospective foster parents and such guaranty as is required by the state department to protect the interests of the county in which the child is to be placed. Such information shall be forwarded to the county agent of the county in which the prospective home is located, if the judge of probate has given prior general consent to such procedure, or to the director of a licensed child-placing agency, or to an employee of the state department who shall investigate the home and if in his opinion the placement should be made shall file his approval with the department. If the proposed placement is or appears to be planned with a view to an adoption of the child under the law of this state by the family with whom the child is to be placed, the prior approval of the proposed placement by the judge of probate of the county of residence of the family is also required. When requested, the state department may require supervision of the child in the home until such time as the child is legally adopted or otherwise discharged from care.

Blind.

(e) To define blindness in terms of ophthalmic measurement, and to assist in the development of sound programs and standards of rehabilitation and treatment of the blind.

Assistance to other agencies; eligibility rules.

(f) To assist other departments, agencies and institutions of the federal and state governments, when so requested, in performing services in conformity with the purposes of this act. The director shall act as certifying agent for federal departments or agencies in determining eligibility of applicants for such aid or service as may be rendered by such departments or agencies. All rules and regulations of the state departments under this subsection shall be binding upon the several county departments of social welfare.

Statistics; fact-finding studies; reports.

(g) To collect and compile statistics, make special fact-finding studies and publish reports in reference to the field of welfare, including a biennial report as provided in section 17.

Claims between counties; determination of settlement or domicile.

(h) To arbitrate and decide disputed or contested claims between 2 or more counties on account of settlement or domicile of a person or family given or in need of any form of public aid or relief; determine and declare the county of settlement or domicile in any instance when so requested or on the department's own volition. All decisions and determinations made under this subsection shall be binding upon the several county departments of social welfare.

General powers; codification of laws.

(i) To administer or supervise such relief or welfare functions as are or may be vested in the department by law, and provide for the progressive codification of the laws governing relief and welfare problems.

County infirmaries, juvenile detention facilities, inspection, orders.

(j) To inspect county infirmaries and places of detention for juveniles for the purpose of obtaining facts in any manner pertaining to the usefulness and proper management of the institutions, and of promoting proper, efficient, and humane administration thereof. Any reasonable order of the department fixing minimum standards of sanitation, fire protection, food and comfortable lodging, may be enforced through mandamus or injunction in the circuit court of the county where the county infirmary or place of detention for the juveniles is located, through proper proceedings instituted by the attorney general on behalf of the department, and the burden of proof shall be on the department to establish the reasonableness of such order.

Schedule of payment for care and maintenance; rules.

(k) Promulgate a recommended schedule of payment for care and maintenance and rules and regulations in accordance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948, to be used as provided by law in determining the amount of payment to be made by patients, their guardians or relatives who are liable for the care and maintenance of mentally diseased persons as defined in section 44 of Act No. 151 of the Public Acts of 1923, as amended, being section 330.54 of the Compiled Laws of 1948.

The department in promulgating such rules, regulations and schedule may give consideration to the person's income, the number of other persons he is obligated to support, his estate, medical and other necessary expenses and other relevant matters.

Neglect, abuse or abandonment of children.

(l) To study and act upon requests for service as to, or reports received of, neglect, exploitation, abuse, cruelty or abandonment of children by parents, guardians, custodians or persons serving in loco parentis, or reports concerning children in need of protection; and on the basis of the findings of such study, assure, where necessary, the provision of appropriate social services to such children, parents, guardians, custodians or persons serving in loco parentis, to reenforce and supplement the parental capabilities, so that the behavior or situation causing the problem is corrected or the child is otherwise protected. The department in assuring the provision of such services, and in providing such services, shall encourage participation by other existing governmental units or licensed private nonprofit agencies and may contract with such agencies for the purchase of any service within the scope of this subsection.

The department shall initiate action in an appropriate court where the conduct of a parent, guardian or custodian requires.

The department shall adopt such rules and regulations as are necessary for implementing the services authorized in this subsection. Such rules and regulations shall include provision for local citizen participation in the program to assure local understanding, coordination and cooperative action with other community resources.

Legal services for recipients.

(m) To provide or contract for legal services for persons receiving assistance under this act in guardianship and support proceedings.

HISTORY: Am. 1944, 1st Ex. Ses., p. 51, Act 30, Imd. Eff. Mar. 3;—CL 1948, 400.14;—Am. 1949, p. 148, Act 142, Eff. Sep. 23;—Am. 1951, p. 371, Act 248, Imd. Eff. Jun. 15;—Am. 1952, p. 391, Act 237, Eff. Sep. 18;—Am. 1957, p. 112, Act 95, Eff. Sep. 27;—Am. 1964, p. 292, Act 230, Eff. Aug. 28;—Am. 1965, p. 530, Act 283, Imd. Eff. Jul. 22;—Am. 1966, p. 298, Act 229, Imd. Eff. Jul. 11;—Am. 1969, p. 598, Act 310, Eff. Mar. 20, 1970.

CITED IN OTHER SECTIONS: The above section is cited in § 331.680.

400.14a State department; camps, purposes.

Sec. 14a. The state department shall be authorized to operate camps for the furnishing of relief and medical care to homeless and unattached persons.

HISTORY: Add. 1945, p. 219, Act 157, Eff. Sept. 6;—CL 1948, 400.14a.

400.14b Family planning services; notice of availability, contents; referral, drugs and appliances, rules and regulations.

Sec. 14b. The director, and under his supervision, county, city and district departments of social welfare, may provide written or oral notice to recipients of public assistance of the availability of advice and treatment in family planning. Such notice shall include a statement that receipt of public assistance is in no way dependent upon a request or nonrequest for family planning services. No effort shall be made to suggest or persuade recipients to request or not request family planning services. The director, and under his supervision, county, city and district departments of social welfare may

make available upon request of recipients of public assistance advice and treatment in family planning by referral upon request of the recipient to a licensed medical doctor, licensed osteopathic physician, public agency or, on a contractual basis, to a private agency of the recipient's choice. Necessary drugs and recognized medical appliances for use in family planning may also be made available through licensed pharmacists upon prescription issued by a licensed physician. Such family planning services shall be made available in accordance with rules and regulations promulgated by the director under law.

HISTORY: Add. 1965, p. 578, Act 302, Imd. Eff. Jul. 22;—Am. 1966, p. 338, Act 248, Imd. Eff. Jul. 11.

400.14c Minimum housing standards; establishment, annual review; use of relief grants.

Sec. 14c. The state department shall establish minimum housing standards for the maintenance of health and decency which shall be not less than those required by the provisions of Act No. 167 of the Public Acts of 1917, as amended, being sections 125.401 to 125.519 of the Compiled Laws of 1948, and shall review the standards at least once each year. No general relief authorized under this act shall be used to pay rent for any dwelling that does not meet the standard established under this section.

HISTORY: Add. 1968, p. 218, Act 192, Imd. Eff. Jul. 1;—Am. 1967, p. 94, Act 76, Imd. Eff. Jun. 21.

400.15 Gifts; acceptance by commission; duties of attorney general.

Sec. 15. The commission may receive on behalf of the state of Michigan any grant, devise, bequest, donation, gift or assignment of money, bonds or choses in action, or any property, real or personal, and accept the same, so that the right and title to the same shall pass to the state of Michigan. All such bonds, notes or choses in action, or the proceeds thereof when collected, and all other property or things of value so received by the commission shall be reported to the auditor general and used for the purposes set forth in the grant, devise, bequest, donation, gift or assignment: Provided, That such purposes shall be within the powers conferred on said commission. Whenever it shall be necessary to protect or assert the right or title to any property so received or derived as aforesaid, or to collect or reduce into possession any bond, note, bill or chose in action, the attorney general, upon request of the commission, shall take the necessary and proper proceedings and bring suit in the name of the commission on behalf of the state of Michigan in any court of competent jurisdiction, state or federal, and prosecute all such suits.

HISTORY: CL 1948, 400.15.

400.16 Budget; preparation by commission, submission to governor.

Sec. 16. The commission shall prepare and submit to the governor or budget director the estimated needs and costs to operate the state department, including the several institutions under the jurisdiction of the department, in accordance with the requirements of the laws of this state.

HISTORY: CL 1948, 400.16.

400.17 Biennial report to governor and legislature; recommendations.

Sec. 17. The commission shall prepare and on or before the fifteenth day of December in each even-numbered year make a report to the governor of the state, setting forth the operation of the state department during the preceding fiscal biennium of the state, and containing any findings and recommendations of said commission. Such report shall also be submitted to the legislature.

HISTORY: CL 1948, 400.17;—Am. 1967, p. 113, Act 95, Eff. Sep. 27.

400.18 Appropriations; allocation and distribution, basis, limitations, arrangements.

Sec. 18. The commission shall provide for the distribution of such moneys as shall be appropriated by the legislature for public welfare grants in respect to general relief, including total administrative costs, medical care and care in the county medical care facility, and the burial of the bodies of deceased indigent or unknown persons, but not capital expenditures in respect to the county medical care facility, other infirmity care or hospitalization, to the several city, county and district departments of social welfare on the basis of monthly reporting to the commission by the departments and with reference to the following facts:

(a) Need for relief as demonstrated by experience of the respective counties.

(b) The financial resources of the respective counties.

Funds distributed shall be in respect to the net amount expended monthly by the respective departments, for general public relief. State funds distributed shall be not less than 40% of the net amount spent by such department for general relief. Whenever any county, district or city department share of general relief expenditures equals 1 mill of the state equalized valuation, the state shall distribute funds for 100% of the general relief costs in excess of 1 mill. General relief shall include the expenditures named in this section, except that administrative costs for any fiscal quarter shall not be included for any county with a population over 600,000 in which section 23a is applicable for the full fiscal quarter. Whenever any county, district or city department share of general relief expenditures exceeds 1 mill of the state equalized valuation, or did exceed 1 mill in the prior fiscal year, administrative costs for such county shall be subject to the review and approval of the state department and the county department of social welfare shall make no change in its policy or administrative plan as would substantially affect its expenditures without the approval of the state department.

The commission shall provide for the allocation and distribution of such moneys as shall be appropriated by the legislature or received from the federal government, for old age assistance, aid to dependent children, aid to the permanently and totally disabled and aid to the blind, to be disbursed in accordance with the laws of this state.

The state treasurer, subject to the approval of the state administrative board, may transfer available money other than money in the irrevocable medical assistance account established in section 11, from the state appropriations made for any of the several forms of social welfare administered under the jurisdiction of the state department, to any other of the funds so administered.

For counties having a population of 600,000 or less and for all cities regardless of population, the commission may make arrangements to disburse amounts to general public relief recipients through central state facilities after determination of the recipients' needs by a county, district or city department of social welfare. The arrangements shall permit emergency and temporary general public relief payments by the county, district or city department and voucher or vendor payments for persons entitled to general public relief not involving any federal funds, where the well-being of the recipient or the protection of general public relief funds makes such payments desirable. The arrangements shall include provisions for county or city reimbursement to the state of funds centrally disbursed to general public relief recipients and allocable costs of the central disbursement. Nothing in this section or act shall be construed, however, as limiting the right of the state department to make warrants payable to and deliver same to, any creditor of a recipient of general public relief who has provided food, shelter or public utility service to such recipients at the request of the state department.

HISTORY: CL 1948, 400.18;—Am. 1950, Ex. Ses., p. 24, Act 19, Eff. Mar. 31, 1951;—Am. 1951, p. 157, Act 125, Eff. Sep. 28;—Am. 1957, p. 366, Act 286, Imd. Eff. Jun. 13;—Am. 1965, p. 806, Act 401, Imd. Eff. Oct. 27.

400.18a Repealed. 1957, p. 400, Act 286, Imd. Eff. Jun. 13.

Section provided for allocation and distribution of aid to persons permanently and totally disabled.

400.18b Foster care of children; state appropriations to counties, distribution; basic amount, county costs, payment; per diem rates, establishment.

Sec. 18b. The commission shall provide for the distribution of such moneys for the foster care of children as shall be appropriated by the legislature to counties whose annual expenditures from county funds for foster care, as limited in this section, exceed a basic amount to be established as follows: Such basic amount shall be equal to $1\frac{1}{2}$ hundredths of 1% of the value of the taxable real and personal property of the county as determined by the state board of equalization for the preceding year, unless in the case of any particular county the commission finds, upon careful examination of the financial resources and necessary expenditures of the county for all services, that it is unable to provide for foster care in so large an amount, in which case the basic amount to be expended by the county before state funds may be made available to it shall be reduced in an amount to be determined by the commission in relation to the county's financial situation: Provided, That the basic amount in every county shall not be less than \$2,000.00: And provided further, That the commission shall make an annual original foster care grant to each county of 90% of the first \$2,000.00 of annual expenditures from the child care fund of the county established in section 73 of this act, such grant to be considered county funds for the purposes of this section.

Costs which shall be considered in determining the county's expenditures for foster care for the purpose of establishing the basic amount are:

(1) Expenditures from county funds for the care of children committed to Michigan children's institute, boys' vocational school and girls' training school.

(2) Expenditures, classified as required by the auditor general, made by the county or on the order of the judge of probate from the general fund of the county for the foster care of children, including children in detention pending adjudication.

(3) Expenditures from the child care fund of the county established under section 73 of this act. Such distribution of state funds shall be in an amount not less than 50% of the net cost of foster care paid from the child care fund of the county established in section 73 of this act, not including any amount of county expenditures from this fund which were used (a) to establish the said basic amount, or (b) to pay for the care of children admitted to Michigan children's institute, boys' vocational school and girls' training school: Provided, That all payments from the foster care fund made on order of the county department of social welfare are found by the commission to have been made in accordance with the standards of care and service established in section 18c of this act. In respect to those counties whose basic amount has been reduced by the commission or who receive other financial consideration by the commission in view of their need, the commission shall establish suitable per diem rates for foster care for any such county and may change such rates from time to time as may be necessary to insure economical and satisfactory foster care. Rates established will not be for the purpose of fixing minimum or maximum rates which a county may pay, but for the purpose of determining an average cost as the basis for allocating state funds. In the case of children cared for through licensed child caring institutions and placement agencies, such per diem rates may include a reasonable amount for supervision.

HISTORY: Add. 1855, p. 176, Act 113, Eff. Oct. 14.

400.18c Foster care of children; licensed institutes, placement agencies of county department; standards of care and service.

Sec. 18c. Foster care financed by a county department of social welfare shall be provided by the use of licensed child caring institutions or placement agencies, in accordance with the needs of the child, or if licensed child caring institutions or place-

ment agencies are not available, or there is a religious conflict, foster care shall be provided under the direct supervision of the county department, which care shall meet the following standards of care and service:

(1) Personnel engaged in placement and supervision of children in foster care shall have qualifying training and experience.

(2) Adequate records shall be maintained with information on the physical and mental health of the child, his emotional stability and family background, together with the reasons for the child's placement away from home to aid in planning for any child placed by the department, toward the end that the child may be reunited with his family as soon as it appears possible.

(3) Family foster homes used by the department shall be selected with consideration of the religious, racial and cultural background of the child to be placed and children thus placed shall be visited in these homes at least once a month.

HISTORY: Add. 1955, p. 177, Act 113, Eff. Oct. 14.

400.18d Foster care of children; county emergency receiving facility for temporary care, standards.

Sec. 18d. The county department of social welfare, upon authorization of the county board of supervisors, may operate an emergency receiving facility for the temporary care of homeless, dependent or neglected children for whom such care is necessary, pending foster care placement or restoration to their own homes or any other plan deemed best for the health, safety and welfare of such children. The county department operating an emergency receiving facility shall maintain the standards of the state department established in respect to places of detention for juveniles under section 14 of this act.

HISTORY: Add. 1958, p. 34, Act 29, Eff. Sep. 13.

400.19 Powers and duties as to Michigan employment institution for blind; transfer to state department.

Sec. 19. The powers and duties vested by law in the board of corrections and charities and transferred to the state welfare commission, in the state welfare department, in the director of the state welfare department, in the state welfare commission and in the state institute commission as relating to the Michigan employment institution for the blind at Saginaw are hereby transferred to and vested in the state department of social welfare herein created. Immediately on the taking effect of this act, the departments, boards, commissions and officers whose powers and duties are hereby transferred shall be abolished, and, whenever reference thereto is made in any law of the state, reference shall be deemed to be intended to be made to the state department of social welfare.

HISTORY: CL 1948, 400.19;—Am. 1957, p. 113, Act 95, Eff. Sep. 27.

400.20 Powers and duties as to social welfare; transfer to state department.

Sec. 20. All of the powers and duties prescribed in any law of this state with respect to any subject matter vested in the state department of social welfare shall be transferred to and be vested in said department.

HISTORY: CL 1948, 400.20.

400.21 Refusal of access or information to social welfare commission; misdemeanor.

Sec. 21. Any officer, superintendent or employe of any institution, home, hospital, or other facility subject to inspection under the provisions of this act, who shall refuse to admit any member of the commission, or any duly authorized agent of the state department, acting within the scope of his authority, for the purpose of inspection, or

who shall refuse or neglect to furnish any information required by the commission, or said duly authorized agent, acting within the scope of his authority, shall be guilty of a misdemeanor and shall be punished as provided in the laws of this state.

HISTORY: CL 1948, 400.21.

OLD AGE ASSISTANCE AID TO DEPENDENT CHILDREN AND AID TO THE BLIND.

400.22 Repealed. 1957, p. 116, Act 95, Eff. Sep. 27.

Section created bureau of social security.

400.23, 400.23a Repealed. 1968, p. 179, Act 117, Imd. Eff. Jun. 11.

Sections related to old age assistance and other aid; county bureau; director of state department.

400.24 Federally financed programs; rules and regulations, uniform system; minimum standards for general public relief, exceptions; review of administrative decision.

Sec. 24. The state department, for programs financed in whole or in part with federal funds, shall have power and authority to make such rules and regulations as are necessary for guiding and regulating the county departments of social welfare. The state department shall prepare and have printed all blanks and books of record used in the county departments of social welfare, to the end that a uniform system shall be employed in all counties. The state department shall establish minimum statewide standards for all forms of general public relief except emergency or temporary general public relief. Any county board of social welfare which is dissatisfied with administrative decisions made under this section may, within 60 days after it has been notified of such determination, file with the circuit court of the county in which the board of social welfare is located, a petition for review of such determination, and there shall be no withholding of state funds pending the appeal.

HISTORY: CL 1948, 400.24;—Am. 1957, p. 114, Act 95, Eff. Sep. 27;—Am. 1965, p. 808, Act 401, Imd. Eff. Oct. 27.

400.25 Application for assistance; form, oath; third party; political or religious affiliations.

Sec. 25. An applicant for assistance or a third party acting responsibly in his behalf shall deliver his application in writing to the county department of social services in the manner and form prescribed by the state department. All statements in the application shall be over the signature or witnessed mark of the applicant or such third party and shall include a declaration under the penalties of perjury that the application has been examined by or read to the applicant or third party, and, to the best of the applicant's or third party's knowledge, that all facts are true in each material point and are complete; and the applicant or third party shall empower the county department of social services and the state department to obtain all necessary information concerning the recipient of social services for whom the application is made and his resources in order to determine the eligibility of the applicant. No question, inquiry or recommendation shall relate to the political opinions or religious affiliations of any person, and no grant or denial of aid under this act shall be in any manner affected or influenced by such opinions or affiliations.

HISTORY: Am. 1945, p. 316, Act 225, Imd. Eff. May 18;—CL 1948, 400.25;—Am. 1950, 1st Ex. Sess., p. 128, Act 42, Eff. Oct. 1;—Am. 1957, p. 114, Act 95, Eff. Sep. 27;—Am. 1965, p. 808, Act 401, Imd. Eff. Oct. 27;—Am. 1968, p. 355, Act 232, Imd. Eff. Jun. 26.

400.25a Aid to permanently and totally disabled; eligibility and residency requirements.

Sec. 25a. Aid to the permanently and totally disabled shall be provided through the county department of social welfare, in accordance with rules and regulations of the state department, to any needy individual who is at least 18 years of age and who is permanently and totally disabled and who is not receiving old age assistance, aid to dependent children or aid to the blind and who has either resided in Michigan for 1

year immediately preceding the date of a grant of aid under this section or whose incapacity resulted from an accident or condition occurring after he became a resident of Michigan, if the individual is not an inmate of a public institution, except as a patient in a medical institution for treatment for other than tuberculosis or mental disease, and is not an inmate of a private institution for tuberculosis or mental disease. The commission may further define by rule the words "permanently and totally disabled".

HISTORY: Add. 1960, 1st Ex. Sess., p. 128, Act 48, Eff. Oct. 1;—Am. 1967, p. 115, Act 95, Eff. Sep. 27;—Am. 1965, p. 809, Act 401, Imd. Eff. Oct. 27.

400.26 Old age assistance; eligibility; residence.

Sec. 26. Old age assistance shall be given to any person who:

(a) Has attained the age of 65 years or upwards. The age stated in the preceding federal census verified by a certified document shall be prima facie evidence of an applicant's age.

(b) Has been a resident of the state for 1 year immediately preceding the date of a grant of aid under this section; or, while receiving old age assistance from some other state, has removed to Michigan and has lived in Michigan for a period of time equal to the period of time that a recipient of old age assistance from Michigan is required to live in the other state before becoming eligible for old age assistance, insofar as residence is concerned, from the other state except no person shall be required to reside in Michigan more than 1 year to meet the Michigan residence requirement.

(c) Is not an inmate of any institution, except that it may be paid to an inmate of an institution under the conditions established in section 42.

(d) Has no spouse, other person, association, society or corporation legally or contractually responsible under the laws of this state for his support and found by the county department of social welfare to be able to support him. If such spouse, child, other person, association, society or corporation is partially able to support the applicant, such partial support shall be taken into consideration in fixing the amount of the assistance.

(e) Has not made an assignment or transfer of any real or personal property or income within 1 year immediately preceding date of application or granting of assistance, for the purpose of qualifying for old age assistance, or for the purpose of increasing the amount of assistance to be received under this, or any prior act, or for the purpose of precluding recovery.

(f) Has not sufficient income to provide a reasonable subsistence, compatible with decency and health, as determined by the county department of social welfare under the rules and regulations of the state department.

(g) Although in need of continual care, is receiving proper care outside an institution as determined by the rules and regulations of the state department. Assistance may be paid to such person when properly cared for by relatives who, though legally responsible, are unable to support such person. Assistance may be given to such person when cared for by relatives who are not legally responsible to support such person.

(h) Is supported in a nontax-supported hospital or institution by relatives who are not legally responsible for the support of such person if such person is otherwise eligible for such assistance.

HISTORY: Am. 1945, p. 65, Act 67, Eff. Sep. 6;—CL 1948, 400.26;—Am. 1949, p. 144, Act 137, Eff. Sep. 23;—Am. 1951, p. 432, Act 264, Eff. Sep. 26;—Am. 1965, p. 424, Act 247, Imd. Eff. Jul. 21;—Am. 1965, p. 809, Act 401, Imd. Eff. Oct. 27;—Am. 1968, p. 578, Act 321, Eff. Sep. 1;—Am. 1970, p. 86, Act 33, Imd. Eff. Jun. 16.

400.27 Old age assistance; ineligibility.

Sec. 27. Old age assistance shall not be given to a person who:

(a) Owns tangible or intangible property having a market value in excess of \$1,500.00, or, if married and not separated from spouse, his or her property together with the tangible or intangible property of spouse exceeds the value of \$2,000.00. The

value of a homestead, occupied by the applicant or recipient as a home, shall not be included in determining the value of property under this section. The value of life insurance shall be computed at the cash surrender value available and payable upon demand and only that portion of the value thereof, which is in excess of \$1,000.00, shall be included in determining the value of the property. If the health of the insured is such as to make continuance of the insurance desirable, the entire cash surrender value of life insurance is to be excluded from consideration. Household goods and wearing apparel shall not be considered, nor shall farm stock or implements, including but not limited to horses, cattle, poultry, power machinery and motor powered vehicles having a fair market value of less than \$750.00 be considered. The interest of the applicant or recipient in an estate or trust as heir, devisee, legatee, cestui que trust, or otherwise shall not be considered the property of the applicant or the recipient for eligibility requirements unless and until it has been distributed to him or is available to him for disposition or expenditure by him. In fixing the value of property under this section, ownership of real property located in another state by a spouse not having a legal residence in Michigan shall not preclude the applicant from receiving the aid unless it appears that the applicant has a present legal interest in such property.

(b) Has an income from all sources of more than the amount necessary to provide such person, or married couple, with a minimum subsistence which shall be determined, as near as possible, by the state department, which shall use the recognized current standards of the department of agriculture of the federal government and the cost figures of the department of labor and industry of the state of Michigan. Premiums paid in any type of life insurance on the life of the applicant or recipient, or on the life of his or her spouse, which has been in force and effect for 5 years or more, by any beneficiary thereof therein provided, shall not be construed as income of the applicant or recipient, and shall not be deducted from the amount of support to be granted or granted for assistance, whether or not the person by whom the premiums are paid is a pecuniarily responsible relative of the applicant or recipient.

HISTORY: Am. 1943, p. 393, Act 238, Imd. Eff. April 21;—Am. 1945, p. 316, Act 225, Imd. Eff. May 18;—Am. 1947, p. 656, Act 350, Imd. Eff. July 3;—CL 1948, 400.27;—Am. 1949, p. 424, Act 283, Eff. Sep. 23;—Am. 1951, p. 305, Act 215, Eff. Sep. 28;—Am. 1953, p. 273, Act 197, Eff. Oct. 2;—Am. 1957, p. 418, Act 292, Eff. Sep. 27;—Am. 1965, p. 591, Act 311, Imd. Eff. Jul. 22;—Am. 1965, p. 803, Act 400, Eff. Oct. 27;—Am. 1966, p. 578, Act 321, Eff. Sep. 1;—Am. 1966, p. 612, Act 332, Eff. Oct. 1;—Am. 1970, p. 87, Act 33, Imd. Eff. Jun. 16.

400.28 Old age assistance; amount; aid by persons not responsible for support, effect.

Sec. 28. The amount of assistance shall be fixed with due regard to the condition of the individual and community and the circumstances in each case. When an applicant is not receiving adequate support from a husband or wife responsible under the laws of this state to furnish such support, free board and lodging supplied to an applicant because of his or her necessity by a friend or relative who is not responsible for applicant's support shall not be grounds for refusing aid.

HISTORY: Am. 1941, p. 283, Act 186, Eff. Jan. 10, 1942;—Am. 1945, p. 317, Act 225, Imd. Eff. May 18;—Am. 1947, p. 473, Act 301, Imd. Eff. June 30;—Am. 1948, 1st Ex. Ses., p. 10, Act 8, Imd. Eff. April 28;—CL 1948, 400.28;—Am. 1949, p. 85, Act 77, Eff. Jul. 1;—Am. 1951, 1st Ex. Ses., p. 613, Act 2, Imd. Eff. Aug. 23;—Am. 1954, p. 52, Act 45, Eff. Aug. 13;—Am. 1956, p. 31, Act 25, Eff. Jul. 1;—Am. 1957, p. 396, Act 286, Imd. Eff. Jun. 13;—Am. 1964, p. 273, Act 202, Imd. Eff. May 22;—Am. 1966, p. 296, Act 228, Eff. Aug. 1;—Am. 1970, p. 263, Act 87, Imd. Eff. Jul. 20.

400.29 Repealed. 1968, p. 179, Act 117, Imd. Eff. Jun. 11.

Section related to social welfare act; old age assistance; effect of income from mortgages and land contracts.

Original section 29 of Act 280 of 1939, p. 513, which provided for exclusion of \$50 in any calendar year from calculation of income of applicant or recipient, was repealed by Act 186 of 1941.

400.30 Repealed. 1965, p. 373, Act 211, Imd. Eff. Jul. 16.

Section provided formula for computing income from non-homestead real property held by applicant for assistance.

400.31 Separate residence of wife; legal residence.

Sec. 31. For the purposes of this act, the residence of the husband shall not be deemed to be the residence of the wife if they are living separate and apart and in

such case each may have a separate residence dependent upon proof of the fact and not upon legal presumption. No person shall be, because thereof, precluded from acquiring or retaining a legal residence or settlement.

HISTORY: Am. 1945, p. 317, Act 225, Imd. Eff. May 18;—CL 1948, 400.31.

400.32 Change of residence of recipient; cancellation of assistance, proof of continuing eligibility.

Sec. 32. Any person qualified for and receiving categorical assistance pursuant to the provisions of this act in any county in this state who moves or is taken to another county in this state, shall be entitled to continue to receive categorical assistance in the county to which he has moved or is taken, and the county department of social welfare of the county from which he has moved shall transfer all necessary records relating to the person to the county department of social welfare of the county to which he has moved. The assistance of any recipient who absents himself from the state for more than 6 months in any calendar year shall be canceled, but the county department of social welfare may, in accordance with the rules and regulations of the state department, grant permission to any recipient to leave or remain out of the state for more than 6 months as may be deemed necessary under the circumstances. Any recipient receiving old age assistance who moves to another state may continue to receive old age assistance until he has fulfilled the residence requirements for old age assistance in the other state. The state department shall require satisfactory proof of continuing eligibility of such recipient during the period such recipient receives old age assistance while residing in the other state.

HISTORY: Am. 1945, p. 124, Act 121, Eff. Sep. 6;—CL 1948, 400.32;—Am. 1965, p. 809, Act 401, Imd. Eff. Oct. 27.

400.33 Repealed. 1968, p. 466, Act 268, Eff. Nov. 15.

Section related to funeral expenses of social welfare recipient; recovery; recovery from estate of deceased or surviving spouse.

400.34, 400.34a Repealed. 1965, p. 579, Act 305, Imd. Eff. Jul. 22.

Sections gave state preferred claim against deceased's estate for funeral expenses paid by state.

400.35 Records confidential; regulation for use.

Sec. 35. All records relating to categorical assistance, including medical assistance, shall be confidential and shall not be open to inspection except that the state bureau shall have the power to promulgate and enforce regulations for the use of such records as may be necessary from time to time for purposes related to federal, state or local public assistance of any kind.

HISTORY: CL 1948, 400.35;—Am. 1950, 1st Ex. Sess., p. 129, Act 42, Eff. Oct. 1;—Am. 1966, p. 577, Act 321, Eff. Sep. 1.

400.36 County department; compliance with state requirements as to payment of assistance.

Sec. 36. When assistance is given to any person under the provisions of this act with respect to old age assistance, aid to dependent children, aid to the blind, and aid to the permanently and totally disabled, the county department of social welfare shall comply with all requirements of the state department.

HISTORY: CL 1948, 400.36;—Am. 1950, 1st Ex. Sess., p. 129, Act 42, Eff. Oct. 1;—Am. 1965, p. 810, Act 401, Imd. Eff. Oct. 27.

400.37 Application for assistance; investigation, hearing, appeal.

Sec. 37. Whenever an application is made for assistance, the county department of social welfare shall make a thorough investigation and report to the state department in the manner prescribed by it, giving its recommendation of the amount of assistance, if any, to be allowed. If the application be disallowed, or if the applicant is dissatisfied with the amount of assistance he is receiving, or is to receive, he may demand, in writing, a hearing of his case, as provided for in section 9 or section 65. The applicant or recipient may appeal to the circuit court of the county in which he resides, which court shall have power to review questions of law involved in any final decision or de-

termination of the state department. Said petition shall be filed within 30 days of the receipt of such decision or determination. The petitioner shall not be required to furnish any bond and costs shall not be taxed against him. If the court shall decide in favor of the petitioner, assistance shall be paid from the first day of the month following the date of the application therefor or of the date of the original application for the relief in question.

HISTORY: Am. 1945, p. 317, Act 225, Imd. Eff. May 18;—CL 1948, 400.37;—Am. 1950, 1st Ex. Ses., p. 129, Act 42, Eff. Oct. 1;—Am. 1965, p. 810, Act 401, Imd. Eff. Oct. 27.

400.38 Assistance; determination of amount; authorizations; warrants, delivery.

Sec. 38. Upon receipt of the recommendations of the county department of social services, the state department shall determine the amount of categorical assistance to be allowed monthly, if any, and the date for which the first payment shall be made, to be payable as the state department shall decide. If a person has been authorized to receive a payment in respect to his requirements for any month for categorical assistance, no assistance shall be allowed nor shall eligibility exist for him for that month for any other categorical assistance. The state department shall cause to be made due record of all authorizations of assistance with the address of the recipient and shall furnish the county department of social services with a copy thereof. Whenever payment of assistance is made, warrants shall be drawn upon the appropriation made therefor, or other moneys available for these forms of assistance, and delivered to the recipients, or third parties acting responsibly in their behalf or the providers of goods or services authorized by the state department in accordance with such regulations as may be made by the state department.

HISTORY: CL 1948, 400.38;—Am. 1951, p. 432, Act 264, Eff. Sep. 28;—Am. 1965, p. 810, Act 401, Imd. Eff. Oct. 27;—Am. 1968, p. 355, Act 232, Imd. Eff. Jun. 28.

400.39 Assistance; payment direct to recipient, exceptions.

Sec. 39. All old age assistance, aid to dependent children, aid to the blind, and aid to the permanently and totally disabled, given under this act shall be paid directly to the applicant or recipient except that (1) if a legal guardian has been duly appointed for such applicant or recipient, the assistance may be paid to such guardian for the benefit of such applicant or recipient, or (2) if the state department has entered into a contractual arrangement or agreement or has authorized goods or services from a provider including hospitalization or medical care in behalf of the applicant or recipient, a portion of the assistance as determined by the state department may be paid directly to the contractor or provider, or (3) if necessary, as determined by the state department and in conformance with the rules of the department of health, education and welfare and such rules as shall be developed by the state department, the assistance may be paid to a third party interested in and acting responsibly in behalf of such applicant or recipient for the benefit of such applicant or recipient. Any assistance checks not indorsed during the lifetime of the recipient shall be null and void and shall be returned to the state department and canceled.

HISTORY: CL 1948, 400.39;—Am. 1951, p. 432, Act 264, Eff. Sep. 28;—Am. 1968, p. 355, Act 232, Imd. Eff. Jun. 28.

400.40 Financial report by recipient; cancellation upon failure to file.

Sec. 40. The recipient of old age assistance, aid to dependent children, aid to the blind, or aid to the permanently and totally disabled may be required in the discretion of the state bureau, to file with the supervisor, annually or otherwise, a report which is to be sworn to or affirmed, showing the recipient's financial condition, and upon fail-

ing to file such report within 30 days after demand or notice to the recipient by registered mail, the state bureau may cancel the authorization of assistance to such recipient and cease payment thereunder.

HISTORY: CL 1948, 400.40;—Am. 1951, p. 433, Act 264, Eff. Sep. 28.

400.41 Report by recipient on acquisition of property; recommendations of county department.

Sec. 41. If at any time after approval of a grant of assistance the recipient, or the spouse of the recipient, becomes possessed of any property or income of which the county department of social welfare has no knowledge, it shall be the duty of the recipient to notify said county department of social welfare which shall report and make recommendations to the state department which in turn may cancel, suspend or alter the certificate of allowance.

HISTORY: CL 1948, 400.41;—Am. 1955, p. 811, Act 401, Imd. Eff. Oct. 27.

400.42 Institutionalization of recipient; visitation; access to confidential information; institution may not reject person; person in mental or tuberculosis hospital.

Sec. 42. While any person is a patient in a public medical institution, convalescent home or is a resident or patient in any private medical, charitable, benevolent, or fraternal institution, old age assistance, aid to the blind, or aid to the permanently and totally disabled may be paid to such person if otherwise eligible therefor under this act, except that aid to the blind and aid to the permanently and totally disabled shall not be paid to a patient in an institution for tuberculosis or mental diseases or to a person diagnosed as having tuberculosis or psychosis and who is a patient in a medical institution as a result thereof. The state department of social services shall be permitted freely to visit the institution and shall have access to information needed to comply with the requirements of the federal government provided that all information about patient medical records be handled in a confidential manner. It shall not be lawful for the authorities of any charitable institution receiving public moneys to refuse admission as an inmate of such institution, or to refuse relief on the ground that the person is receiving assistance under this act. Any patient in a mental or tuberculosis hospital, who is otherwise eligible, may receive assistance under the provisions of this section, notwithstanding the provisions of Act No. 151 of the Public Acts of 1923, as amended, Act No. 177 of the Public Acts of 1925, as amended, and Act No. 115 of the Public Acts of 1929, as amended.

HISTORY: CL 1948, 400.42;—Am. 1951, p. 433, Act 264, Eff. Sep. 28;—Am. 1955, p. 821, Act 403, Imd. Eff. Oct. 27;—Am. 1966, p. 296, Act 286, Eff. Aug. 1.

400.43 Assistance; periodical review, power to alter or revoke, appeal.

Sec. 43. All assistance granted under this act shall be reconsidered from time to time, or as frequently as may be required by the state department. After further investigation by the county department of social welfare, the amount and manner of giving assistance may be changed, or the assistance may be withdrawn if the state department finds the recipient's circumstances have changed sufficiently to warrant such action. It shall be within the power of the state department at any time to cancel and revoke assistance for cause, and it may for cause suspend payments for assistance as it may deem proper, subject to appeal and hearing by the recipient as provided for in section 9. The provisions of this section shall be mandatory only with respect to old age assistance, aid to dependent children, aid to the blind, aid to the permanently and totally disabled or any other function financed in whole or in part by federal funds.

HISTORY: CL 1948, 400.43;—Am. 1950, 1st Ex. Ses., p. 129, Act 42, Eff. Oct. 1;—Am. 1955, p. 811, Act 401, Imd. Eff. Oct. 27.

400.44 Repealed. 1951, p. 434, Act 264, Eff. Sep. 28.

Section gave bureau of social security power to prescribe number of recipients in any year in which moneys for old age assistance were not adequate to provide reasonable assistance for all applications.

COUNTY DEPARTMENTS OF SOCIAL WELFARE.

400.45 County department of social services; creation, powers and duties; county social services board, appointment, compensation; director and employees, appointment.

Sec. 45. There is created a county department of social services, hereinafter called the county department, in each county of this state, which shall possess the powers granted and perform the duties imposed in this act. The county department shall consist of a county social services board and the director of the county department, together with such assistants and employees as may be necessary to operate the county department. The board of supervisors in each county shall provide suitable office accommodations. The state department shall make all administrative disbursements for integrated services but the county shall reimburse the state for the portion of administrative expenses earned in respect to county functions.

The salary and expenses of each individual member of the county board shall be fixed by the county board of supervisors according to the amount of time necessary he shall devote to the performance of his duties. A member of the county board may not serve as the director or an employee of the county department. The members of the county boards shall be appointed at the annual October session of supervisors, and they shall qualify by taking and filing the oath of office with the county clerk, and assume their duties as prescribed by this act not later than November 1 of the year appointed.

The director, employees and assistants of the county department shall be appointed by the state department as recommended by the county or city board from among persons certified as qualified by the state civil service commission, section 48 notwithstanding, and in accordance with the staffing requirements of the state and county departments.

HISTORY: Am. 1945, p. 50, Act 53, Eff. Sep. 6;—CL 1948, 400.45;—Am. 1965, p. 811, Act 401, Imd. Eff. Oct. 27;—Am. 1966, p. 98, Act 74, Imd. Eff. Jun. 10.

400.46 County social service board; administration; members, terms, oath of office, vacancies; quorum; meeting, nonattendance; removal, expenses; chairman.

Sec. 46. The administration of the powers and duties of the county department shall be vested in a county social services board of 3 members, appointed from persons resident within the county and holding no elective office, for 3-year terms as follows: 2 members shall be appointed by the county board of supervisors, and 1 member by the director of the state department. Members appointed prior to the effective date of this 1965 amendatory act shall continue in office until the expiration of their terms and their successors are appointed and qualified. Each member shall qualify by taking and filing with the county clerk the constitutional oath of office, and shall hold office until the appointment and qualification of his successor. Vacancies in the membership of the board shall be filled for the expiration of the unexpired term, in the same manner as herein provided for appointment of the original members. A majority of the board shall constitute a quorum for the transaction of business. The board shall meet on the call of the chairman, or on a written request to the chairman signed by 2 members of the board, or at such times and places as shall be prescribed by the rules and regulations of the board. The board shall hold not less than 12 meetings each fiscal year with an interval of not more than 5 weeks between any 2 meetings. If a member of the county social services board, upon receiving notification thereof, fails to attend 3 consecutive regularly scheduled meetings of the board, the board of supervisors after notification from the county social services board of the failure of a member or members to attend without reasonable cause such as illness or other circumstances beyond his

control shall by formal vote excuse him or declare his office vacant. The vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment was made. Members of the board shall be reimbursed for necessary travel and other expenses, and shall be paid such amount as shall be fixed by the board of supervisors or board of county auditors.

At the first meeting following the appointment of any new member to said board, the members shall choose 1 of their number as chairman, who shall continue to act as chairman of said board until the selection of his successor.

HISTORY: Am. 1945, p. 51, Act 53, Eff. Sept. 6;—CL 1948, 400.46;—Am. 1965, p. 812, Act 401, Imd. Eff. Oct. 27;—Am. 1967, p. 76, Act 60, Imd. Eff. Jan. 20.

400.47 District department of social welfare and medical relief; two or more counties; district social welfare board and medical advisory council, appointment, terms, chairman.

Sec. 47. Two or more counties may organize a district department of social welfare and medical relief by a majority vote of the members-elect of the board of supervisors of each county. The administration of the powers and duties of said department shall be vested in a district social welfare board, and medical advisory council of members appointed from persons resident within the district for 3 year terms as follows: One member shall be appointed by the state social welfare commission, and the county board of supervisors of each county included in the district shall each appoint 2 members: Provided, That of the members first appointed the one appointed by the state social welfare commission shall be appointed for a term of 1 year; 1 member appointed by the county board of supervisors of each county shall be appointed for the term of 2 years, and 1 member for the term of 3 years. Any reference herein to a county department of social welfare or to a county social welfare board, shall be deemed to apply to a district department of social welfare or a district social welfare board, where a district has been created as herein provided. No member of a district board shall hold any elective office. The members of said board shall choose their chairman as provided in section 46 hereof.

HISTORY: CL 1948, 400.47.

400.48 Repealed. 1968, p. 179, Act 117, Imd. Eff. Jun. 11.

Section related to city department of social welfare; establishment, discontinuance.

400.49 County or district social welfare boards; director and assistants, employment, qualifications, compensation and expenses, supplementary salary.

Sec. 49. Any county or district board shall employ a director, who shall be the executive officer and secretary of the board, and shall be responsible to the board for the performance of his duties. The director and his assistants shall hold no elective office, shall devote their entire time to the performance of the duties of their office, and shall receive such compensation as shall be fixed by the state civil service commission, together with their actual and necessary traveling and other expenses incurred in the discharge of their official duties. Unless disapproved by the state civil service commission, the county board, with the approval of the board of supervisors, may provide a supplementary salary to that fixed by the state civil service commission in remuneration for those duties of the director and his assistants if deemed justifiable, associated with the administration of those forms of relief or other welfare programs not wholly or in part financed by federal funds. The cost shall be deemed for all purposes a proper county expense.

HISTORY: CL 1948, 400.49;—Am. 1953, p. 74, Act 78, Eff. Oct. 2;—Am. 1965, p. 812, Act 401, Imd. Eff. Oct. 27;—Am. 1968, p. 167, Act 143, Imd. Eff. Jan. 24.

400.50 County employee; unauthorized transfer of public relief recipient, misdemeanor.

Sec. 50. Any county employee or officer who transports, brings or causes to be transported or brought, any other person receiving general relief, hospitalization or infirmity care, or in need of general relief, hospitalization or infirmity care from any county or from any city operating a separate department of social welfare under this act into any other county or city operating a separate department without legal authority and there leave the person receiving general relief or in need of general relief; or who induces such person by threat or other means to remove to another county or city operating a separate department, with the intent to make the county or city to which the removal is made chargeable with the support of the person receiving or in need of public assistance, is guilty of a misdemeanor.

HISTORY: Former section 400.50 (Sec. 50, Act 290, 1939, p. 529) authorized employment of supervisor of bureau of social aid of county department of social welfare by supervisor of bureau of social security of state department of social welfare. It was repealed by Act 95, § 2, 1957, p. 74, Eff. Sept. 27. Add. 1961, p. 261, Act 184, Eff. Sep. 8.

400.51 County board; executive heads of institutions and assistants, appointment, compensation and expenses.

Sec. 51. The county board may appoint an executive head of any institution under the supervision and jurisdiction of the board, and may employ such assistants and employes and incur such other expenses as may be necessary to carry out the provisions of this act. This compensation of all assistants and employes, and the number thereof, shall be within the funds made available therefor. Such assistants and employes shall receive their actual and necessary traveling and other expenses incurred in the discharge of their official duties.

HISTORY: CL 1948, 400.51.

400.52 County department; rules and regulations; review, copies, filing; audit of case records; withholding fund.

Sec. 52. The governing board of each county, city and district department shall adopt rules and regulations governing the policies of the board, which rules and regulations shall not be in violation of any express provision of state law. Said rules and regulations shall be reviewed by such governing board at least once in each year. Copies of such rules and regulations shall be forthwith filed with the state department. The state department is hereby authorized to provide for the audit of the case records of the several county, city and district departments with respect to general public relief as defined in section 18, and is further authorized to withhold the distribution of state funds, otherwise required by section 18, in respect to cases for which the relief granted is deemed to be in violation of state law or the rules and regulations of the state department or of the respective boards and filed with the state department. The respective boards shall comply with and be governed by the rules and regulations of the state department only as to those forms of relief which are wholly or in part financed by federal funds.

HISTORY: CL 1948, 400.52;—Am. 1950, Ex. Ses., p. 64, Act 29, Eff. Mar. 31, 1951;—Am. 1951, p. 160, Act 127, Eff. Sep. 28;—Am. 1965, p. 812, Act 401, Imd. Eff. Oct. 27.

400.53 County board; cooperation with state department.

Sec. 53. Said board shall cooperate with the state department of social welfare in handling the welfare and relief problems and needs of the people of its county, and to such end may adopt any plan or plans required or desirable in order to participate in the distribution of federal or state moneys, or in order to receive the assistance of the federal or state governments. The board may adopt any rules and regulations or do any act in order to enable participation of the county in any such plan or plans.

HISTORY: CL 1948, 400.53.

400.54 County board; prevention of social disabilities, restoration of individuals to self support.

Sec. 54. In the administration of the powers and duties assigned to the department, the board, shall, insofar as possible, place emphasis upon the prevention of social disabilities, the removal of causes of such disabilities, and the restoration of individuals to self support and to normal conditions of life.

HISTORY: CL 1948, 400.54.

400.55 County department; administration of welfare program.

Sec. 55. The county department shall administer a public welfare program, as follows:

General public relief; county medical care facility; temporary emergency relief; legal settlement; absence.

(a) To grant general relief including medical care as defined in this section and care in the county medical care facility, but not including hospitalization and infirmary care other than care in the county medical care facility, to any person domiciled in the county who has a legal settlement in the state. General relief may also be granted to a person who has a legal settlement in the state but no domicile in the county and a re-charge can be made when appropriate in the manner provided in cases of emergency hospitalization under this act. In a temporary emergency, general relief may be given to indigents with no settlement in the state as the respective county departments deem necessary, including, if no other funds are available for the purpose, all necessary expenses in transporting an indigent to his domicile in Michigan, or in another state or nation, when information reasonably tends to show that the person has a home available to him in his place of domicile in Michigan or a legal residence in another state or nation. A legal settlement in the state is acquired by an emancipated person: (1) Who has lived continuously in the state for a period of 1 year with the intent to make it his home; and (2) Who, during the 1 year period has not received any public relief, other than relief received during and as a direct result of a civil defense emergency, or support from relatives, but time spent in a public institution shall not be counted in determining settlement. A legal settlement shall be lost by remaining away from this state for an uninterrupted period of 1 year except that absence from the state for labor or other special or temporary purpose shall not occasion loss of settlement.

Administration of assistance; medical care.

(b) To administer categorical assistance including medical care.

County infirmary or medical care facility; board of county institutions; outpatient facilities for mental disorders; grants.

(c) To supervise and be responsible for the operation of the county infirmary and county medical care facility. In any county now or hereafter containing more than 1,000,000 population and which maintains a county infirmary or county hospital or such joint infirmary and hospital providing for mental patients, such institution and the admissions thereto shall be subject to the control of a board to be known as the board of county institutions. Such board shall consist of 5 members. Three members shall be appointed by the board of supervisors and 2 members by the board of county auditors, and each member of the board shall hold office for such term and receive such compensation as said board of supervisors shall provide by ordinance. In relation to the administration of such institutions said board shall have and succeed to all powers and duties heretofore vested by law, general, local or special, in the superintendents of the poor in such county and the board of county institutions as constituted immediately preceding the adoption of this amendment. The board of county institutions of said county may also maintain outpatient facilities for the treatment of needy persons suf-

fering from mental disorders. Such board shall also have the same powers as are given herein to the county board in section 78.

Restoration to financial and social independence.

(d) To furnish in all cases, insofar as practicable, such care and treatment as will tend to restore needy persons to a condition of financial and social independence.

Proof of eligibility of applicants for relief.

(e) To require that each applicant shall furnish proof satisfactory to the county board that the applicant is entitled to the aid, relief, assistance or benefit sought.

Investigation of circumstances of applicants and recipients of relief.

(f) To investigate, in respect to each application for any form of public aid or relief, the circumstances of the applicant, both at the time of application and periodically during the receipt of aid or relief.

Social and financial records; social disabilities.

(g) To maintain adequate social and financial records pertaining to each recipient of aid or relief and so far as is practicable engage in the prevention of social disabilities.

Investigation of children for probate court; crippled children commission.

(h) To investigate, when requested by the probate court matters pertaining to dependent, neglected, and delinquent children and wayward minors, under the jurisdiction of the probate court to provide supervision and foster care as provided by court order, and to furnish the court, on request, investigational service in respect to the hospitalization of children under the program of the Michigan crippled children commission, which services shall include follow-up investigation and continuing observations.

Assistance to other federal, state and county departments.

(i) To assist other departments, agencies and institutions of the federal, state and county governments, when so requested, in performing services in conformity with the purposes of this act.

Child welfare; programs to prevent dependency, neglect and delinquency.

(j) To assist in the development of sound programs and standards of child welfare; promote programs and policies looking toward the prevention of dependency, neglect and delinquency and other conditions affecting adversely the welfare of families and children.

Medical care division, organization; physician-patient relation.

(k) To create within the county department a division of medical care. The county board may appoint a properly qualified and licensed doctor of medicine as the head thereof, and an advisory committee consisting of 1 doctor of medicine, nominated by the county medical society; 1 dentist, nominated by the district dental society; and 1 druggist, nominated by the district pharmaceutical association, to assist in formulating policies of medical care and auditing and reviewing bills for same. Medical care as used in this act shall be defined as medical care rendered under the supervision of a licensed physician in an organized out-patient department of a hospital approved by the Michigan department of health under Act No. 227 of the Public Acts of 1953 or home and office attendance by physicians, licensed under Act No. 162 of the Public Acts of 1903, as amended, being sections 338.101 to 338.109 of the Compiled Laws of 1948, Act No. 237 of the Public Acts of 1899, as amended, being sections 338.51 to 338.59 of the Compiled Laws of 1948, or Act No. 115 of the Public Acts of 1915, as amended, being sections 338.301 to 338.308a of the Compiled Laws of 1948, and when prescribed by them, diagnostic services requiring the use of equipment not available in their offices, if the services do not require overnight care, dental service, optometric service, bedside nursing service in the home, and pharmaceutical service. The private

physician-patient relationship shall be maintained; and the normal relationships between the recipients of dental, optometric, nursing and pharmaceutical service, and the services furnished by professions under Act No. 162 of the Public Acts of 1903, as amended, Act No. 115 of the Public Acts of 1915, as amended, and Act No. 145 of the Public Acts of 1933, as amended, being sections 338.151 to 338.159 of the Compiled Laws of 1948, and the persons furnishing these services shall be maintained. Nothing in this section shall be construed as affecting the office of any city physician or city pharmacist established under any city charter or of any county health officers or of the medical superintendent of any county hospital. This section shall be so construed that eligible sick shall be permitted to select either a private professional attendant as defined here or the city physician or city pharmacist established under any city charter.

Burial of indigents.

(l) To cause to be suitably buried the body of a deceased indigent person who has a domicile in the county, when requested by the person's relative or friend, or of a stranger, when requested by a public official following an inquest.

Administration of additional welfare functions; hospitalization.

(m) To administer such additional welfare functions as are hereby or may be vested in the department including hospitalization.

Agent of state department.

(n) To act as an agent for the state department in such matters as shall be requested by the state department under the rules and regulations of said department.

Temporary general relief to families ineligible for aid to dependent children.

(o) To provide temporary general relief for each and every family found ineligible for aid to dependent children assistance by reason of unsuitable family home as provided in section 56.

HISTORY: Am. 1941, p. 594, Act 343, Eff. Jan. 10, 1942;—Am. 1943, p. 114, Act 85, Eff. July 30;—CL 1948, 400.55;—Am. 1951, p. 373, Act 348, Imd. Eff. Jun. 15;—Am. 1957, p. 419, Act 292, Eff. Sep. 27;—Am. 1961, p. 361, Act 184, Eff. Sep. 8;—Am. 1962, p. 429, Act 195, Imd. Eff. Jun. 4;—Am. 1963, p. 192, Act 141, Eff. Sep. 6;—Am. 1965, p. 812, Act 401, Imd. Eff. Oct. 27;—Am. 1966, p. 351, Act 258, Imd. Eff. Jul. 11.

Act 85, 1943, had a section 2 as follows:

"Section 2. This act shall become operative in any county affected hereby on the first day of the fiscal year commencing next after the date of the enactment hereof: Provided, That the board of supervisors of any such county may select the members of such board of county institutions at any regular or special session called for that purpose occurring at any time prior to the first day of such fiscal year."

CITED IN OTHER SECTIONS: The above section is cited in §§ 331.212a and 712A.2.

400.55a General public relief; eligibility of applicants, rules and regulations.

Sec. 55a. In determining the eligibility of applicants for general public relief, and before granting such relief, except temporary relief pending disposition of the case, the county and district departments of social welfare shall conform to the following:

(a) Require each applicant entitled to alimony or separate maintenance to seek the assistance of the friend of the court.

(b) Clear with the proper legal authorities the case of an applicant deserted by her spouse to determine the advisability of legal action to obtain support.

(c) Whenever it is indicated that eligibility for benefits from other programs such as unemployment compensation, old age and survivors insurance benefits, federal veterans' benefits, old age assistance, aid to dependent children or aid to the blind exists, secure a clearance in writing with the appropriate agency or agencies.

(d) Require employable persons to work on work relief or work training projects if available, in return for relief given. All such employees shall be entitled to the benefits provided by Act No. 10 of the Public Acts of the First Extra Session of 1912, as amended, being sections 411.1 to 417.14a of the Compiled Laws of 1948. All work relief projects authorized by this section shall be subject to the following conditions:

(1) Any person required to work on a work relief project, upon claiming to be physically incapable to work when so assigned, shall be given a thorough medical examination by competent medical authorities to ascertain his fitness to do work required on work relief projects, and,

(2) Each person assigned to a work relief project shall be required to register for employment with the Michigan employment service if such service is available and to investigate all bona fide employment opportunities.

(e) Determine that each employable applicant, mentally and physically able to work, is not currently refusing to accept available employment for which wages not less than the going rate of the community for the particular kind of employment are being offered.

The several county, city and district departments shall promulgate rules and regulations relative to the granting of temporary relief.

HISTORY: Add. 1951, p. 161, Act 128, Eff. Sep. 28;—Am. 1964, p. 141, Act 148, Eff. Aug. 28;—Am. 1965, p. 815, Act 401, Imd. Eff. Oct. 27.

Prior section 400.55a (Sec. 55a, Act 20, 1950, Ex. Ses., p. 25, Eff. Mar. 31, 1951, as added) relating to eligibility of applicants for general public relief was held invalid in opinion of Attorney General (op. Atty. Gen. 1951-1952, No. 1367, Mar. 12, 1951, p. 196) as not within the scope of the Governor's message for the Extra Session of 1950.

400.55b Legal settlement; children, emancipation, marriage; reuniting of family.

Sec. 55b. An emancipated person, upon acquiring a legal settlement in the state as provided in section 55 of this act, together with any dependent spouse and any unemancipated children of either the person or spouse, living in the home, shall hold and continue to hold each in his own right, such settlement until lost as provided in section 55. Every person is emancipated at age 21. A minor may emancipate by being married, in which case the husband's settlement shall determine that of the wife and of any unemancipated children of either the husband or wife, or by working for 1 year for wages paid to the person in an amount sufficient for maintenance. If an emancipated person changes his domicile, the spouse and those of the unemancipated children of either who are living in the home shall acquire his domicile. Nothing in this act in respect to settlement or domicile shall be interpreted to authorize any official to take any action which would tend to keep apart families desiring to be reunited.

HISTORY: Add. 1957, p. 421, Act 292, Eff. Sep. 27;—Am. 1961, p. 264, Act 184, Eff. Sep. 8.

400.56 Dependent child; definition; amount of assistance; applications; change of residence; transfer of records.

Sec. 56. Aid to dependent children shall be provided under the county department of social services. The term "dependent child" as used in this act means a child who:

(a) Has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent. When parents not formerly living together in the home have become reconciled, the children shall continue to be eligible for aid for a period ending 30 days after the reconciliation.

(b) Is living with its father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece or first cousin in a suitable family home containing 1 or more of such relatives which meets the standards of care and health to be fixed by the rules of the state department. Assistance shall not be given in the case of any child while it resides with both of its parents unless the parent is disabled.

(c) Is under the age of 18 years, or under the age of 21 and a student regularly attending a high school, college, university or a course of vocational training in pursuance of a course of study leading to a high school diploma or gainful employment. A child aged 18 to 21 and not a student without means of support is deemed to be a dependent child and is entitled to counseling, employment training and other services

provided by the department, but not to monetary aid. The application for aid shall constitute prima facie evidence of the age of the child and also its relationship to the person mentioned in subdivision (b). The department may require other evidence thereof when in doubt as to the correctness of the statements in the application.

(d) Either has, or his parent has, resided in the state for 1 year immediately preceding the application for such assistance, or was born within 1 year immediately preceding the application and the parent or other relative with whom the child is living has resided in the state for 1 year immediately preceding the birth.

(e) Is otherwise eligible for aid to dependent children. A dependent child who is not eligible for aid under this act shall remain under the jurisdiction of the several probate courts. The amount of assistance which shall be granted for any dependent child shall be determined with due regard to the resources and necessary expenditures of the family including those of the stepparent if the child is living with a parent and a stepparent and with due regard to the conditions existing in each case, and in accordance with section 38 and the rules of the state department, and shall be sufficient, when added to all other income and support available to the child, to provide such child with a reasonable subsistence compatible with decency and health. Application for assistance shall be made to the county department of social services in the county in which the dependent child resides. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the state department. The application shall be made by the parent or such relative having custody of the dependent child and shall contain information as to the age and residence of the child and such other information as may be required by the rules of the state department. One application may be made for several children of the same family if they reside with the same person. Any child qualified for and receiving assistance pursuant to the provisions of this act in any county in this state who moves or is taken to another county in this state shall be entitled to continue to receive assistance in the county to which he has moved or is taken and the department of social services in the county from which he has moved shall transfer copies of or all necessary records relating to the child to the department of social services in the county to which he has moved.

HISTORY: Am. 1943, p. 339, Act 208, Imd. Eff. Apr. 17;—CL 1948, 400.56;—Am. 1949, p. 169, Act 159, Imd. Eff. May 24;—Am. 1951, p. 433, Act 264, Eff. Sep. 28;—Am. 1957, p. 115, Act 95, Eff. Sep. 27;—Am. 1965, p. 729, Act 370, Imd. Eff. Jul. 23;—Am. 1965, p. 815, Act 401, Imd. Eff. Oct. 27;—Am. 1966, p. 239, Act 212, Imd. Eff. Jul. 11;—Am. 1970, p. 284, Act 89, Eff. Apr. 1, 1971.

400.56a, 400.56b Repealed. 1964, p. 9, Act 3, Imd. Eff. Mar. 13.

Sections defined "dependent child" and "unemployed parent", provided for cooperative arrangements for job placement of unemployed parents.

400.56c Dependent child; inclusion of needy child in foster family home or licensed child-care institution.

Sec. 56c. The term "dependent child" as used in section 56 shall also include a needy child who would meet the requirements of sections 56 or 56d, except for his removal from the homes of a relative specified in section 56 as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child (1) if the determination makes the state department or any other public agency that has an acceptable agreement with the state department responsible for the placement and care of the child and the child has been placed in a licensed foster family home or private child care institution and (2) if the child received aid under sections 56 or 56d for the month in which the court proceedings leading to the determination were initiated, or would have received aid to dependent children for such month if application had been made therefor, or had been living with a relative specified in section 56 within 6 months prior to the month in which such proceedings were initiated and would have received such aid for such month had application been made therefor and had he not been absent from the relatives home. Foster care expenditures

for such a child shall be considered to be aid to dependent children under sections 56 or 56d notwithstanding other provisions of those sections. The words dependent child in this section shall include foster care in behalf of such child (a) in the foster family home of any individual, whether the payment therefor is made to such individual or to a public or nonprofit private child-placement or child-care agency, or (b) in a child-care institution, whether the payment therefor is made to such institution or to a public or nonprofit private child-placement or child-care agency, but subject to limitations prescribed by the state department with a view to including as "aid to families with dependent children" in the case of such foster care in such institutions only those items which are included in such term in the case of foster care in the foster family home of an individual.

HISTORY: Add. 1963, p. 189, Act 136, Imd. Eff. May 10;—Am. 1965, p. 382, Act 218, Imd. Eff. Jul. 16;—Am. 1967, p. 100, Act 81, Imd. Eff. Jun. 21;—Am. 1969, p. 206, Act 111, Eff. Mar. 20, 1970.

400.56d Dependent child; inclusion of student; parental unemployment.

Sec. 56d. The term "dependent child" as used in section 56 shall also include a needy child under the age of 18, or under the age of 21 and a student regularly attending a high school, college, university, or a course of vocational training in pursuance of a course of study leading to a high school diploma or gainful employment, who has been deprived of the support or care of his father by reason of unemployment. In order for a father to be considered unemployed and a child to be considered dependent under this section, the father cannot be engaged in gainful employment for more than 64 hours in any consecutive 2 week period and must meet the conditions and requirements of the social security act and the rules and regulations of the department of health, education and welfare. Except that time spent in an educational, training or other employment directed program shall not be considered in determining the 64 hour limitation.

HISTORY: Add. 1964, p. 9, Act 3, Imd. Eff. Mar. 13;—Am. 1965, p. 730, Act 370, Imd. Eff. Jul. 23;—Am. 1966, p. 240, Act 212, Imd. Eff. Jul. 11;—Am. 1967, p. 101, Act 81, Imd. Eff. Jun. 21;—Am. 1968, p. 356, Act 232, Imd. Eff. Jun. 26.

400.56e Job placement services; cooperative agreements establishing community work or training programs.

Sec. 56e. The employment security commission and the director of the state department of social services shall enter into cooperative arrangements for maximum utilization of the job placement and other services and facilities of the employment security commission. The director of the department of social services is authorized to enter into a cooperative agreement with the county or district department of social services for the purpose of establishing community work or training programs. Any person receiving assistance under this act who is engaged in a community work or training program or work experience program shall be entitled to the benefits provided by Act No. 10 of the Public Acts of the First Extra Session of 1912, as amended, being sections 411.1 to 417.14a of the Compiled Laws of 1948, in the same manner as employees of the state. Each employable applicant or recipient for aid to dependent children shall be subject to the requirements of the social security act and the existing or hereafter amended policy of the state department.

HISTORY: Add. 1964, p. 9, Act 3, Imd. Eff. Mar. 13;—Am. 1965, p. 730, Act 370, Imd. Eff. Jul. 23;—Am. 1966, p. 356, Act 232, Imd. Eff. Jun. 26.

400.56f Social welfare training program; incentive, participation, expenses.

Sec. 56f. Programs operated under 42 U.S.C. section 630, shall be conducted in the following manner providing federal funds are available for these purposes:

(1) The appropriate "individual" referred to such programs shall not include mothers with minor children if participating in the program would be contrary to the best

interests of the children and shall not include those persons whose needs are not included within the assistance budget.

(2) Persons who are not required to participate shall be encouraged to be volunteers and shall be free to terminate their participation in the program at any time without penalty.

(3) At the time an individual is referred to the employment security commission, he shall be designated as a volunteer or a nonvolunteer and informed of this designation.

(4) If a recipient's assistance is terminated for refusal to participate in the program, he may become eligible for assistance if changes in circumstances have made the individual inappropriate for referral or if he later agrees to participate in the program.

(5) Training provided by the employment security commission shall prepare the recipient for an occupation in the regular economy which is consistent with his ability and skills, which takes account of his interests, which would lead or would be likely to lead to upward mobility and which does not provide a salary below that received by other employees of the same occupation.

(6) Expenses attributable to participation in the program, either special work projects, employment or the work training program, shall be considered in determining the amount of assistance to be given. Those expenses should include but are not limited to: transportation to and from the project, work clothing, special clothing requirements such as dry cleaning or laundry expenses, special grooming requirements of the job, union dues, training expenses, additional costs of lunches or other meals while working on a project.

HISTORY: Add. 1969, p. 222, Act 128, Eff. Mar. 30, 1970.

400.57 Aid to blind; eligibility; residence.

Sec. 57. Aid to the blind shall be provided under the department of social services to any person who:

(a) Has no vision or whose vision, with correcting glasses, is so defective as to prevent the performance of ordinary activities for which sight is essential.

(b) Has not sufficient income or other resources to provide a reasonable subsistence compatible with decency and health.

(c) Is at least 16 years of age.

(d) Either has

(1) Resided in the state for 1 year immediately preceding the date of a grant of aid under this section, or

(2) Has lost his sight after having become a resident of this state, or

(3) While receiving aid to the blind from some other state, has removed to Michigan and has lived in Michigan for a period of time equal to the period of time that a recipient of aid to the blind from Michigan must live in said other state before becoming eligible for aid to the blind, insofar as residence is concerned, from said other state except no person shall be required to reside in Michigan more than 1 year to meet the Michigan residence requirement.

(e) Is not receiving old age assistance.

(f) Is not an inmate of any institution. Aid to the blind may be paid to an inmate of an institution under the conditions established in section 42.

(g) Although in need of continuing care, is receiving proper care outside an institution as determined by the rules and regulations of the state department.

(i) Has not made an assignment or transfer of any real or personal property or income within 1 year immediately preceding date of application or granting of assistance, for the purpose of qualifying for aid to the blind, or for the purpose of increasing the amount of assistance to be received under this or any prior act.

HISTORY: Am. 1945, p. 124, Act 121, Eff. Sep. 6;—CL 1948, 400.57;—Am. 1951, p. 434, Act 284, Eff. Sep. 28;—Am. 1965, p. 592, Act 311, Imd. Eff. Jul. 22;—Am. 1965, p. 816, Act 401, Imd. Eff. Oct. 27;—Am. 1966, p. 577, Act 321, Eff. Sep. 1;—Am. 1970, p. 87, Act 33, Imd. Eff. Jun. 16.

400.58 County medical care facility; program of care and treatment.

Sec. 58. The county social welfare board is hereby authorized, with the approval of the board of supervisors, to supervise and be responsible for the operation of a county medical care facility which is now or may hereafter be established within or auxiliary to or independent of the county infirmary: Provided, That in any county having a board of county institutions, such facilities shall be supervised and operated by such board and all references hereinafter to the county social welfare board in such counties in relation to the operation of such facilities shall be construed to refer to the board of county institutions. The social welfare board in such county shall have the authority to collect from any available source for the cost of care given therein and such collections shall be deposited in the social welfare fund. Such facility shall provide a program of planned and continuing medical treatment and nursing care under the general direction and supervision of a licensed physician employed full or part-time who shall be known as the medical director.

Medical treatment and nursing care.

Medical treatment and nursing care shall consist of those services given to persons who are suffering from prolonged illness, defect, infirmity or senility, or who may be recovering from injury or illness. Such services shall include any or all of the procedures commonly employed, such as physical examination, diagnosis, minor surgical treatment, administration of medicines, provision of special diets, giving of bedside care, and the carrying out of any required treatment prescribed by a duly licensed physician and within the ability of the facility to provide.

Special treatment not provided; psychiatric ward; feeble-minded persons.

These services shall be consistent with the needs of the type of patient admitted and cared for and must be on a professionally supervised, planned and continuing basis: Provided, however, That no person shall be admitted or retained for care who requires special medical or surgical treatment, treatment for a psychosis, tuberculosis or contagious disease, except that the facility may contain a supervised psychiatric ward for the temporary detention of mentally disturbed patients: Provided, That such ward has been inspected and approved by the state department of mental health and so certified by it to the county social welfare board: And provided further, That no other such facility for temporary detention of mentally disturbed patients exists within the county: And provided further, That a county department may provide for the support of poor persons who may be feeble-minded or mentally ill at some other place or places and in such manner as shall best promote the interests of the county and be for the comfort and recovery of such persons, at the expense of the county.

Medical care facility in existing building; plan.

The county social welfare board, in seeking approval to establish, extend, and operate a county medical care facility in an existing building, shall make application in writing to the state department submitting therewith its proposed plan with specifications, including standards of operation, for the examination and recommendations of the state department.

Infirmary or medical care facility; buildings, approval.

The board of supervisors of any county may determine to erect a county infirmary or county medical care facilities for the reception and care of the poor and unfortu-

nate of the county which medical facilities may be on different sites than the infirmary. Upon filing such determination with the clerk of the county, they may direct the county social welfare board to purchase 1 or more tracts of land, not exceeding 320 acres, and to erect thereon 1 or more suitable buildings for that purpose. Before any county infirmary or medical care facility is erected or any existing buildings are remodeled, added to or substantially altered, under the provisions of this section and before the plans thereof are finally accepted, or any contract entered into for construction, the plans shall be submitted to the state department for examination and approval. The determination reached shall be certified to the county clerk of the county and shall be placed before the board of supervisors at the next regular meeting thereof. No county infirmary or medical care facility shall be constructed without the approval of the plans thereof having been duly certified as herein provided. No contract for the erection of an infirmary or medical care facility shall be valid or binding unless the plans thereby contemplated and actually followed shall have been approved, nor shall any money be paid out of the treasury of the county for any construction unless and until the plans thereof have been approved and the determination filed.

Same; review of plans and programs.

It shall be the duty of the state department to review the proposals and plans of the county social welfare board submitted in connection with the establishment, extension and operation of the medical care facility or the county infirmary and to consult with and give advice to the county department as to plans, procedures and programs required in the proper establishment, extension and operation of the medical care facility or the county infirmary.

Same; inspection; appeal to social welfare commission.

The state department shall approve the medical care facilities by proper notice to the county department. Subsequent to its approval, the state department shall inspect such facility as frequently as it deems necessary, but at least 1 annual inspection shall be made. County departments shall be governed by and shall adhere to any reasonable order issued by the state department. The county department may appeal such order in writing, within 30 days of receipt of same, to the Michigan social welfare commission.

Enforcement of orders.

Any reasonable order of the commission governing the establishment, extension, operation or the closing of an infirmary or medical care facility, if circumstances so warrant, may be enforced through mandamus or injunction in the circuit court for the county where the facility is located through proper proceedings instituted by the attorney general on behalf of the commission.

Medical care facility; inspections.

No medical care facility shall be opened for operation until it has been inspected and approved in writing to the state department by the state fire marshal and the state health commissioner. The county department shall abide by any reasonable directive issued by the state fire marshal or the state health commissioner with regard to the fire safety and sanitation of said institution. Said directives may be enforced by the social welfare commission in the same manner as are orders of the commission. Upon receipt of the approval of the state department, the county department shall thereafter represent such facility to the public as the county medical care facility and shall make reasonable and continuing effort to divorce such facility from an association in the public mind with the words "poor house" or "poor farm."

HISTORY: CL 1948, 400.56;—Am. 1954, p. 307, Act 125, Eff. Aug. 13;—Am. 1957, p. 193, Act 170, Eff. Sep. 27.

400.58a County medical care facility; admittance.

Sec. 58a. Only those persons may be admitted to the county medical care facility who require the individualized medical care, treatment and supervision provided by the facility and who do not require major surgery, treatment for psychosis, treatment for tuberculosis, contagious disease or other specialized hospital care. The facility is designed to care especially for persons, otherwise eligible for admission, who are 65 years of age or older, including persons who evidence the general manifestations of senility without the presence of a psychosis and the need of treatment therefor; or who, being of lesser age, are blind, chronically ill or disabled: Provided, That the provisions of this amendatory act with respect to special medical or surgical treatment shall not apply to those counties where such medical or surgical treatment is being provided on the effective date of this act.

HISTORY: Add. 1954, p. 308, Act 125, Eff. Aug. 13.

400.58b County medical care facility; eligibility for care; state aid recipient.

Sec. 58b. The state department in accordance with its rules and regulations may pay for medical care that a recipient of aid to the blind, aid to disabled, aid to dependent children, or old age assistance, receives in the county medical care facility. Other persons admitted to care in the facility shall be charged for the cost of their care to the extent of their financial ability as determined by the county department and such financial ability shall not preclude their eligibility for such care. Prior consideration shall be given to any person who comes within the definition of a "poor person" set forth in section 1 of chapter 1 of Act No. 146 of the Public Acts of 1925, as amended, being section 401.1 of the Compiled Laws of 1948. No poor persons as so defined shall be refused admittance to a county medical care facility if there are then within such county medical care facility persons who are not senile and who are paying the total cost of their care.

State aid for capital expenditures; admission of patients.

Any county department which shall accept state financial aid for capital expenditures related to the establishment, extension or improvement of its facilities shall accept for care any patient eligible for admission as provided in section 58a, and having a domicile in the county and any patient for whom care is requested by the state department because of being found in the county without either a known domicile in the state or a place of residence outside the state to which he may be returned.

State and federal aid for capital expenditures, appropriation.

Direct state financial aid to meet part of the cost of capital expenditures for the establishment, extension or improvement of a county medical care facility may be provided from the general funds of the state or from such federal funds as may be made available in the following manner: The county social welfare board with the approval of the county board of supervisors will make an application to the state department as otherwise provided in section 58 but shall make in addition, a showing of need, in the same manner as provided in section 18, that it is unable to meet all of the capital expenses of a county medical care facility. The state department shall determine the percentage of the total capital cost of the facility which the county will be unable to meet and shall request from the legislature an appropriation from the general fund of the state or such federal funds as may be made available for this purpose to meet this amount. Requests of the legislature from the state department for such appropriations shall be separate items for each medical care facility. The amount of state aid actually granted the county by the state department shall not exceed (1) the amount appropriated by the legislature in respect to the amount of the item in the budget, or (2) the percentage of state aid required as previously determined by the state department, whichever is the lesser.

Special tax.

To defray the cost of construction in the establishment or extension of the medical care facility, the board of supervisors may raise in any 1 year a sum not exceeding .1 mill of each dollar of assessed valuation of the county, such tax to be regarded as a special tax collected in the same manner as other county charges, and moneys received therefrom shall be transmitted to the treasurer of the county who shall deposit same in a special fund to be used solely for the purposes for which the tax is spread. Money expended for construction in the establishment or extension of the facility shall be paid out by the county treasurer on the order of the county social welfare board.

HISTORY: Add. 1954, p. 306, Act 125, Eff. Aug. 13;—Am. 1957, p. 396, Act 286, Imd. Eff. Jun. 13;—Am. 1961, p. 264, Act 184, Eff. Sep. 8;—Am. 1965, p. 385, Act 231, Imd. Eff. Jul. 16;—Am. 1966, p. 297, Act 228, Eff. Aug. 1.

400.58c County medical care facility; patients with contagious disease, isolation.

Sec. 58c. Notwithstanding any other provision of this act, patients suffering from contagious diseases may be admitted to any county medical care facility where the facility is constructed or operated with the approval of the state department of social welfare and is able to provide an isolated area for such care approved by the state health commissioner.

HISTORY: Add. 1961, p. 252, Act 176, Eff. Sep. 8.

400.59 Applications for aid, relief or assistance; forms, ascertainment of settlement, charge to county of domicile; temporary relief to persons with no settlement.

Sec. 59. All applications for aid, relief or assistance provided under this act shall be made to the county department of social welfare in such manner and upon such forms as may be prescribed by the state department. When any person applies for or requires public aid as a poor person under this act other than hospitalization or those forms of aid financed in whole or in part by federal funds, the county department shall ascertain the legal settlement and domicile of the person. The county department shall ascertain the settlement and domicile of other persons when requested by the county health department or by the state health commissioner. Except as otherwise provided in this act, general relief granted to persons with a legal settlement in this state may be charged to the county of domicile. The sending of notices, billings and appeals in respect to charges to the county of domicile, shall be made in accordance with regulations of the commission. Wherever in this act a chargeback or return to the county or city of "settlement" or "legal settlement" is authorized a chargeback or return to the county or city of "domicile" shall be deemed to be intended. Hospitals, jails, nursing homes, convalescent homes, homes for the aged and prisons are not places of domicile. General relief and hospitalization granted to persons who, while receiving assistance under this act, move into a county to receive care in a home for the aged, convalescent home or other institution shall be a charge against the county of their domicile just prior to the move regardless of other provisions of this act and even though domicile in the home for the aged or other institutions is intended. Temporary relief granted to persons with no settlement in this state shall be at the expense of the county where found. In the case of persons illegally brought or induced to come into the county, necessary relief shall be a charge against the county where they were living when transported or induced to move.

HISTORY: CL 1948, 400.59;—Am. 1957, p. 421, Act 292, Eff. Sep. 27;—Am. 1961, p. 265, Act 184, Eff. Sep. 8;—Am. 1965, p. 817, Act 401, Imd. Eff. Oct. 27.

400.59a Return of person to county of residence; deportation to another nation; expense; reimbursement from county of residence.

Sec. 59a. The county or city department of social welfare, as part of its general relief program, may provide funds and necessary attendants for the return of a person to his

place of residence as authorized in section 55, or to a new place of residence under the conditions of sections 59 or 59f. State or county funds shall not be used for the return of a person to another nation who may be deported under federal law.

If the probable place of legal settlement is in Michigan and the probable place of domicile is in some other county of this state, the county department where application for aid was made, within 60 calendar days following the application, shall give notice and necessary information in writing to the county department of the county of probable domicile on forms prescribed for that purpose by the state department. If it appears that domicile may lie in any 1 of 2 or more counties notices shall be sent to all such counties. If the notice is not given to the county of probable domicile within 60 days following the application for aid, the county granting relief to the applicant shall have no claim whatsoever irrespective of any other provisions of this act, for reimbursement for the relief granted the applicant prior to 60 calendar days preceding the date the notice is given to the county of probable domicile.

HISTORY: Add. 1957, p. 422, Act 292, Eff. Sep. 27;—Am. 1961, p. 266, Act 184, Eff. Sep. 8;—Am. 1965, p. 817, Act 401, Imd. Eff. Oct. 27.

400.59b Notification of county of residence; denial of settlement, notice.

Sec. 59b. Counties receiving notices shall acknowledge their receipt and within 60 calendar days thereafter shall make an investigation of the case and acknowledge that settlement lies in Michigan and domicile within the county or present to the county department granting relief detailed evidence, together with and supporting a denial of the settlement or domicile or both. If the county department receiving a denial is not satisfied with the evidence supporting it, appeal may be made to the director of the state department. If the notice of denial is not given to the county department granting relief within 60 calendar days after the county of probable domicile receives notice, the county department granting relief, irrespective of any other provisions of this act, shall be reimbursed by the county receiving the notice for all relief granted the applicant prior to the date the notice of denial is given. In the case of 2 or more counties having received notices under section 59a and none having acknowledged settlement and domicile, the failure to acknowledge may be treated as a denial for the purpose of an appeal to the director.

HISTORY: Add. 1957, p. 422, Act 292, Eff. Sep. 27;—Am. 1961, p. 266, Act 184, Eff. Sep. 8.

400.59c Domicile and legal settlement cases; appeal, determination by state department.

Sec. 59c. Upon receiving an appeal, the director shall set a time and place for a hearing and designate an employee of the state department to serve as referee at the hearing. If the appealing county waives its right to a personal appearance at the hearing, the notice to the denying county shall so state and the denying county shall decide whether or not to do likewise. If it so decides, the designated referee shall advise the director of the department as to his findings in respect to settlement and domicile from written evidence submitted by the contending counties.

HISTORY: Add. 1957, p. 422, Act 292, Eff. Sep. 27;—Am. 1961, p. 266, Act 184, Eff. Sep. 8.

400.59d Domicile and legal settlement cases; appeal; insufficient evidence.

Sec. 59d. The decision of the director may be in favor of either of the contending counties or that domicile lies in neither of the counties or that settlement does not lie in this state or that there is insufficient evidence on which to make a finding of settlement. The decision of the director shall be final. If the decision is that there is insufficient evidence for a determination, all the proceedings of both counties shall be set aside and the county granting relief may proceed anew as if no notice had been sent under sections 59a and 59b.

HISTORY: Add. 1957, p. 423, Act 292, Eff. Sep. 27;—Am. 1961, p. 266, Act 184, Eff. Sep. 8.

400.59e Domicile and legal settlement cases; notices, evidence, bills for aid; rules and regulations.

Sec. 59e. The state department shall make suitable rules and regulations governing the sending and form of notices and evidence in domicile and legal settlement cases, and the sending of bills for aid granted as provided in section 68a of this act, to insure prompt and economical administration of the accounting for and collection of the aid granted. When settlement is found in this state and the county of domicile is finally determined by the director of the state department to be some county other than the initiating county, the county of domicile shall be charged for all aid granted in accordance with law by the county department where application was made during the 1 year preceding the date of determination.

HISTORY: Add. 1957, p. 423, Act 292, Eff. Sep. 27;—Am. 1961, p. 267, Act 184, Eff. Sep. 8.

400.59f Joint plan for economic rehabilitation of aid recipient; removal from county of settlement.

Sec. 59f. The county department of the county of domicile or the county department granting aid may request joint planning with another county department if it appears to the requesting county that the person receiving aid should remove to or remain in the other county. The joint plan shall consider the relative possibilities of economic rehabilitation of the person in each of the 2 counties but if these appear approximately equal, the departments shall consult the wishes of the person. If, as the result of the joint planning, the 2 county departments determine that a person should be removed, the plan shall be presented to the person who will be informed that as soon as a suitable living arrangement can be made in the other county, he will be removed. If he declines to accept the plan, aid shall not be continued. He may re-apply for aid after 30 days.

HISTORY: Add. 1957, p. 423, Act 292, Eff. Sep. 27;—Am. 1961, p. 267, Act 184, Eff. Sep. 8.

400.59g Joint plan for economic rehabilitation of aid recipient; disagreement, appeal to director.

Sec. 59g. (1) If the 2 counties concerned find themselves unable to agree on a joint plan, either may appeal to the director of the state department to make a determination of which plan is most in the public interest in the case. The director shall have the same power and shall proceed to act on such appeals in the same manner as on appeals under sections 59c, 59d and 59e of this act.

(2) If the plan so determined provides that the person shall continue to live in the county granting relief, the relief shall be granted at the expense of that county.

HISTORY: Add. 1957, p. 423, Act 292, Eff. Sep. 27;—Am. 1961, p. 267, Act 184, Eff. Sep. 8.

400.60 Fraudulent device to obtain relief; liability; misdemeanor, penalty.

Sec. 60. (1) Any person who by means of wilful false statement or representation or by impersonation or other fraudulent device obtains or attempts to obtain, or aids or abets any person to obtain (a) assistance or relief to which he is not entitled; or (b) a larger amount of assistance or relief than that to which he is justly entitled; or any officer or employee of a county, city or district department of social welfare who authorizes or recommends relief to persons known to him to be ineligible or to have fraudulently created their eligibility; or any person who knowingly buys or aids or abets in buying or in disposal of the property of a person receiving assistance or relief without the consent of the director or supervisor of the state department, shall, if the amount involved shall be of the value of \$500.00 or less, be deemed guilty of a misdemeanor, and shall, if the amount involved shall be of the value of more than \$500.00, be deemed guilty of a felony, and upon conviction shall be punished as provided by the laws of this state. The amount involved as used in this subsection shall be defined as the difference between the lawful amount of assistance or aid and the amount of assis-

tance or aid actually received. If anyone receives assistance or relief through means enumerated in this section, in which prosecution is deemed unnecessary, the state department or county departments may take the necessary steps to recover from the recipient the amount involved, plus interest at 5% per annum. On conviction of the violation of the provisions of this section of any officer or employee of any county, city or district department of social welfare, such officer or employee shall be removed or dismissed from office.

Information furnished by recipients; failure.

(2) There is imposed upon every person receiving relief under this act either upon his own application or by his inclusion, to his knowledge, in the application of another the continuing obligation to supply to the department issuing the relief: (a) the complete circumstances in regard to his income from employment or from any other source or the existence of income, if known to him, of other persons receiving relief through the same application; (b) information regarding each and every offer of employment for himself or, if known to him, of the other persons receiving relief through the same application; (c) information concerning changes in his circumstances or those of other persons receiving relief through the same application which would decrease the need for relief; and (d) the circumstances or whereabouts, known to him, of relatives legally responsible for his support or for the support of other persons receiving relief through the same application if changes in such circumstances or whereabouts could affect the amount of assistance available from such relatives or affect their legal liability to furnish support. Any person who shall neglect or refuse to submit to the department issuing relief the information required by this section shall, if the amount of relief granted as a result of such neglect or refusal be less than \$500.00, be guilty of a misdemeanor, and if the amount of relief granted as a result of such neglect or refusal be \$500.00 or more, shall be deemed guilty of a felony, and upon conviction shall be punished as provided by the laws of this state.

HISTORY: CL 1948, 400.60;—Am. 1950, Ex. Ses., p. 22, Act 18, Eff. Mar. 31, 1951;—Am. 1969, p. 359, Act 179, Imd. Eff. Aug. 5.

400.61 Violation of act; misdemeanor; suspension of relief or assistance.

Sec. 61. Any person who violates any provision of this act for which no penalty is specifically provided shall be guilty of a misdemeanor and, upon conviction, shall be sentenced as provided in the laws of this state. Whenever any person receiving aid, relief or assistance is convicted of an offense under this act, or of any other crime or offense and punished by imprisonment for 1 month or longer, the county board may thereupon direct that all payments for aid, relief or assistance under this act shall cease and shall not be made during the period of such imprisonment.

HISTORY: CL 1948, 400.61.

400.62 Relief or assistance; effect of amendment or repeal; no claim for compensation.

Sec. 62. All aid and relief granted under this act shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be passed, and no recipient thereof shall have any claim for compensation, or otherwise, by reason of his aid or relief being affected in any way by any amending or repealing act.

HISTORY: CL 1948, 400.62.

400.63 Relief or assistance; nonassignability.

Sec. 63. All aid, relief or assistance given under this act shall be absolutely inalienable by any assignment, sale, garnishment, execution or otherwise, and in the event of bankruptcy, shall not pass to or through any trustee or other person acting on behalf of creditors.

HISTORY: CL 1948, 400.63.

400.64 Social services records; public inspection, restrictions; alphabetical index file; violation of act, misdemeanor, penalty; notice of abandoned child.

Sec. 64. (1) Notwithstanding the provisions of section 35, all applications and records concerning any applicant for or recipient of any form of aid or relief under the terms of this act, except medical assistance, shall be considered public records and shall be open to inspection by persons duly authorized by the federal or state government, the state department or the duly elected officials of the county, city or district involved, in connection with their official acts and by the general public as to the names and addresses of recipients and the amounts of such aid or relief granted. General public access shall be restricted to only such persons who shall present a signed application containing the name, the address and the occupation of the persons signing such application. It shall be unlawful for any person to utter or publish such names or addresses except in cases where fraud is charged or wrongful grant of aid is alleged; and it shall be unlawful to use such names or addresses for political or commercial purposes.

(2) All records relating to persons applying for, receiving or formerly receiving medical services under the categorical assistance programs of this act shall be confidential and shall be used only for purposes directly and specifically related to the administration of the medical program.

(3) In each county, the department of social services shall maintain an alphabetical index file in its office of cases receiving assistance through such department. Whenever a citizen makes a personal visit to one of said offices during its regular office hours, and makes inquiry as to the name, address or amount of assistance being received by any person, he shall be given promptly the information requested. If any employee shall fail to furnish promptly to any caller the required information he shall be found insubordinate and subject to immediate dismissal.

(4) Any person who shall violate the provisions of this act shall upon conviction thereof be guilty of a misdemeanor, punishable by imprisonment in the state prison for a term of not more than 2 years, or by a fine of not more than \$1,000.00, or by both.

(5) The county department of social services shall cause prompt notice to be given to appropriate law enforcing officials of the furnishing of aid to dependent children in any case where a child has been deserted or abandoned by a parent and aid is being furnished to such child.

HISTORY: CL 1948, 400.64;—Am. 1952, p. 451, Act 267, Eff. Sep. 18;—Am. 1953, p. 273, Act 197, Eff. Oct. 2;—Am. 1965, p. 817, Act 491, Imd. Eff. Oct. 27;—Am. 1968, p. 250, Act 169, Imd. Eff. Jan. 17.

400.65 Hearings within county department; rules for procedure; review by board.

Sec. 65. The board shall prescribe rules and regulations for the conduct of hearings within the county department, and provide adequate procedure for a fair hearing of appeals and complaints by any applicant for or recipient of aid, relief, or assistance under the jurisdiction of the board. Such hearing may be conducted by the director or by any agent designated by him, but shall be subject to a review by the board, upon filing of a request in writing.

HISTORY: CL 1948, 400.65;—Am. 1965, p. 818, Act 401, Imd. Eff. Oct. 27.

400.66 Relief not financed by federal funds; decision of local department final; state department's right to investigate; relief grants, reconsideration.

Sec. 66. As to those forms of relief which are in no part financed by federal funds, the decision of the county, district or city department of social welfare as to the denial, granting, form and amount of such relief shall, except as provided in section 24, be final. This provision shall not be construed to prevent the state department from making such investigations, collecting such statistics and otherwise gaining such information concerning the administration of welfare in any county, district or city as said state department deems advisable. All grants of aid to individuals shall be reconsidered by the county board as frequently as may be necessary, and at least once in each year. This provision shall not be construed to relieve the county department of welfare from the duty to furnish temporary general relief as provided in subsection (o) of section 55.

HISTORY: CL 1948, 400.66;—Am. 1962, p. 432, Act 185, Imd. Eff. Jun. 4;—Am. 1965, p. 818, Act 401, Imd. Eff. Oct. 27.

400.66a Hospitalization; definition; state aid recipients' eligibility; state reimbursement; admission and report; expenses.

Sec. 66a. The several county social welfare boards shall make provision for hospitalization which is necessary and not more advantageously provided to the recipient under other law or provided under other sections of this act for every person found in their respective counties under rules of financial eligibility established by the boards and shall be reimbursed 100% by the state for the monthly net cost of such hospitalization for nonresidents of the state. The county department may, in its discretion, direct that the patient be conveyed to the university hospital at Ann Arbor or any other hospital for hospitalization. "Hospitalization" as used in this act shall be defined as medical, surgical, or obstetrical care in the university hospital or in a facility approved by the state health commissioner as a hospital under section 7 of Act No. 146 of the Public Acts of 1919, as amended by Act No. 83 of the Public Acts of 1954, being section 325.7 of the Compiled Laws of 1948, together with necessary drugs, x-rays, physical therapy, prosthesis, transportation and nursing care incidental thereto but shall not include "medical care" as defined in section 55. Before a patient shall be admitted except in an emergency, to any hospital other than the university hospital, a definite agreement, statement or schedule of charges, expenses and fees to be received by such hospital and physicians or surgeons performing necessary services under this act shall be filed with the county department of the county in which the hospital is located and approved by said department. Such hospital shall, at the conclusion of such treatment, make a report of the treatment and an itemized statement of the expenses thereof to the county department which issued the order, but charges for special nurses shall not be made without the consent of the county social welfare director. The expenses for sending such patient home or to other institutions after being discharged from said hospital may be paid by the hospital and charged in the regular bill for maintenance unless different instructions have been received from the county department which issued the order for admission.

HISTORY: Add. 1957, p. 397, Act 286, Imd. Eff. Jun. 13;—Am. 1966, p. 578, Act 321, Eff. Oct. 1.

400.66b Hospitalization; application; emergency care, intercounty payments; arbitration of payment disputes.

Sec. 66b. The county social welfare board shall require the county department to act promptly on all applications for hospitalization and shall provide for retroactive authorizations for emergency care in accordance with rules which the board shall establish including one defining "emergency". When the person hospitalized in an emergency is found to be eligible for hospitalization at public expense under section

66a of this act and is found to be a transient in the county with a domicile elsewhere in the state, the county in which his domicile is located shall be responsible for the cost of hospitalization to the county department which has authorized the care. When a patient is taken without authorization in an emergency across a county line to a hospital in a county other than the county of domicile of the patient, the county department in which the emergency occurred shall be responsible, in accordance with its own rules governing emergency care, to the hospital for the expense of the emergency care subject to reimbursement by the county of domicile as provided by this section. The state department shall provide rules governing intercounty payments and shall arbitrate and decide disputes arising thereunder.

HISTORY: Add. 1957, p. 398, Act 286, Imd. Eff. Jun. 13.

400.66c Hospitalization; reimbursement of county expense.

Sec. 66c. The county department shall enter into an agreement signed by the patient or a legally responsible relative or guardian for reimbursement of the net cost to the county in furnishing such hospitalization: Provided, That such an agreement between the patient and the county department shall be deemed to be in existence in respect to an emergency hospitalization. The spouse, parent and adult child or any such patient being of sufficient ability shall be jointly and severally liable to the county department for the reimbursement of the expenses incurred by the county in furnishing such hospitalization to the extent that such expenses are not reimbursed from another source. Such liability may be enforced in an action at law.

HISTORY: Add. 1957, p. 398, Act 286, Imd. Eff. Jun. 13.

400.66d Hospitalization; ineligibility, finality of determination.

Sec. 66d. The determination that a person is ineligible for hospitalization under section 66a made by the county responsible for care shall be final.

HISTORY: Add. 1957, p. 398, Act 286, Imd. Eff. Jun. 13;—Am. 1966, p. 578, Act 321, Eff. Oct. 1.

400.66e University hospital; county patients; insurance coverage; affidavit of itemized expenses; report of expenses and conditions of patient.

Sec. 66e. The admitting officer of the university hospital, upon receiving a patient with an authorization issued by a county department of social welfare under this act, may provide a bed in the hospital and designate the clinic of the hospital to which such person shall be assigned for treatment, and the physician or surgeon in charge of said patient shall proceed with proper care to perform such operation and bestow such treatment upon the patient as in his judgment shall be necessary. No compensation shall be charged or received by the admitting officer, or by the medical faculty or by the physician, surgeon or nurses of said university hospital who shall treat and care for said patients, other than the salaries received by them provided by the board of regents of the university of Michigan: Provided, however, That if any such patient has medical or surgical insurance coverage said university hospital may then charge for the service of its medical and surgical staff in amounts not to exceed the amounts available from such insurance coverage. The superintendent shall make and file with the auditor general an affidavit containing so far as possible an itemized statement of all expenses of hospitalization incurred at said hospital in care of patients admitted under this act in accordance with the usual rates therefor fixed by the regents of the university. He shall also make reports at suitable intervals to the county department which issued the order, stating the condition of the patient and the expense incurred.

HISTORY: Add. 1957, p. 399, Act 286, Imd. Eff. Jun. 13.

400.66f University hospital; payment for county patient; uniform county tax.

Sec. 66f. It shall be the duty of the auditor general, upon receiving said affidavit, to draw an order on the treasurer of the state of Michigan payable to the university hos-

pital of the university of Michigan, for the amount of such expenditure in accordance with the terms of the warrant drawn by him for university purposes. The auditor general shall then collect the same amount from the treasurer of the county which sent the patient: Provided, That no county shall be liable for expenses incurred after the expiration date of the order of the county department unless a new order is obtained: Provided further, That in a county having a city operating a department of social welfare under section 48 of this act, the necessary funds to carry out the duties imposed by section 66a of this act shall be raised by a uniform tax spread over the entire county.

HISTORY: Add. 1957, p. 399, Act 286, Imd. Eff. Jun. 13.

400.66g Hospitalization; childbirth, care of child, duration.

Sec. 66g. The expenses of the medical or surgical treatment and hospital care of any child which may be born in the hospital of any woman sent to a hospital under this act, as long as it shall seem necessary and proper in the judgment of the hospital physicians to keep such child in the hospital, shall be included in the expense as hereinbefore provided, unless said child is eligible for hospitalization under this act or some other law of this state. No patient shall be granted hospitalization or continued hospitalization under this act unless in the judgment of the admitting or attendant physician there shall be a reasonable probability of such person being benefited by such hospitalization.

HISTORY: Add. 1957, p. 399, Act 286, Imd. Eff. Jun. 13;—Am. 1966, p. 578, Act 321, Eff. Oct. 1.

400.66h Hospitalization; consent to surgical operation, medical treatment; first aid.

Sec. 66h. Nothing in this act shall be construed as empowering any physician or surgeon, or any officer or representative of the state or county departments of social welfare, in carrying out the provisions of this act, to compel any person, either child or adult, to undergo a surgical operation, or to accept any form of medical treatment contrary to the wishes of said person. If the person for whom surgical or medical treatment is recommended is not of sound mind, or is not in a condition to make decisions for himself, the written consent of such person's nearest relative, or legally appointed guardian, or person standing in loco parentis, shall be secured before such medical or surgical treatment is given. This provision is not intended to prevent temporary first aid from being given in case of an accident or sudden acute illness where the consent of those concerned cannot be immediately obtained.

HISTORY: Add. 1957, p. 400, Act 286, Imd. Eff. Jun. 13.

400.67 Relief financed by federal funds; denial or revocation of application, appeal, hearing, investigation; decision.

Sec. 67. If any application for aid financed in whole or in part by federal funds is not acted upon by the county department of social welfare within a reasonable time after the filing of the application, or is denied or revoked, in whole or in part, the applicant may appeal to the state department in the manner and form prescribed by the state department and an opportunity for a fair hearing shall be granted by said department as provided in section 9. The state department may also, upon its own motion, review any decision of a county department of social welfare, and may consider any such application upon which a decision has not been made by the county department of social welfare within a reasonable time. The state department may make such additional investigation as it may deem necessary, and shall make such decision as to the granting of aid financed in whole or in part by federal funds and the amount thereof to be granted the applicant as in its opinion is justified and in conformity with the laws of this state. In such cases the decisions of the state department shall be binding upon the

county department of social welfare involved and shall be complied with by such county department.

HISTORY: CL 1948, 400.67;—Am. 1957, p. 116, Act 95, Eff. Sep. 27;—Am. 1965, p. 818, Act 401, Imd. Eff. Oct. 27.

400.68 Application by county board for state and federal moneys.

Sec. 68. The county board shall apply to the state department of social welfare at such time, on such forms, and in such manner, as the state department shall prescribe for the allocation and distribution under section 18 of this act of state or federal moneys available for the several forms of public aid and relief, and with respect to such application shall be governed by the requirements and rules and regulations of the state department.

HISTORY: CL 1948, 400.68.

400.68a County of settlement; itemized statement of relief expense; items of undetermined value.

Sec. 68a. The county department furnishing general relief, including medical care, hospitalization or infirmary care to any poor person at the expense of another county in this state, shall present to the department of social welfare of the county liable for the aid and infirmary care, from time to time as the case might be, a sworn, itemized statement of the expense which shall be allowed and paid by the department of social welfare of the county liable therefor, within 60 days after being presented. No item of the itemized statement of expense shall be a proper and collectible charge against the county which has been determined to be or has agreed to be liable therefor unless submitted within 180 days from the end of the month during which services covered by the item were rendered. In the case of an item, the exact amount of which the county department furnishing care is unable to determine during the 180 days period or prior thereto, notice of the existence of such an item of undetermined amount shall be given the county liable during the 180 days whereupon the county furnishing care shall have an additional 180 days in which to include the amount of the item in an itemized statement.

HISTORY: Add. 1957, p. 423, Act 292, Eff. Sep. 27.

400.69 Estimate of funds for social welfare; accounting as to receipts and expenditures; district department of social welfare.

Sec. 69. The county social welfare board shall prepare and submit to the county board of supervisors, at the annual meeting of said board of supervisors or at such other time as the said board of supervisors shall request, an estimate of the funds necessary to carry out the provisions of this act, including funds needed for the several institutions under the jurisdiction of the county social welfare board. The county social welfare board shall also render an account of all moneys received and expended by them. In the case of a district department of social welfare the district social welfare board shall submit such an estimate to the board of supervisors of each county forming a part of such district.

HISTORY: CL 1948, 400.69;—Am. 1957, p. 424, Act 292, Eff. Sep. 27.

400.70 Appropriation for expenses by county board of supervisors.

Sec. 70. The county board of supervisors shall, within its discretion, make such appropriations as are necessary to maintain the various welfare services within the county, as provided in this act, and to defray the cost of administration of these services. In the case of a district department of social welfare the county board of supervisors of each county forming a part of said district shall appropriate funds necessary to

care for the welfare services of such county, and the administrative expenses of the district department shall be defrayed by all of the counties in said district in the proportion that the population of each county, according to the last federal census, bears to the population of the entire district.

HISTORY: CL 1948, 400.70;—Am. 1965, p. 819, Act 401, Imd. Eff. Oct. 27.

400.71 Distinction between township, city, and county poor; abolition.

Sec. 71. Except in respect to a city maintaining a separate department of social welfare under section 48 of this act, the distinction between township, city and county poor is abolished.

HISTORY: CL 1948, 400.71;—Am. 1957, p. 424, Act 232, Eff. Sep. 27;—Am. 1961, p. 267, Act 184, Eff. Sep. 8;—Am. 1964, p. 272, Act 201, Eff. Jan. 1, 1965.

400.72 Repealed. 1968, p. 179, Act 117, Imd. Eff. Jun. 11.

Section related to social welfare moneys in county with city maintaining own department; distribution of expense; levy of taxes.

400.73 County treasurer; custodian of moneys; child care funds; social welfare funds; transfer of funds; authority of state department.

Sec. 73. The county treasurer is hereby designated as the custodian of any and all moneys provided for the use of the county department and the probate court, juvenile division. Said treasurer shall create and maintain a child care fund into which shall be deposited (a) all moneys raised by the county for the use of the county department of social welfare for the foster care of children with respect to whom the juvenile division of the probate court has not taken jurisdiction; (b) those moneys for the foster care of children under the jurisdiction of the probate court, juvenile division, raised by the county with the view of receiving supplementary funds for this purpose from the state government as provided in section 18b of this act; (c) all funds made available by the state government for foster care of children; (d) all payments made in respect to support orders issued by the probate court for the reimbursement of government for expenditures made or to be made from said child care fund for the foster care of children; (e) all prepayments and refunds for reimbursement of county departments of social welfare for the foster care of children; and (f) all funds made available to the county for the foster care of children from any other source whatsoever, except gifts which are conditioned on a different disposition or reimbursements of the general fund. Such child care fund shall be used for the costs of providing foster care for children under the provisions of sections 18b and 18c of this act and of section 25 of chapter 12A of Act No. 288 of the Public Acts of 1939, as amended, being section 712A.25 of the Compiled Laws of 1948, and may be used for payment of the county's share of the cost of maintaining children at Michigan children's institute, boys' vocational school and girls' training school. The county board of supervisors shall distinguish in their appropriations for this fund the sums of money to be used by the probate court juvenile division from those which may be used by the county department of social welfare. The treasurer shall keep these segregated in proper sub-accounts. The creation of such a fund shall not be interpreted as limiting or repealing the existing right of the probate judge to issue orders for the foster care of children against the general fund of the county. Said treasurer shall create and maintain a social welfare fund into which shall be deposited, exclusive of funds which must be deposited in the child care fund: (a) All moneys raised by the county for the use of the county department of social welfare; (b) all funds made available to the county department of social welfare by the state and federal governments; (c) all refunds and collections arising out of reimbursements to the county department of social welfare; and (d) all funds made available to the county department from any other source whatsoever. Moneys in said child care and social welfare funds shall remain separate and apart from all other funds at the disposal of the county government and shall not be transferred to or mingled with other funds of the county. Said funds shall be used exclusively for carrying out the pur-

poses of this act: Provided, That the same provisions of this section shall apply to any city operating under section 48 of this act, and the city treasurer of such city is hereby designated as the custodian of funds provided for the city department.

The state department of social welfare shall have the power to prescribe, with respect to the child care fund and the social welfare fund, such sub-accounts and expenditure classifications as said department deems suitable, to comply with requirements to secure federal funds, to facilitate uniform reporting, and for other purposes. The state department may promulgate rules, regulations, plans, procedures and controls with respect to accounting, disbursements, and any other kind of element of financial transactions in connection with the social welfare fund. The county board and the probate judge may establish further financial practices not inconsistent with the above. The state department shall prescribe the manner and extent to which the county department shall keep on file vouchers or other authorizations to show the items and reasons for which money is disbursed.

HISTORY: CL 1948, 400.73;—Am. 1955, p. 177, Act 113, Eff. Oct. 14.

CITED IN OTHER SECTIONS: The above section is cited in § 712A.25.

400.74 Child care and social welfare funds; disbursement; bond; purchases made locally.

Sec. 74. All moneys in the child care fund provided for the use of the county department and all moneys in the social welfare fund shall be disbursed on the order or warrant of the county department, over the signature of a person or persons designated by the board. The board shall require a suitable and adequate bond from all persons designated to sign such orders conditioned for the proper handling of all such disbursements.

All purchases by the board shall, insofar as possible, be placed with business concerns located within the county for which such board is appointed and shall be spread equitably among business concerns.

HISTORY: CL 1948, 400.74;—Am. 1955, p. 178, Act 113, Eff. Oct. 14.

400.75 County board of auditors; authority.

Sec. 75. In any county now or hereafter having a county board of auditors, such board may discharge such of the custodial, auditing, disbursement, and accounting functions set forth in sections 72, 73 and 74 hereof, and such of the budget making functions set forth in section 69 hereof, as is permitted by existing law, whether general, local or special.

HISTORY: CL 1948, 400.75.

400.76 Construction of act as to liability of relatives for support.

Sec. 76. (1) This act shall not be construed to relieve the liability for support by relatives under the provisions of chapter 1 of Act No. 146 of the Public Acts of 1925, as amended, being sections 401.1 to 401.21 of the Compiled Laws of 1948, but shall be construed as superseding the definition of settlement contained in section 1 of chapter 1. The terms of chapter 1 with respect to liability for support by relatives may be invoked in connection with any form of public aid or relief administered under this act.

Action for reimbursement of county granting aid.

(2) The social welfare board of the county of legal settlement of a recipient of any form of aid granted under this act, or a social welfare board granting aid, may maintain an action in the circuit court for the county the board represents, or the circuit court for the county in which the defendant resides or is found: (a) Against the county, township or city neglecting or refusing to allow and pay a bill owing under this act and presented more than 90 days prior to the commencement of the action; or (b) Against a recipient of emergency hospitalization or his relatives who are neglecting or refusing to acknowledge responsibility for reimbursement of the county for the costs

of the emergency hospitalization; or (c) Against a recipient of hospitalization or his relatives legally liable for his support to enforce its agreement with the recipient or relatives for reimbursement of the county for hospitalization expenses.

Prosecuting attorney; duties; legally responsible relative in another state; reciprocal enforcement of support.

(3) The prosecuting attorney shall represent the county social welfare board in such actions, service or process of courts of like jurisdiction in any county in this state, and such service and return thereof in accordance with law shall give the court in which the action is commenced full jurisdiction to hear and determine the cause. If any legally responsible relative of a poor person receiving or having received any form of public welfare support in this state lives or can be found in some other state which has enacted a uniform reciprocal enforcement of support law, suitable action may be initiated in Michigan by the prosecuting attorney against the legally responsible relative under the provisions of Act No. 8 of the Public Acts of 1952, as amended, being sections 780.151 to 780.172 of the Compiled Laws of 1948.

HISTORY: CL 1948, 400.76;—Am. 1957, p. 424, Act 292, Eff. Sep. 27.

400.77 Reimbursement of county for welfare relief; relatives or estate; agreements; hospital care, exception; county employees; collection by counties.

Sec. 77. The county department of social welfare is hereby authorized and empowered to collect and receive funds to reimburse the county for expenditures made on behalf of recipients of any form of aid or relief, or hospital care provided at county expense, from such recipients, their relatives legally responsible under the laws of this state for the support of such recipients, or from the estates of recipients, in accordance with the laws of this state, and the rules and regulations of the state department of social welfare, which funds, reimbursed for direct relief, shall be disbursed to carry out the provisions of this act. Agreements for the reimbursement of the county department of social welfare for relief granted to persons or families in their own homes may be required in the cases of applicants whose need for relief is based in whole or in part on inability to obtain funds, moneys, moneys which may be received, income or assets unavailable at the time of application for or grant of relief: Provided, however, That earnings from wages or salaries not due or owing at the time of application for or grant of relief shall not be included in reimbursement agreements. Reimbursements for any form of hospital care provided at county expense shall be collected and paid over by the department of social welfare to the county treasurer for deposit to the fund from which such expenditure was made: Provided, That no county department of social welfare nor any other agency of county government shall collect or receive reimbursements for hospitalization or other treatment for tuberculosis, whether there is an agreement to reimburse the county or not, unless such reimbursement has been ordered by the state commissioner of health or is found acceptable by him as a voluntary reimbursement as provided in section 3a of Act No. 314 of the Public Acts of 1927, as added, being section 329.403a of the Compiled Laws of 1948, and no county department of social welfare shall collect or receive reimbursements for hospitalization or other treatment for any other communicable disease or diseases. Nothing in this section shall be construed to affect the civil service status, if any, of county employees now engaged in collecting reimbursements for the county for any form of aid, relief or hospital care, under the supervision of any other county department. All such employees, and all collection records and files in the county on cases investigated by the department of social welfare prior to the effective date hereof, shall be transferred to and be under the supervision, control and jurisdiction of the board of social welfare in such county.

If a county has acknowledged liability or has reimbursed another county for the cost of any form of aid, relief or hospital care provided at county expense, the county so reimbursed shall credit or remit, as the case may be, to the paying county within 60 days, any additional collections thereon from any other source. It shall be the duty of each county department of social welfare to continue to collect according to its best judgment and ability, if so requested by the county which has acknowledged or paid for any form of aid, relief or hospital care provided at county expense.

HISTORY: CL 1948, 400.77;—Am. 1949, p. 630, Act 307, Eff. Sept. 23;—Am. 1950, Ex. Sess., p. 65, Act 30, Eff. Mar. 31, 1951;—Am. 1951, p. 158, Act 126, Eff. Sep. 28.

400.77a Old age assistance, aid to dependent children, welfare relief; inconsequential earnings.

Sec. 77a. Under such rules and regulations as the state department of social welfare shall promulgate, inconsequential earnings shall not affect the determination of any amount of assistance to be paid by the state for old age assistance, aid to dependent children or matched by the state in connection with the granting of welfare relief.

HISTORY: Add. 1952, p. 390, Act 235, Eff. Sep. 18.

400.77b Old age assistance; relative liable for support, determination; appeal; jurisdiction of court, order.

Sec. 77b. Any relative determined by the county department of social welfare legally responsible under the laws of this state for the support of an applicant for or recipient of old age assistance, within 30 days of receipt of notice of such determination, may appeal to the probate court of the county in which the applicant for or recipient of old age assistance is a resident for a determination by the court of legal responsibility under the laws of this state for support. The probate court shall have jurisdiction to affirm, modify or reverse the determination of the county department of social welfare, and shall have power to enforce its orders, which shall be final and binding upon the county department of social welfare. Appeals under the provisions of this section shall be taken in the same manner as appeals from the probate court to the circuit court, except that no bond shall be required. Any order entered under the provisions of this section may be amended, suspended, revoked or confirmed by the court when the financial circumstances of the respective parties so require, upon application made in such form and manner as the court shall prescribe: Provided, That such finding of the probate court may be appealed from as in other cases of appeal from the probate court.

HISTORY: Add. 1954, p. 109, Act 91, Eff. Aug. 13.

400.78 Grants and gifts; acceptance by county board; use of funds; duty of prosecuting attorney.

Sec. 78. The county board may receive on behalf of the county any grant, devise, bequest, donation, gift or assignment of money, bonds or choses in action, or of any property, real or personal, and accept the same, so that the right and title to the same shall pass to the board. All such bonds, notes or choses in action, or the proceeds thereof when collected, and all other property or things of value so received by the board shall be used for the purposes set forth in the grant, devise, bequest, donation, gift, or assignment: Provided, That such purposes shall be within the powers conferred on said board. Whenever it shall be necessary to protect or assert the right or title of the board to any property so received or derived as aforesaid, or to collect or reduce into possession any bond, note, bill or chose in action, the prosecuting attorney is directed to take the necessary and proper proceedings and to bring suits in the name of the board on behalf of the county in any court of competent jurisdiction, state or federal, and to prosecute all such suits.

HISTORY: CL 1948, 400.78.

400.79 Prosecuting attorney; duty to give counsel to board or director.

Sec. 79. It shall be the duty of the prosecuting attorney of each county to give his counsel and advice to the board or director whenever the board or director may deem it necessary for the proper discharge of the duties imposed upon them in this act.

HISTORY: CL 1948, 400.79.

400.80 County social welfare board; reports to state department.

Sec. 80. It shall be the duty of the county social welfare board to report to the state department monthly, and in such form as the state department shall furnish and prescribe, the activities of the county department. The board shall also make such other and additional reports as shall be required by the state department.

HISTORY: CL 1948, 400.80;—Am. 1957, p. 116, Act 95, Eff. Sep. 27.

400.81 County board; seal; publication of rules and regulations; records and papers as evidence; body corporate, powers.

Sec. 81. The board may devise a seal, and the rules and regulations of the board may be published over the seal of the board. Copies of all records and papers in the office of the county department, certified by a duly authorized agent of the board shall be evidence in all cases equally, and with the like effect, as the originals. The board shall be a body corporate, and is hereby authorized to lease any lands under its jurisdiction and to do any other act or thing necessary in carrying out the provisions of this act.

HISTORY: CL 1948, 400.81.

400.82 County board; case examinations, witnesses, attendance and testimony; circuit court enforcement.

Sec. 82. Any member of the board, the director, or supervisor may issue a subpoena requiring any person to appear before the board, director, or supervisor as the case may be, and be examined with reference to any matter within the scope of the inquiry or investigation being conducted and to produce any books, records or papers. Any member of the board, the director, supervisor or any duly authorized agent of the board or director, may administer an oath to a witness in any matter. In case of disobedience of a subpoena, the board, director or supervisor may invoke the aid of the circuit court of the county in which said board is created in requiring the attendance and testimony of witnesses and the production of books, papers and documents. Such circuit court may, in case of contumacy or refusal to obey a subpoena, issue an order requiring such person to appear, and to produce books, records and papers if so ordered and give evidence touching the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

HISTORY: CL 1948, 400.82.

400.83 Financial institutions; obtaining information relating to transactions of recipients.

Sec. 83. The director is hereby authorized to request and receive from any bank, industrial bank, trust company, U.S. Postal Savings, building and loan association, credit union, or other financial institution doing business in this state, information with respect to the transactions with any such institution of any applicant for or recipient of any form of aid or relief under this act, and it shall be the duty of the officers and employees of such institution to furnish such information on the written request of the director.

HISTORY: CL 1948, 400.83.

400.84 State department; jurisdiction over district and county departments, rules and regulations.

Sec. 84. In respect to matters in which a district department of social welfare differs from a county department of social welfare, the state department shall have the power

to promulgate rules and regulations relating to organization, operation and procedure affecting such district or city department, which rules and regulations shall be binding upon all persons and authorities concerned.

HISTORY: CL 1948, 400.84;—Am. 1965, p. 819, Act 401, Imd. Eff. Oct. 27.

400.85 County superintendents of poor; transfer of powers and duties to county department of social welfare.

Sec. 85. The powers and duties now vested by law in the county superintendents of the poor, except as otherwise provided in subdivision (c) of section 55 of this act, are hereby transferred to and vested in the several county departments of social welfare herein created. Whenever reference is made to the above offices in any law of the state, or whenever reference is made to the supervisor of any township or ward, or to the director of poor of any city, with respect to the powers and duties transferred to the county department of social welfare, reference shall be deemed to be intended to be made to the said county board of social welfare.

HISTORY: CL 1948, 400.85;—Am. 1957, p. 425, Act 292, Eff. Sep. 27.

400.86 County departments; powers and duties transferred.

Sec. 86. All of the powers and duties prescribed in any law of this state incidental of the transfer of the powers and duties herein provided for shall be transferred to and be vested in the several county departments of social welfare.

HISTORY: CL 1948, 400.86.

400.87 Veterans' relief act not repealed.

Sec. 87. The provisions of this act shall not be construed to repeal or supersede the provisions of Act No. 214 of the Public Acts of 1899, as amended, being sections 35.21 to 35.27 of the Compiled Laws of 1948.

HISTORY: CL 1948, 400.87;—Am. 1957, p. 116, Act 95, Eff. Sept. 27.

400.88 Repealed. 1957, p. 116, Act 95, Eff. Jul. 1.

Section required that state welfare commission members be appointed, stated effective date of several provisions, and authorized temporary continuance of existing agencies.

Sec. 89. (This was an appropriation section.)

HISTORY: Rep. 1947, p. 170, Act 129, Eff. Oct. 11.

400.90 Political activity or use of position by officers and employees prohibited; penalty.

Sec. 90. No member of the state commission or of any county social welfare board and no executive official or employe of the state or any county welfare department shall participate in any form of political activity other than may be appropriate to the exercise of the individual's rights, duties and privileges or use his official position for any political purpose. Any employe of any department violating this provision shall be subject to discharge or such other disciplinary action as may be provided by the rules and regulations of the state department.

HISTORY: CL 1948, 400.90.

Sec. 91. (This was a severing clause section.)

HISTORY: Rep. 1945, p. 415, Act 267, Imd. Eff. May 25.

400.100 Retirement system service credits; continuation by employees of city or county department when transferred to state department.

Sec. 100. Persons who were employees of a city or county department of social welfare immediately prior to the effective date of this amendatory act, who (1) were members of a city or county retirement system and (2) become members of the state employees' retirement system, shall be entitled to benefits provided by Act No. 88 of the Public Acts of 1961, as amended, entitled "An act to provide for the preservation and continuity of retirement system service credits for public employees who transfer their employment between units of government", notwithstanding that the city or

county might not have adopted the said Act No. 88. Whenever the service requirements for benefits to be paid under Act No. 240 of the Public Acts of 1943, as amended, to the said persons who become members of the state employees' retirement system are lower than the service requirements in the said Act No. 88, the provisions of the said Act No. 240 shall apply with respect to the said persons.

HISTORY: Add. 1965, p. 819, Act 401, Imd. Eff. Oct. 27.

400.101 Distribution of general relief funds; effective date; state civil service system, membership.

Sec. 101. The distribution of state funds provided in section 18 shall be effective October 1, 1965 and the director and all employees and assistants in counties and cities in which section 23a is not applicable shall become members of the state civil service system on or before July 1, 1967.

HISTORY: Add. 1965, p. 819, Act 401, Imd. Eff. Oct. 27.

400.102 Nonduty disability retirement allowance or death benefits; eligibility, conditions.

Sec. 102. Whenever the combined state and city or the combined state and county service of an employee covered by section 100 of this act shall equal or exceed the minimum years of service required by the several units of government under their respective system to be eligible for nonduty disability retirement allowance or benefit, or, for the dependents of such an employee to be eligible for benefits in the event of the nonduty death of such an employee, the state and the city or the county, shall grant such disability or death allowance or benefit upon the following conditions:

(a) That the employee has not withdrawn his accumulated contributions from the retirement system of the city or the county.

(b) That the years of service with the granting unit of government only be used for computing the amount of the retirement allowance or benefit.

(c) That the average final compensation earned from the state, county or city, shall be used for determining the amount of the allowance or grant unless otherwise provided in the charter of any other city affected by this act.

If any retirement system does not provide for a nonduty disability retirement allowance or benefit or for nonduty death benefit, then neither the employee nor his dependents shall receive such allowance or benefit from such retirement system nor shall an employee or his dependents receive any retirement allowance or benefit from more than 1 retirement system covering the same service credit period. The provisions of this section shall not apply to any city or county that does not have a retirement system.

HISTORY: Add. 1966, p. 339, Act 249, Imd. Eff. Jul. 11.

400.105 Medical assistance program; eligibility.

Sec. 105. The state department shall establish and administer a program for medical assistance for the medically indigent under title XIX of the federal social security act, as amended, and shall be responsible for determining eligibility under this act.

HISTORY: Add. 1966, p. 578, Act 321, Eff. Oct. 1;—Am. 1967, p. 616, Act 289, Imd. Eff. Aug. 1.

400.106 Medically indigent individual; medical institution; defined.

Sec. 106. A medically indigent individual is defined as:

(1) Any individual receiving old age assistance, aid to dependent children, aid to the permanently and totally disabled, aid to the blind, or any individual who would be eligible for any such programs, or children 18 to 21 who would be eligible for aid to dependent children except for their age, and the adult caretakers living with such children or any child up to 21 years of age although not receiving aid to dependent children who meets the means test under the aid to dependent children program or

(2) Any individual meeting all of the following conditions:

(a) He has made application therefor in the manner prescribed by the state department.

(b) His need for the type of medical assistance available under this act for which application has been made has been professionally established and no payment for it is available through the legal obligation of a contractor, public or private, to pay or provide for such care without regard to the income or resources of the patient. The department shall be subrogated to any right of recovery which a patient may have for the cost of hospitalization, pharmaceutical services, physician services and nursing services not to exceed the amount of funds expended by the department for such care and treatment of the patient. The patient or other person acting in his behalf shall execute and deliver an assignment of claim or other authorizations as necessary to secure the right of recovery to the department. No payment shall be made under this act for medical assistance for an injury, disease or disability for which the patient is entitled to medical care or the cost thereof under the workmen's compensation law; except that payment may be made if an appropriate application for medical care or the cost thereof has been made under the workmen's compensation act, entitlement thereto has not been finally determined, and an arrangement satisfactory to the state department has been made for reimbursement if the claim under the workmen's compensation act is finally sustained.

(c) He has an annual income which is below or because of medical expenses falls below the protected basic maintenance level. The protected basic maintenance level is \$1,900.00 for an individual living alone and \$2,700.00 for a 2-person family. Comparable amounts to be protected for basic maintenance shall be established by the state department for family groups and individuals in other than family living arrangements.

(d) He, if living alone, has liquid or marketable assets of not more than \$1,500.00 in value, or, if a 2-person family, the family has liquid or marketable assets of not more than \$2,000.00 in value. The department shall establish comparable liquid or marketable asset amounts for family groups. Excluded in making the determination of the value of liquid or marketable assets are the values of: (i) the homestead, (ii) clothing and household effects, (iii) \$1,000.00 of cash surrender value of life insurance, and (iv) the fair market value of tangible personal property used in earning income.

(e) He is not an inmate of a public institution except as a patient in a medical institution.

(f) He meets the eligibility standards for old age assistance, aid to dependent children, aid to the blind or aid to the permanently and totally disabled except for income or income and resources, or a child 18 to 21 and his adult caretaker who would be eligible for aid to dependent children except for age, income or income and resources, or he is a child under 21 from a family whose income is below the basic maintenance level.

(3) As used in this act, "medical institution" means a state licensed or approved hospital, nursing home, medical care facility, psychiatric hospital or other facility or identifiable unit thereof certified as meeting established standards for a nursing home or hospital in accordance with the laws and rules of this state.

HISTORY: Add. 1966, p. 579, Act 321, Eff. Oct. 1;—Am. 1967, p. 616, Act 299, Imd. Eff. Aug. 1;—Am. 1970, p. 505, Act 160, Imd. Eff. Aug. 2.

400.107 Medical assistance program; financial eligibility, application of income.

Sec. 107. In establishing financial eligibility for the medically indigent as defined in section 106 (2) income shall be disregarded in accordance with standards established for the related categorical assistance program. Additional income shall be applied

against: (i) the cost of medical care not authorized under this act, and (ii) the cost of services authorized under this act, in excess of the basic amount. For medical assistance only, income shall include the amount of contribution which an estranged spouse or parent for a minor child is making to the applicant according to the standards of the state department, or pursuant to a court determination, if there is such a determination. Nothing in this section shall eliminate the responsibility of support established in section 76 for cash assistance received under this act.

HISTORY: Add. 1966, p. 579, Act 321, Eff. Oct. 1;—Am. 1967, p. 616, Act 289, Imd. Eff. Aug. 1.

400.108 Medical and dental services; services of medical institution.

Sec. 108. A medically indigent person as defined under section 106 (1), is entitled to all the services enumerated in sections 109 (a), 109 (b), 109 (c), 109 (d) and 109 (e). A medically indigent person as defined under section 106 (2) is entitled to medical services enumerated in sections 109 (a), 109 (c) and 109 (e) through June 30, 1967. From and after July 1, 1967, he shall also be entitled to the services enumerated in section 109 (b) to the extent of appropriations made available by the legislature for the fiscal year. Medical services shall be rendered upon certification by the attending licensed physician and dental services shall be rendered upon certification of the attending licensed dentist that a service is required for the treatment of an individual. The services of a medical institution shall be rendered only after referral by a licensed physician or dentist and certification by him that the services of the medical institution are required for the medical or dental treatment of the individual, except that referral is not necessary in case of an emergency. Periodic recertification that medical treatment which extends over a period of time is required in accordance with regulations of the state department shall be a condition of continuing eligibility to receive medical assistance.

HISTORY: Add. 1966, p. 580, Act 321, Eff. Oct. 1;—Am. 1967, p. 617, Act 289, Imd. Eff. Aug. 1.

400.109 Medical services provided under act.

Sec. 109. The following medical services may be provided under this act:

(a) Hospital services which an eligible person may receive consist of medical, surgical or obstetrical care, together with necessary drugs, x-rays, physical therapy, prosthesis, transportation and nursing care incidental thereto. The period of inpatient hospital service shall be the minimum period necessary in this type of facility for the proper care and treatment of the individual. Necessary hospitalization to provide dental care shall be provided where certified by the attending dentist with the approval of the state department. A person 65 years of age or older who is receiving medical treatment as an inpatient because of a diagnosis of tuberculosis or mental disease may receive service under the provisions of this section, notwithstanding the provisions of Act No. 151 of the Public Acts of 1923, as amended, being sections 330.11 to 330.71 of the Compiled Laws of 1948, Act No. 177 of the Public Acts of 1925, as amended, being sections 332.151 to 332.164 of the Compiled Laws of 1948 and Act No. 115 of the Public Acts of 1929, as amended, being sections 332.1 to 332.7 of the Compiled Laws of 1948. Hospitals shall be paid reasonable cost, in accordance with the standards approved by the United States department of health, education and welfare, for inpatient hospital service provided under this act and upon the promulgation of the rules of the state department in accordance with and subject to the provisions of Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.313 of the Compiled Laws of 1948.

(b) An eligible person may receive physician services authorized by the state department. Such service may be furnished in the office of the physician, patient's home, a medical institution or elsewhere in case of emergency. Physicians shall be paid reasonable charges for services rendered. Reasonable charges shall be determined by the

state department and shall not be more than those paid in this state for services rendered under title XVIII of the federal social security act.

(c) An eligible person may receive nursing home services in a state licensed nursing home, a medical care facility, or other facility or identifiable unit thereof certified by the appropriate authority as meeting established standards for a nursing home in accordance with the laws and rules of this state and the federal department of health, education and welfare, to the extent found necessary by the attending physician, dentist or certified Christian Science practitioner.

(d) An eligible person may receive pharmaceutical services from a licensed pharmacist of his choice as prescribed by a licensed physician or dentist and approved by the state department. In an emergency, but not routinely, he may receive pharmaceutical services rendered personally by a licensed physician or dentist on the same basis as approved for pharmacists.

(e) An eligible person may receive other medical and health services as authorized by the state department.

HISTORY: Add. 1966, p. 580, Act 321, Eff. Oct. 1;—Am. 1967, p. 617, Act 289, Imd. Eff. Aug. 1;—Am. 1970, p. 506, Act 160, Imd. Eff. Aug. 2.

400.110 Medical services for residents absent from state.

Sec. 110. Services under this act may be provided to a resident of this state who is temporarily absent from the state. Out of state physicians and institutions in which service is received shall be licensed or approved by the appropriate standard-setting authority in the other state.

HISTORY: Add. 1966, p. 581, Act 321, Eff. Oct. 1;—Am. 1967, p. 618, Act 289, Imd. Eff. Aug. 1.

400.111 Medical services; responsibility of state department.

Sec. 111. The state department is responsible for the proper handling of each medical case. The state department may transfer a recipient to some other medical institution for treatment better adapted to his needs, or take any other action to insure meeting the medical needs of the recipient.

HISTORY: Add. 1966, p. 581, Act 321, Eff. Oct. 1.

400.112 Medical services; contract with private agencies as fiscal agents.

Sec. 112. The state department may contract with any private agency, including a corporation or association, to act as fiscal agent in dealing with vendors providing medical service authorized in this act.

HISTORY: Add. 1966, p. 581, Act 321, Eff. Oct. 1.

400.113 Youth services; definitions.

Sec. 113. As used in sections 113 to 122:

- (a) "Commission" means the youth services advisory commission.
- (b) "Office" means the office of youth services.
- (c) "Director" means the director of the office of youth services.
- (d) "Board" means the youth parole and review board.

HISTORY: Add. 1966, p. 765, Act 338, Imd. Eff. Dec. 8.

400.114 Office of youth services; creation; director, appointment, compensation.

Sec. 114. The office of youth services is created within the department of social services. The head of the office of youth services shall be the director, who shall be appointed by the governor with the advice and consent of the senate, and whose salary shall not exceed \$26,000.00 per annum.

HISTORY: Add. 1966, p. 765, Act 338, Imd. Eff. Dec. 8.

400.115 Office of youth services; duties.

Sec. 115. To the extent of appropriations provided, the office shall:

(a) Operate the boys' training school, the girls' training school, the children's institute, halfway houses, youth camps, diagnostic centers, state operated regional detention facilities, regional short-term treatment centers, group homes and such other facilities and programs as may be established with the approval of the legislature to provide an effective program of out-of-home care for delinquent or neglected children committed or placed in the care and custody of the office by probate courts.

(b) Encourage and assist in the development and coordination of new programs as well as the coordination of prevailing programs at all levels of government and with those of public and private nonprofit agencies and groups providing care or training for delinquent and neglected children.

(c) Devise and make available a system of supervision for juveniles on conditional release from facilities of the office by establishing its own programs, or, with the approval of the legislature, by agreement with other units of state, regional or local government or with private agencies.

(d) Administer grants, subsidies, incentive payments and such other fiscal programs as are authorized by the legislature, including but not limited to:

(i) Subsidies or incentives to insure adequate locally-based probation and other social services for children under the jurisdiction of the juvenile division of the probate court.

(ii) Cost-sharing programs between the state and county concerning court wards. The powers and duties of the state department of social services as prescribed by section 18b relating to the juvenile division of the probate court are transferred to the office.

(iii) Allocation of funds budgeted for governmental or private organizations operating delinquency prevention programs or projects in accordance with standards established by the office.

(e) Establish, with approval of the legislature, training programs for delinquent youth by contract with government and private agencies. The programs may be conducted through camps established by the office or in cooperation with the department of natural resources or with other organizations.

(f) Develop a coordinated system of care for delinquent and neglected children committed to the office. The development of treatment programs and other centers shall be coordinated with locally-operated programs for treatment, detention and diagnosis.

(g) Gather and make available statistics and information about the operation of the various state, regional and local components of the program of neglect and delinquency services, presenting such information to the legislature and the public through annual reports.

(h) Undertake special studies regarding the development of intensive probation, new probation methods and other services specifically aimed at reduction of detention and out-of-home care.

(i) Administer the provisions of Act No. 203 of the Public Acts of 1958, as amended, being sections 3.701 to 3.706 of the Compiled Laws of 1948.

(j) Administer other programs and services assigned or transferred to the office by the legislature.

(k) Receive any donation, grant or gift of money or property without obligation to the state for the benefit of its programs or for children placed with or committed to its care. The director, on receipt of the donation, grant or gift, shall remit it within 30

days to the state treasury to be credited to the office of youth services trust fund which is created in the state treasury.

HISTORY: Add. 1969, p. 765, Act 338, Imd. Eff. Dec. 8.

400.116 Office of youth services; duties as to juvenile court probation staff.

Sec. 116. With respect to juvenile court probation staff, the office shall:

(a) Develop and recommend to the supreme court standards and qualifications for employment and other criteria designed to develop an adequate career service.

(b) Maintain information as to court employment needs and assist in recruitment of qualified personnel.

(c) Provide, with legislative approval, a statewide system of preservice and inservice training, which may include full and part-time scholarships.

(d) Develop recommendations regarding the functions of the office of county juvenile officer.

HISTORY: Add. 1969, p. 766, Act 338, Imd. Eff. Dec. 8.

400.117 Federal matching funds; avoidance of loss.

Sec. 117. If the secretary of the United States department of health, education and welfare or his successor should rule that the implementation of any provision of this act would result in the loss of federal matching funds to the state, the office shall refrain from implementing such provisions unless otherwise authorized by the legislature.

HISTORY: Add. 1969, p. 766, Act 338, Imd. Eff. Dec. 8.

400.118 Youth advisory commission; creation; membership, qualifications, terms, vacancies, allowance and expenses.

Sec. 118. A youth advisory commission is created within the department of social services to consist of 5 members appointed by the governor with the advice and consent of the senate. Not more than 3 of the members shall be from the same political party. Members shall be appointed for terms of 4 years and until their successors are appointed and qualified, except that of the members first appointed, 2 shall serve for 4 years, 1 for 3 years, 1 for 2 years and 1 for 1 year. Vacancies shall be filled in the same manner as original appointments for the unexpired term. Members shall receive a per diem allowance of \$45.00 and shall be reimbursed for travel and other necessary expenses.

HISTORY: Add. 1969, p. 766, Act 338, Imd. Eff. Dec. 8.

400.119 Youth advisory commission; duties.

Sec. 119. The commission shall:

(a) Provide the director with advice and recommendations concerning the formulation and implementation of programs and policies administered by the office.

(b) Inform the legislature, the executive office, the judiciary and the public of the needs and interests of children and the programs and needs of the department.

HISTORY: Add. 1969, p. 767, Act 338, Imd. Eff. Dec. 8.

400.120 Youth parole and review board; membership, director.

Sec. 120. A youth parole and review board is created within the department of social services to consist of 3 members appointed by the director and who shall be within the state civil service. The chairman of the board shall be designated by the director from the membership of the board.

HISTORY: Add. 1969, p. 767, Act 338, Imd. Eff. Dec. 8.

400.121 Youth parole and review board; duties.

Sec. 121. The board shall:

(a) Be responsible for approval of releases from all institutional programs of the office of youth services, for return to such facilities from release status and for discharge from legal commitment.

(b) Have such other duties and responsibilities as shall be authorized by law.

HISTORY: Add. 1969, p. 767, Act 338, Imd. Eff. Dec. 8.

400.122 Appropriations for salaries and expenses of director, commissioners, and members of parole board.

Sec. 122. There is appropriated from the general fund for the fiscal year ending June 30, 1970, the sum of \$75,000.00 or as much thereof as may be necessary for the salaries of the director, the commissioners and the members of the parole board and for reimbursement for travel and other necessary expenses thereto.

HISTORY: Add. 1969, p. 767, Act 338, Imd. Eff. Dec. 8.

Act 350, 1965, p. 691; Imd. Eff. Jul. 23.

AN ACT to require agencies administering relief, social security, health insurance or health service to accept the services of optometrists on the same basis as other professionals authorized to render similar service.

The People of the State of Michigan enact:

400.131 Optometric services; welfare agencies, acceptance and payment.

Sec. 1. Any agency of the state or county or municipality, or any commission, clinic, or board administering relief, social security, health insurance or health service under the laws of the state of Michigan shall accept the services of optometrists registered in the state in accordance with law for the purposes of rendering services defined under the optometric law to any person under the jurisdiction of said agency, clinic, commission or board administering such relief, social security, health insurance or health service, on the same basis and on a parity with any other person authorized by law to render similar professional service, when such services are needed, and shall pay for such services in the same way as other professions may be paid for similar services.

HISTORY: New 1965, p. 691, Act 350, Imd. Eff. Jul. 23.

Act 203, 1964, p. 273; Imd. Eff. May 22.

AN ACT to authorize the social welfare commission to expand its program of aid to totally and permanently disabled persons, and to authorize the use of appropriations for such purpose.

The People of the State of Michigan enact:

400.141 Aid to totally and permanently disabled persons; expansion of program.

Sec. 1. Notwithstanding the provisions of sections 1 and 8 of Act No. 221 of the Public Acts of 1963, the social welfare commission may expand its program of aid to totally and permanently disabled persons in accordance with the 1962 amendments of the social security act.

HISTORY: New 1964, p. 273, Act 203, Imd. Eff. May 22.

400.142 Aid to totally and permanently disabled persons; appropriation.

Sec. 2. In order to provide funds for the administration and operation of this act for the period ending June 30, 1964, the department of social welfare may expend a sum not to exceed \$30,000.00 out of the appropriation of \$82,017,000.00 for public welfare

purposes made in Act No. 221 of the Public Acts of 1963. The controller of the department of administration, upon request of the department of social welfare and with the approval of the state administrative board, shall transfer the sum authorized for this purpose as provided in this act.

HISTORY: New 1964, p. 273, Act 203, Imd. Eff. May 22.

Act 181, 1962, p. 388; Eff. Mar. 28, 1963.

AN ACT to authorize county boards of supervisors to establish a board of county institutions; to prescribe the composition, powers and duties of the board; and to transfer and change the powers and duties of other boards and agencies affected by this act.

The People of the State of Michigan enact:

400.151 Board of county institutions; creation; purpose; abolition.

Sec. 1. In counties having a population of less than 1,000,000 and having an approved county tuberculosis hospital, the board of supervisors, by a 2/3 vote of the members elect, may create and appoint a board of county institutions for the purpose of maintaining and operating a county tuberculosis hospital, a county medical care facility and a county psychiatric facility; or may operate and administer as a single medical institution. The board may be abolished by a 2/3 vote of the members elect of the board of supervisors.

HISTORY: New 1962, p. 388, Act 181, Eff. Mar. 28, 1963;—Am. 1968, p. 212, Act 149, Imd. Eff. Jun. 12.

400.152 Board of county institutions; members, oath, terms.

Sec. 2. The members of the board shall be residents of the county. The board shall be composed of 7 members appointed for terms of 3 years each. Of the members first appointed 3 shall be appointed for a term of 1 year, 2 for 2 years and 2 for 3 years. Thereafter each member shall hold office for a period of 3 years beginning January 1 next ensuing and until a successor is appointed and qualified. Each member shall file with the county clerk the constitutional oath of office.

HISTORY: New 1962, p. 388, Act 181, Eff. Mar. 28, 1963.

400.153 Board of county institutions; duties, employees, budget, policies, cooperation with state agencies.

Sec. 3. Subject to the provisions of this act, the board of county institutions shall operate the hospital or institution for the care and treatment of persons suffering from tuberculosis or any physical or mental ailment or impairment, including the condition of senility. The board of county institutions shall employ an executive head and such other employees as may be necessary to carry out the provisions of this act. The compensation and expenses necessary to the discharge of official duties of the executive head and employees and the number thereof shall be within the funds made available therefor. The board shall be responsible for the establishment of an annual budget and all charges and disbursements shall be within the budget so prepared and approved by the board of supervisors. The board shall be responsible for establishing the policies covering the operation of the hospital or institution, including the conditions of admission and the rates to be charged for the care of patients. The board of county institutions shall cooperate with all agencies and departments of the state, particularly the public health department, the mental health department and the department of social services.

HISTORY: New 1962, p. 388, Act 181, Eff. Mar. 28, 1963;—Am. 1968, p. 212, Act 149, Imd. Eff. Jun. 12.

400.154 Board of county institutions; members, compensation, meetings.

Sec. 4. No more than 4 members of the board of supervisors shall be members of the board of county institutions. They shall be entitled, for attending meetings, to per diem compensation and other expense in the same manner as members of the board of supervisors. The members of the board of county institutions who are not members of the board of supervisors shall also be entitled to per diem compensation and other expense for attending meetings the same as members of the board of county institutions who are members of the board of supervisors. The board shall meet at least once a month. However they may not claim reimbursement for attending more than 24 meetings a year.

HISTORY: New 1962, p. 389, Act 181, Eff. Mar. 28, 1963;—Am. 1966, p. 111, Act 88, Imd. Eff. Jun. 14.

400.155 Board of trustees of tuberculosis hospital; transfer of powers to board of county institutions.

Sec. 5. The powers and duties now vested in the board of trustees of the tuberculosis hospital are hereby transferred to and vested in the board of county institutions of those counties in which the county board of supervisors appoints such a board of county institutions.

HISTORY: New 1962, p. 389, Act 181, Eff. Mar. 28, 1963.

400.156 Social welfare board; transfer of powers as to county medical facility to board of county institutions.

Sec. 6. The powers and duties now vested in the social welfare board pertaining to the direction and administration of a county medical facility or county home are hereby transferred to and vested in the board of county institutions of those counties in which the county board of supervisors appoints a board of county institutions.

HISTORY: New 1962, p. 389, Act 181, Eff. Mar. 28, 1963.

400.157 Board of county institutions; responsibility to board of supervisors; budgets.

Sec. 7. The board of county institutions will be responsible to the board of supervisors for the administration and management of different county institutions placed under the responsibility of the board.

The board of county institutions may not be required, if it operates as a single institution to prepare separate budgets for each hospital or institution, but may prepare 1 budget for the operation of the single institution.

HISTORY: New 1962, p. 389, Act 181, Eff. Mar. 28, 1963;—Am. 1968, p. 212, Act 149, Imd. Eff. Jun. 12.

400.158 Board of county institutions; financial assistance.

Sec. 8. The county board of institutions, if eligible, shall qualify for any grants-in-aid, subsidy or other financial assistance granted by the state or the United States.

HISTORY: Add. 1968, p. 212, Act 149, Imd. Eff. Jun. 12.

Act 14, 1959, p. 14; Eff. Mar. 19, 1960.

AN ACT to transfer the functions of the commodities surplus food distribution section from the department of administration to the department of social welfare; to provide for the transfer of staff, records, files and other property; to provide that hearings shall not be abated; to transfer appropriations and other funds; to prescribe the powers and duties of the department of administration and the department of social welfare; and to fix the effective date of this act.

The People of the State of Michigan enact:

400.181 Commodities surplus food distribution; transfer of powers and duties to department of social welfare.

Sec. 1. All powers and duties now vested by law with the department of administration with reference to the commodities surplus food distribution section are hereby transferred to and vested in the state department of social welfare. The commodities food surplus distribution section within the department of administration is hereby abolished and the state department of social welfare shall be vested with full authority, and shall be required to exercise such powers and perform such duties with reference to the commodities surplus food distribution section as have heretofore been vested in, and required to be performed by, the department of administration.

HISTORY: New 1959, p. 14, Act 14, Eff. Mar. 19, 1960.

400.182 Commodities surplus food distribution; transfer of staff, records, files and property.

Sec. 2. All of the staff, records, files and other property including property held in trust belonging to the commodities surplus food distribution section within the department of administration shall be transferred to the department of social welfare and shall be continued as part of the staff, records, files and property of the department of social welfare.

HISTORY: New 1959, p. 14, Act 14, Eff. Mar. 19, 1960.

400.183 Commodities surplus food distribution; transfer of hearings and proceedings; orders, rules and regulations, continuation.

Sec. 3. All hearings and proceedings of whatever nature now pending before the department of administration with respect to the commodities surplus food distribution section shall not be abated, but shall be transferred to the state department of social welfare, without notice to interested parties, and shall be conducted in the same manner and determined in accordance with the provisions of law concerning such hearings and proceedings. All orders, rules and regulations of the commodities surplus food distribution section shall continue in effect as though the transfer were not made and, to the extent applicable, they shall be binding upon the department of social welfare.

HISTORY: New 1959, p. 14, Act 14, Eff. Mar. 19, 1960.

400.184 Commodities surplus food distribution; transfer of appropriations.

Sec. 4. All appropriations and all other funds necessary to carry out the duties, functions and responsibilities of the commodities surplus food distribution section shall be transferred to the state department of social welfare.

HISTORY: New 1959, p. 14, Act 14, Eff. Mar. 19, 1960.

400.185 Commodities surplus food distribution; services and functions, continuation.

Sec. 5. The department of administration and the state department of social welfare shall make all other arrangements as are necessary to provide for the uninterrupted conduct of the services and functions of government as prescribed by this act.

HISTORY: New 1959, p. 14, Act 14, Eff. Mar. 19, 1960.

400.186 Effective date of act.

Sec. 6. This act shall take effect on January 1, 1960.

HISTORY: New 1959, p. 14, Act 14, Eff. Mar. 19, 1960.

Act 287, 1913, p. 550; Eff. Aug. 14.

AN ACT to authorize the board of control of the state public school to sell certain lands belonging to said school and invest the proceeds derived therefrom and use the income thereof for the wards of such school.

The People of the State of Michigan enact:

400.191 Sale of certain land by state public school; tract, description.

Sec. 1. The board of control of the state public school is hereby authorized to sell a certain tract of land now owned by the said school, devised to it by one Truman Cobb, and described as follows:

That part of the west half of the northwest quarter of section 23 in town 5 south of range 7 west, Branch county, Michigan, lying north of the Coldwater river, containing 50 acres more or less, subject, however, to rights of flowage; said board of control being authorized to sell said lands either as a whole or subdivided into smaller tracts, whichever, in the judgment of said board, may be most advantageous, and to give a warranty deed or deeds for said tract or tracts.

HISTORY: CL 1915, 1531;—CL 1929, 7955;—CL 1948, 400.191.

NOTE: The state public school has been abolished and superseded by the Michigan children's institute, see Compilers' § 400.201 et seq.

400.192 Sale of certain land by state public school; Truman Cobb fund, establishment.

Sec. 2. The said board of control is hereby authorized to hold the net proceeds derived from such sale or sales in a fund, apart from the other moneys belonging to said school, to be known as the Truman Cobb fund, to be kept invested in first class securities, to be approved by said board of control, and the income to be used by said board of control for the benefit of the wards of said school.

HISTORY: CL 1915, 1532;—CL 1929, 7956;—CL 1948, 400.192.

Act 220, 1935, p. 364; Imd. Eff. Jun. 8.

AN ACT to provide family home care for children committed to the care of the state, to create the Michigan children's institute under the control of the Michigan social welfare commission, to prescribe the powers and duties thereof, and to provide penalties for violations of certain provisions of this act. Am. 1944, 1st Ex. Ses., p. 14, Act 8, Imd. Eff. Feb. 19;—Am. 1955, p. 327, Act 220, Eff. Oct. 14.

The People of the State of Michigan enact:

400.201 Michigan children's institute; creation; transfer of records and property from state public school.

Sec. 1. That in order the state may more effectively exercise the duty and obligation which it owes to unfortunate children, there is hereby created and established the Michigan children's institute. Such records, papers, equipment and appurtenances as needed from the state public school shall be transferred to the said institute and whenever the name "state public school" appears in any statute of this state it shall be taken and deemed to mean the Michigan children's institute.

HISTORY: CL 1948, 400.201.

FORMER ACTS: Act 143, 1903, being CL 1929, 7936-7954; Act 164, 1931.

CITED IN OTHER SECTIONS: Sections 400.201 to 400.214 are cited in § 400.14.

400.202 Children's institute; control by social welfare commission; superintendent, officers and employees.

Sec. 2. The said Michigan children's institute shall be under the control and management of the Michigan social welfare commission, hereinafter referred to as "the commission", whose appointment and duties are provided in Act No. 280 of the Public Acts of 1939, as amended, being sections 400.1 to 400.90, inclusive, of the Compiled Laws of 1948, and as further expressly provided for in this act. The commission shall appoint the superintendent, and such other officers and employees as it shall deem necessary, who shall severally hold their offices and positions during the pleasure of the commission.

HISTORY: Am. 1944, 1st Ex. Sess., p. 14, Act 8, Imd. Eff. Feb. 19;—CL 1948, 400.202;—Am. 1955, p. 327, Act 290, Eff. Oct. 14.

400.203 Children's institute; admission.

Sec. 3. Any child under 17 years of age, provision for whose support and education has been made under regulations of the commission, may be admitted to the institute hereafter in accordance with any one of the following provisions:

Commitment, conditions.

(a) By commitment to the state department of social welfare. Any child may be committed to the state department of social welfare:

- (1) By the juvenile division of the probate court, if the child is abandoned by his parents, guardian or other custodian, or is otherwise without proper custody or guardianship, or if the child's home or environment, by reason of neglect, cruelty, drunkenness, criminality or depravity on the part of the parents, guardian or other custodian, is an unfit place for such child to live in, or
- (2) By the probate court, if the child is a ward of said court and the court has denied an order of adoption for said child,

if the child is sound in mind and body and free from chronic or contagious disease as shown by a careful examination given by a regularly authorized and competent physician. All children heretofore or hereafter committed to the Michigan children's institute shall be deemed committed to the state department of social welfare. The superintendent of the institute shall represent the state as guardian of each child committed beginning with the day the child is admitted and continuing until the child is 19, unless the superintendent or the commission shall discharge the child sooner as provided in sections 8 or 9 of this act. Wherever commitment to the Michigan children's institute is mentioned in any law of this state, it shall be construed to mean commitment to the state department of social welfare.

Observation period, extension, treatment; reimbursement of expenses.

(b) By observation order. When in accordance with the provisions of the statutes, a child has been decreed to be a ward of the probate court, or the juvenile division of the probate court has acquired formal jurisdiction of a child, if it shall appear to the judge of probate, because of the circumstances of the case, or because the condition of the child might be benefited, the court may make a temporary commitment to the state department of social welfare and direct that the child be taken to a facility of the Michigan children's institute for observation for a period not to exceed 90 days. Before the expiration of this order of observation, the superintendent of the institute shall report to the judge of probate the results of the observation of said child. If the superintendent shall report to the judge of probate that the order of observation should be extended, or that the child is in need of treatment for emotional disturbance which does not require hospital care and for which the institute has facilities, then the court may extend the temporary commitment and continue the observation order or establish a treatment period for the child to any date prior to the nineteenth birthday of the

child. When such child has ceased to be a ward of the court, written consent of the person or persons lawfully having custody of the child shall be secured. Before the expiration of this extended order of observation or treatment, the superintendent shall report to the judge of probate the results of the observation or treatment of the child and an opinion stating what disposition can be made of the child. Before any child is sent to a facility of the institute for observation, the superintendent of the institute shall notify the judge of probate that there is room to receive the child and shall designate the facility of the institute for the reception of the child. The commission may by regulation establish conditions for the reimbursement of the expense of caring for said child while under the supervision of the institute when the parents or other persons responsible for the child's support are financially able to pay reasonable costs of such care.

Transfer from other state institutions, return.

(c) By transfer. Any child now attending or under the control of the boys' vocational school at Lansing or the girls' training school at Adrian, upon recommendation of the superintendent of each respective institution and upon approval of the commission, may be transferred to the care of the Michigan children's institute for placement and supervision under such regulations as the commission shall establish when such transfer will materially benefit the child either mentally or physically. The original commitment shall be deemed to be in full force and effect for the purpose of retaining such child in the custody of the state. Before such transfer is made the superintendent of the institute shall indicate in writing that there is room to receive the child and the superintendent, with the approval of the commission, may return the child to the care of the institution to which original commitment was made at any time before the expiration date of the order of commitment.

HISTORY: Am. 1943, p. 336, Act 207, Eff. Jul. 30;—Am. 1944, 1st Ex. Sess., p. 14, Act 8, Imd. Eff. Feb. 19;—CL 1948, 400.203;—Am. 1951, p. 150, Act 120, Eff. Sep. 28;—Am. 1955, p. 327, Act 220, Eff. Oct. 14;—Am. 1957, p. 80, Act 74, Eff. Sep. 27;—Am. 1959, p. 97, Act 90, Eff. Mar. 19, 1960.

400.204 Children's institute; commitment order, transportation, expense.

Sec. 4. When an order is made committing a child to said institute, the court shall within 30 days send to the superintendent of said institute a certified copy of the petition, order of disposition in the case, report of the county agent or probation officer, and the report of the physician making the examination of the child. Upon receipt of such order the superintendent of said institute shall, as soon as there is room to receive such child at the said institute, notify the judge of probate of that fact, whereupon the judge of probate may cause such child to be transported to the said institute for admission thereto. The expense of transportation of such child to said institute pursuant to law shall be audited by the board of state auditors and paid from the general fund in the same manner as the expense of conveying children to other institutions of the state.

HISTORY: Am. 1943, p. 337, Act 207, Eff. July 30;—CL 1948, 400.204.

400.205 Committed children; placement in private home, investigation, court order.

Sec. 5. In case a child has been committed to said institute, and a person in the same county has been found who is willing to take said child into his home under the same conditions as children placed out on agreement, or for adoption from the said institute, the court, county agent, probation officer or any other person representing the court or state in the placement of children may notify the superintendent of said institute, giving the name and the address of the party interested in taking the child into his home; whereupon the superintendent shall order an investigation be made, and if it appears that the home is a suitable one for said child, the child shall be placed and the order of the court entered on the records of the said institute. Upon entering the order

of the court on the records of the said institute, the child shall be considered a ward of said institute and may be supervised, or adopted as are other wards of the said institute: Provided, In case the investigation indicates that the child is not eligible for admission to the said institute because of some mental or physical defect, or should not be offered for adoption because of a mental defect in its forbears, or being of unknown parentage and too young to determine its mental and physical development, the superintendent shall so notify the court with reasons thereof and further disposition shall be made by said court.

HISTORY: CL 1948, 400.205.

400.206 Committed children; temporary residential facilities.

Sec. 6. The commission shall maintain at Ann Arbor and at such other places as may be made available to the commission, temporary residential facilities for the reception of children sent to the institute under sections 3 or 4 of this act, or for their care between placements in family homes, or for other temporary purposes. Such facilities may include office space for employees of the commission engaged in the maintenance of the facilities or who work in their vicinity.

HISTORY: Add. 1955, p. 328, Act 220, Eff. Oct. 14.

Original section 6 of Act 220 of 1935, p. 364, which provided for 1 year county liability, was repealed by Act 207 of 1943.

400.207 Committed children; county liability for care; gifts, trust fund, investment; rules; release of child to relative, placement in licensed boarding home.

Sec. 7. The commission shall make all necessary regulations for the maintenance, health, instruction and training of the children under the control of said institute; for placing them in homes; and for their supervision while they remain wards of the state. The county from which the child was committed shall be liable to the state for 50% of the cost of care, but this amount may be reduced by use of funds from the annual original foster care grant of the state to the county, or otherwise for any period of time in respect to which the commission has made a finding that the county is unable to bear 50% of the expense: Provided, That when a child, born in a hospital or institution to which its mother has been committed or in which the mother is receiving care, is committed to the Michigan children's institute upon a petition filed within 30 days of birth in the probate court of the county in which the hospital or institution is located, the judge of probate of the county of residence of said child, having refused consent to the transfer of jurisdiction to his court as provided in section 2 of chapter 12A of Act No. 288 of the Public Acts of 1939, being section 712A.2 of the Compiled Laws of 1948, the liability shall be upon the county which committed the mother, or if the mother was not committed, upon the county in which she was living at the time of entering the hospital, as shall be determined by the commission. The finding that the county is unable to bear 50% of the cost of care shall be based on a study to be made by said commission in accordance with section 18b of Act No. 280 of the Public Acts of 1939, as added, of the financial resources and of the necessary expenditures of the county. The cost of care shall be determined by the commission on a per diem basis using all cost figures for the previous fiscal year, exclusive of capital outlay. The superintendent is to be recognized as the authorized agent of the said commission to carry out the purposes of this act. The superintendent or the commission may receive any donation, grant or personal property for the benefit of the children of said institute. The superintendent or the commission, upon receipt of such donation, grant or personal property, shall within 30 days remit the same to the state treasury to be credited to the Michigan children's institute trust fund, which is hereby created in the state treasury. The state treasurer is hereby authorized to keep as much of said fund as he deems advisable invested in United States government bonds, notes, bills, certificates or other obliga-

tions, and to credit all earnings to said fund. The commission may expend such amounts as they deem necessary for any of the purposes of said institute for the care and education of such children during minority or until released as provided in this act. When any part of said trust fund shall be required by said commission for said purposes, the superintendent shall obtain the same by requisition to the accounting division of the department of administration, which division shall certify the same to the auditor general who shall issue his warrant therefor. The said commission may utilize any facilities existing in any county in caring for such children and is authorized to accept the services of any voluntary organization for the benefit of such children, subject to such regulations as the said commission may establish. Such rules and regulations shall be enforced by the superintendent on behalf of the said commission. Any agreement entered into with any person taking a child who is a ward of the Michigan children's institute shall provide that the said commission shall have the right to cancel the same when, in the opinion of said commission, the interest of the child requires it. If any parent, or relatives within the third degree, of any child who is a ward of said institute shall establish a suitable home and are capable and willing to support such child, the said commission may by resolution restore such child to its parent, parents or relatives. Said institute may assist such parent or relative with the support of such child, provided such aid is less than the cost of care that said institute would otherwise provide. Said commission shall have the right and authority to place and maintain any child under the control of said institute in any licensed boarding home for children, and the expense of supervision and transportation of such children to said home shall be paid out of money appropriated to said institute, subject to partial reimbursement by the county liable as provided in this section. The superintendent shall cause an investigation of the condition and suitability of each such boarding home to be made, and a report to be made and kept on file at the office of the superintendent. Such report must have the approval of said superintendent before any child or children of the said institute may be placed in such licensed boarding home.

HISTORY: Am. 1944, 1st Ex. Ses., p. 15, Act 8, Imd. Eff. Feb. 19;—CL 1948, 400.207;—Am. 1951, p. 28, Act 26, Imd. Eff. Apr. 20;—Am. 1951, p. 151, Act 120, Eff. Sep. 28;—Am. 1955, p. 167, Act 108, Eff. Apr. 1, 1956.

400.208 Committed children; return to home county.

Sec. 8. The said commission is authorized to return to the counties from which they were sent, the following classes of children:

First, those who have become 16 years of age and who, for any reason, cannot be placed or retained in family homes.

Second, those who by reason of vicious habits or incorrigibility, cannot be placed in or retained in family homes.

Third, those who are of unsound mind or body, or have some physical disability, which prevents their being placed in family homes. Whenever a child shall be ordered by said commission to be returned to a county, as herein provided, the guardianship of the said commission shall cease, and the child thereupon becomes a charge on the county from which it was sent, and the superintendent shall report to the court the reasons thereof, and any other information which may assist the court in a further disposition of the child.

HISTORY: CL 1948, 400.208.

400.209 Committed children; adoption, marriage, emancipation; consent by superintendent.

Sec. 9. The superintendent of said institute is hereby authorized to consent to the adoption, marriage or emancipation of any child who may have been committed to said institute, pursuant to the laws for the adoption, marriage or emancipation of mi-

nors. On such adoption, marriage or emancipation the child so adopted, married or emancipated shall cease to be a ward of the state.

HISTORY: Am. 1944, 1st Ex. Sess., p. 16, Act 8, Imd. Eff. Feb. 19;—CL 1948, 400.209;—Am. 1955, p. 328, Act 220, Eff. Oct. 14.

400.210 Committed children; application for removal from institute, procedure; visitation to homes.

Sec. 10. Any person desiring to take a child from said institute by agreement or adoption shall apply for that purpose in writing, on such form as said commission shall prescribe, to the superintendent or to the judge of probate of the county in which the applicant resides. The superintendent of said institute shall require an investigation of the home of the applicant upon such forms as the commission shall prescribe. Said commission shall procure 1 or more reports, at least 4 times each year, for each child placed in a home for adoption or on an agreement, either from the county agent, officer of the institute or the person with whom the child is placed, and at such times as the superintendent of said institute may direct.

It shall be the duty of county agents or child welfare workers of the state department of social welfare in their respective counties, to visit the wards of the said institute at such times as they are requested to do so, by said superintendent, and to report on said homes and children to said institute.

HISTORY: Am. 1944, 1st Ex. Sess., p. 16, Act 8, Imd. Eff. Feb. 19;—CL 1948, 400.210.

400.211 Preservation of records; confidentiality.

Sec. 11. The commission shall preserve in said institute all legal and other papers of importance including reports of investigation of parentage, of family conditions of the children committed to said institute, and also a brief history of each child, showing its name, age, county, former residence, occupations, habits and character, so far as can be ascertained, and the name and residence and occupation of the person who has taken the child by agreement, or for adoption. In any report of any officer of the institute, or any agent of the state department of social welfare or any state or county officer, no names of such children, wards of the state, shall be published. Act No. 142 of the Public Acts of 1909, as amended, and Act No. 115 of the Public Acts of 1925, being sections 6733 to 6736, inclusive, of the Compiled Laws of 1929 shall not apply to said institute. All records pertaining to any child committed to said institute shall be filed as confidential and shall not be made public thereafter, excepting as the said commission shall authorize, when deemed necessary for the best interest of the child.

HISTORY: Am. 1944, 1st Ex. Sess., p. 16, Act 8, Imd. Eff. Feb. 19;—CL 1948, 400.211.

NOTE: Act 142, 1909, above referred to, is Compilers' repealed §§ 328.1-328.2; Act 115, 1925 is Compilers' §§ 328.101-328.102.

400.212 Repealed. 1955, p. 328, Act 220, Eff. Oct. 14.

Section conveyed land for use of Michigan children's village, gave state hospital commission jurisdiction over village, regulated admissions.

400.213 Construction of act; severing clause.

Sec. 13. This bill being remedial in its nature and purposes shall be liberally construed in order to accomplish the beneficial purposes herein sought. Should any clause, paragraph, or section of this bill be declared unconstitutional by any court of competent jurisdiction, such decision shall not affect the remainder thereof.

HISTORY: CL 1948, 400.213.

400.214 Aiding child to escape; penalty.

Sec. 14. Any person who shall aid or assist, or entice a child under the control of the said institute to escape from a home in which said child has been placed, or shall aid, entice or assist any such child to leave the state, or shall marry any such child without

the consent of the said commission, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding 100 dollars and costs of prosecution, or by imprisonment in a county jail, or any of the state prisons for a term not exceeding a year, or by both such fine and imprisonment according to the discretion of the court.

HISTORY: CL 1948, 400.214.

400.215, 400.216 Repealed. 1955, p. 328, Act 220, Eff. Oct. 14.

Sections regulated location of Michigan childrens institute, limited acquisition and construction costs, repealed inconsistent acts, abolished name "state public school", and saved pending proceedings.

Act 22, 1919 (Ex. Ses.), p. 32; Eff. Sep. 25.

AN ACT to provide for the appointment of county agents of the probate courts; to prescribe the powers, duties and compensation thereof; and to provide for the repeal of all acts or parts of acts inconsistent with the provisions hereof. Am. 1944, 1st Ex. Ses., p. 21, Act 11, Imd. Eff. Feb. 19;—Am. 1945, p. 88, Act 93, Eff. Sep. 6.

The People of the State of Michigan enact:

400.251 County juvenile officers; appointment, term, compensation.

Sec. 1. The governor shall appoint upon the recommendation of the probate judge or judges in each county of this state some suitable person to act as the county juvenile officer of the county. The county juvenile officers shall not be subject to or governed by the civil service law of this state. Each such person shall hold his office during the pleasure of the probate judge or judges of the county and shall perform the various duties required by law. Each juvenile officer shall receive the sum of \$11.50 for each half day or the sum of \$23.00 for each full day of time actually spent by him in performing his official duties. The compensation shall be paid monthly by the state treasurer in accordance with the accounting laws of the state. In counties now or hereafter having a population of 20,000 inhabitants but less than 75,000 inhabitants, the county juvenile officer shall receive an annual salary of \$6,470.00. In counties now or hereafter having a population of 75,000 inhabitants but less than 150,000 inhabitants, the county juvenile officer shall receive an annual salary of \$6,826.00. In counties now or hereafter having a population of 150,000 inhabitants but less than 250,000 inhabitants, the county juvenile officer shall receive an annual salary of \$7,658.00. In counties now or hereafter having a population of 250,000 inhabitants but less than 500,000 inhabitants, the county juvenile officer shall receive an annual salary of \$7,896.00. In counties now or hereafter having a population of more than 500,000 inhabitants, the county juvenile officer shall receive an annual salary of \$8,490.00. Such salary shall be paid monthly by the state treasurer in accordance with the accounting laws of the state. In counties where the juvenile officer receives a salary, he shall receive no other fees or compensation for any services as county juvenile officer, except as provided by the county board of supervisors, and he shall devote his entire time to the performance of the duties of his office.

Assistant county juvenile officers, appointment, compensation; expenses.

The governor, upon the recommendation of the probate judge or judges in counties now or hereafter having a population of 75,000 inhabitants but less than 150,000 inhabitants, may appoint 1 assistant county juvenile officer in such county who shall receive an annual salary of \$6,470.00; in counties now or hereafter having 150,000 inhabitants but less than 250,000 inhabitants he may appoint 2 assistant county juvenile officers in such counties who shall each receive an annual salary of \$6,826.00; in counties now or hereafter having 250,000 inhabitants, but less than 500,000 inhabitants, he may appoint 4 assistant county juvenile officers in such counties who shall each re-

ceive an annual salary of \$6,945.00; and in counties now or hereafter having over 500,000 inhabitants, he may appoint 6 assistant county juvenile officers in such counties who shall each receive an annual salary of \$7,064.00, to be paid monthly by the state treasurer in accordance with the accounting laws of the state. All county juvenile officers and assistants shall be entitled to receive their necessary and actual expenses incurred by them in the performance of their official duties, to be paid by the state treasurer in accordance with the accounting laws of the state.

Additional salary or per diem.

All vouchers for payment of compensation and expenses shall be certified by the director of the state department of social welfare. The amount herein provided shall be compensation in full for all services performed by each of the county juvenile officers or assistant county juvenile officers, unless the board of supervisors vote to pay the county juvenile officer or assistant county juvenile officer an amount in addition to the salary or per diem herein designated.

HISTORY: Am. 1921, 1st Ex. Ses., p. 800, Act 25, Imd. Eff. June 15;—Am. 1923, p. 391, Act 244, Eff. Aug. 30;—CL 1929, 8203;—Am. 1930, p. 295, Act 150, Eff. Sept. 29;—Am. 1943, p. 357, Act 290, Imd. Eff. April 20;—Am. 1944, 1st Ex. Ses., p. 21, Act 11, Imd. Eff. Feb. 19;—Am. 1947, p. 251, Act 178, Eff. Oct. 11;—Am. 1947, 2nd Ex. Ses., p. 17, Act 3, Imd. Eff. Nov. 12;—CL 1948, 400.251;—Am. 1951, p. 236, Act 185, Imd. Eff. Jan. 8;—Am. 1955, p. 180, Act 115, Eff. Oct. 14;—Am. 1957, p. 394, Act 285, Eff. Jul. 1;—Am. 1960, p. 118, Act 111, Imd. Eff. Apr. 26;—Am. 1961, p. 31, Act 31, Eff. Sep. 8;—Am. 1963, p. 105, Act 95, Eff. Sep. 6;—Am. 1966, p. 128, Act 108, Eff. Jul. 1.

CITED IN OTHER SECTIONS: The above section is cited in § 38.13.

400.252 Repeal.

Sec. 2. All acts and parts of acts relating to the manner of the appointment of county agents of the state board of corrections and charities, to the tenure of office thereof, and to the amount of the compensation received thereby, are hereby repealed.

HISTORY: CL 1929, 8204;—CL 1948, 400.252.

Act 21, 1929, p. 45; Eff. Aug. 28.

AN ACT to provide for the state welfare commission to call annual meetings of the county agents of the state and to defray the expenses incident thereto.

The People of the State of Michigan enact:

400.261 Annual meeting of county agents; time, place, purpose.

Sec. 1. Hereafter on such day in the month of either September, October or November of each year, as the director of the state welfare department shall designate, the said director may call a meeting of the county agents of the respective counties of the state to meet in the city of Lansing for the purpose of planning the work pertaining to the duties of their office for the ensuing year.

HISTORY: CL 1929, 8205;—Am. 1931, p. 438, Act 253, Eff. Sept. 18;—CL 1948, 400.261.

NOTE: See note under Compilers' § 400.251.

400.262 Annual meeting of county agents; adjournment; registration; certificate of attendance.

Sec. 2. The director of the state welfare department shall have the power to adjourn such meeting to a future date, and in case of such adjournment shall give notice to each county agent. The respective county agents shall, upon attending said meeting, register with the director of the state welfare department, and at the close of said meeting the said director shall issue to each county agent so attending a certificate showing the attendance at such meeting.

HISTORY: CL 1929, 8206;—Am. 1931, p. 438, Act 253, Eff. Sept. 18;—CL 1948, 400.262.

400.263 Annual meeting of county agents; expenses of attendance.

Sec. 3. The county agents of the state shall be paid their necessary and actual expenses in attending such meeting by the county treasurer of their respective counties, if approved by the board of supervisors, upon presentation by said county agent of a certificate so issued by the director of the state welfare department, showing his attendance at such meeting.

HISTORY: CL 1929, 8207;—Am. 1931, p. 438, Act 253, Eff. Sept. 18;—CL 1948, 400.263.

Act 68, 1915, p. 116; Eff. Aug. 24.

AN ACT regulating organizations, institutions, associations or persons soliciting from the public for a charitable purpose; and providing a penalty for the violation thereof. Am. 1921, p. 398, Act 204, Eff. Aug. 18;—Am. 1961, p. 140, Act 118, Eff. Sep. 8.

The People of the State of Michigan enact:

400.301 Solicitation for charitable purposes; definitions.

Sec. 1. As used in this act:

- (a) "State department" means the state department of social welfare.
- (b) "Commission" means the Michigan social welfare commission.
- (c) "Charitable organization" means a corporation, institution, association or private person (1) that solicits or receives funds from the public upon the representation that they will be used for a charitable purpose, and regardless of whether a "membership" or article of small value is given the donor, or (2) that from a central office promotes such solicitation by local groups and receives part of the gross proceeds.
- (d) "Exempt organization" means a church, or a church sponsored charitable organization, or a veterans organization chartered by the congress of the United States.
- (e) "Soliciting material" means printed or similar material, including but not limited to labels, posters, television scripts, radio scripts or recordings, used in soliciting funds from the public.

Statement filed with state department; license, issuance, revocation; local solicitation.

Hereafter every charitable organization, except an exempt organization shall be required to file with the state department a statement setting forth the name and location of the charitable organization, and, if located outside of Michigan, the name and address of its Michigan agent, the purposes for which it exists, the name of its principal officers and soliciting agents, the purposes for which money solicited is to be expended, and the terms under which solicitors are employed, a financial statement for the most recent fiscal year in such detail and with such certification as may be required by the rules and regulations of the commission including those salaries paid to the 10 highest paid officials outside the state of Michigan and 5 highest paid officials working within the state of Michigan, and copies of all soliciting materials used in the most recent fiscal year. The word "pay" shall be interpreted to include total amounts paid including commissions as well as guarantees. If in the judgment of the commission the statement shall be deemed sufficient evidence, the state department shall be authorized to issue to the charitable organization and its agents and representatives, a state license without expense, authorizing the organization to solicit and receive from the public donations or sell memberships, for the charitable purpose contained in the statement filed with the state department, in any county, city or township in the state. Such license shall be valid for 1 year from the date of its issuance, and may be re-

newed from time to time in the same manner as is herein provided for the original granting thereof. Any license issued to a charitable organization, under the provisions of this act, may be revoked by the commission for cause shown, and after reasonable notice to the organization and after due opportunity to be heard. Nothing in this act, however, shall be construed to prohibit any local charitable organization from publicly soliciting funds or donations within any one county in which, optionally, its principal activity or its registered office is located. No license shall be issued under the provisions of this act to a charitable organization located in another state, unless it shall have an agent in Michigan. No license issued under the terms of this act shall be deemed to authorize the soliciting of funds thereunder in any township, village or city in this state, without having first obtained any required separate township, village or city license or permit to do so from the proper officials of the township, village or city.

HISTORY: CL 1915, 15344;—Am. 1917, p. 53, Act 28, Eff. Aug. 10;—Am. 1921, p. 398, Act 204, Eff. Aug. 18;—Am. 1925, p. 97, Act 72, Eff. Aug. 27;—CL 1929, 8190;—Am. 1931, p. 437, Act 252, Eff. Sept. 18;—CL 1948, 400.301;—Am. 1961, p. 140, Act 118, Eff. Sep. 8;—Am. 1965, p. 662, Act 338, Imd. Eff. Jul. 23.

CITED IN OTHER SECTIONS: Sections 400.301 to 400.304 are cited in § 18.154.

400.302 Copy of license in possession of solicitor; certification.

Sec. 2. It shall be unlawful for any agent or representative of any charitable organization, which is required to be licensed under the provisions of this act, to publicly solicit and receive donations in this state, or sell memberships, regardless of whether an article of small value is given the donor, unless such agent or representative is provided with a copy of the license of the charitable organization which he represents, or by whom he is employed. Attached to the copy of the license there shall be a certificate signed by the president, secretary or treasurer of the charitable organization by whom the agent or representative is employed, or which he represents, certifying that the agent or representative is authorized by the organization to publicly solicit and receive donations for it.

HISTORY: CL 1915, 15345;—CL 1929, 8191;—CL 1948, 400.302;—Am. 1961, p. 141, Act 118, Eff. Sep. 8.

400.303 Violation of act; misdemeanor, penalty.

Sec. 3. Any person who shall violate the provisions of this act, or who shall solicit and receive public donations or sell memberships in this state for and on behalf of any organization, institution or association subject to the provisions herein, and which is not duly licensed in the manner aforesaid, or who shall solicit funds under any such license and thereafter divert the same to purposes other than that for which they were contributed, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than 500 dollars, or imprisonment in the county jail not to exceed 6 months.

HISTORY: CL 1915, 15346;—Am. 1917, p. 54, Act 28, Eff. Aug. 10;—CL 1929, 8192;—CL 1948, 400.303.

400.304 Files and lists of licensees; public inspection.

Sec. 4. The files maintained by the department under this act are public records and may be reviewed at Lansing by any person who properly identifies himself. Lists of the names and addresses of all licensees under this act may be made available to the public by the department.

HISTORY: Add. 1961, p. 141, Act 118, Eff. Sep. 8.

Act 300, 1965, p. 576; Imd. Eff. Jul. 22.

AN ACT to provide for the organization and function of a commission on Indian affairs; and to prescribe its powers and duties.

The People of the State of Michigan enact:

400.311 Indian affairs commission; creation; membership, appointment, terms.

Sec. 1. Within the department of social welfare an Indian affairs commission is created to consist of 11 members appointed by the governor with the advice and consent of the senate, for 4-year terms, not more than 3 of which shall expire in the same year, except that of the members first appointed, 3 each shall be appointed for terms of 1, 2 and 3 years and 2 for 4 years. A member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the unexpired term.

HISTORY: New 1965, p. 576, Act 300, Imd. Eff. Jul. 22.

400.312 Election of officers; expenses.

Sec. 2. The commission shall elect such officers from its members as it deems advisable. Officers shall hold office at the pleasure of the commission. Commission members shall receive their necessary traveling and other expenses while on the business of the commission, in accordance with the provisions of the standard travel regulations issued by the department of administration.

HISTORY: New 1965, p. 576, Act 300, Imd. Eff. Jul. 22.

400.313 Indian affairs commission; quorum; majority required to act; effect of vacancy.

Sec. 3. A majority of the members of the commission constitutes a quorum. A majority of the members is required to take action on all matters within the purview of the commission. A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission.

HISTORY: New 1965, p. 576, Act 300, Imd. Eff. Jul. 22.

400.314 Indian affairs commission; investigation of problems; economic development; state and federal health and general welfare programs.

Sec. 4. The commission shall investigate alleged problems existing among those residents of the state whose rights and privileges have been defined by treaty. The commission shall assist in their economic development. The commission shall further assist them in realizing the educational guarantees assured them by treaty and under appropriate state laws. The commission shall assist the residents in the alleviation of problems of health and general welfare through federal and state programs.

HISTORY: New 1965, p. 576, Act 300, Imd. Eff. Jul. 22.

400.315 Indian affairs commission; functions, powers and duties.

Sec. 5. The commission shall have the following functions, powers and duties:

- (a) To meet and function any place within the state.
- (b) To appoint a staff director who shall carry on the administrative and ministerial functions of the commission when it is not in session and who shall act in such other capacities as the commission may direct.
- (c) To appoint such employees as it deems advisable in accordance with civil service regulations and within limitations provided by law, and to prescribe their duties.
- (d) To request the services of all state and local governmental departments and agencies.
- (e) To promote and cooperate with such agencies as in its judgment will aid in effectuating the purposes of this act.
- (f) To submit each year to the governor and to the legislature a full written report of its activities and its recommendations.

HISTORY: New 1965, p. 576, Act 300, Imd. Eff. Jul. 22.

400.351-400.353 Repealed. 1960, p. 11, Act 11, Eff. Jul. 1.

Sections created legislative advisory council on problems of the aging, and determined council's powers and duties.

400.361-400.371 Repealed. 1965, p. 579, Act 304, Imd. Eff. Jul. 22;—1969, p. 163, Act 80, Eff. Mar. 20, 1970.

Sections related to medical and dental care and hospitalization for aged persons.

Act 1, 1960 (1st Ex. Ses.), p. 3; Imd. Eff. Sep. 27.

AN ACT to authorize the state department of social welfare to expand its program of medical care and hospitalization of old age assistance recipients; and to authorize the transfer of state funds for this purpose.

The People of the State of Michigan enact:

400.381 Old age assistance medical care and hospitalization; vendor payment program, expansion.

Sec. 1. The department of social welfare is authorized to expand its existing program of vendor payments for medical care and hospitalization of old age recipients to include home nursing care services, and a physical examination for each new old age assistance recipient who is less than 66 years of age at the time of application.

HISTORY: New 1960, 1st Ex. Ses., p. 3, Act 1, Imd. Eff. Sep. 27.

400.382 Old age assistance medical care and hospitalization; transfer of appropriation.

Sec. 2. In addition to the sum appropriated for vendor payments by Act No. 138 of the Public Acts of 1960, the controller of the department of administration, upon request of the department of social welfare and with the approval of the state administrative board, shall transfer a sum not to exceed \$1,539,000.00 out of the appropriation of \$57,725,000.00 for public welfare purposes made in Act No. 138 of the Public Acts of 1960.

HISTORY: New 1960, 1st Ex. Ses., p. 3, Act 1, Imd. Eff. Sep. 27.

Act 11, 1960, p. 9; Eff. Jul. 1.

AN ACT to establish a state commission on aging; to provide for the appointment of a director and such advisory committees as the commission deems necessary; to prescribe the powers and duties of the commission and its director; to provide for the administration and financing of demonstration programs for the aging; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

400.501 Michigan commission on aging; ex officio and appointive membership.

Sec. 1. There is created the Michigan commission on aging, hereafter called the commission. The commission shall consist of 11 members, as follows: 5 members ex officio, herein referred to as government members, who shall be the director of the Michigan employment security commission, the director of the department of public health, the director of the department of mental health, the superintendent of public instruction and a representative of the Michigan health council, and 6 citizens of the state, herein referred to as citizen members, who have an interest in and knowledge of the problems of the aging. The governor, with the advice and consent of the senate,

shall appoint the 6 citizen members of the commission, none of whom shall be employees of any state department.

HISTORY: New 1980, p. 9, Act 11, Eff. Jul. 1;—Am. 1988, p. 132, Act 112, Imd. Eff. Jun. 22.

CITED IN OTHER SECTIONS: The above section is cited in § 16.554.

400.502 Commission on aging; appointive members, terms, vacancies.

Sec. 2. The citizen members of the commission shall be appointed for terms of 3 years each; except that of the members first appointed, 2 shall be appointed for terms of 1 year, 2 for terms of 2 years, and 2 for terms of 3 years. Vacancies shall be filled for the remainder of any unexpired term in the same manner as the original appointment.

HISTORY: New 1980, p. 9, Act 11, Eff. Jul. 1.

400.503 Commission on aging; quorum; offices; meetings, attendance.

Sec. 3. A majority of the members of the commission shall constitute a quorum for the transaction of business. The commission shall elect a chairman, a vice-chairman, and such other officers as it deems necessary. The commission shall meet at least 6 times each year and more often if necessary, on call of the chairman. If unable to attend a commission meeting, a government member shall send in his place his deputy or another person who has authority to act on behalf of the government member, who shall be considered a member of the commission for the purpose of obtaining a quorum.

HISTORY: New 1980, p. 9, Act 11, Eff. Jul. 1.

400.504 Commission on aging; citizen members, expenses.

Sec. 4. Citizen members shall be entitled to reimbursement for expenses incurred in the work of the commission.

HISTORY: New 1980, p. 9, Act 11, Eff. Jul. 1.

400.505 Commission on aging; director, qualifications, salary, expenses.

Sec. 5. After its citizen members have been confirmed by the senate, the commission shall appoint a director who shall act as chief administrative officer of the commission. He shall be a person who is professionally qualified by experience and training to assume the responsibilities of the position. The director's annual salary shall be fixed by the legislature and he shall be reimbursed for travel and other expenses incurred in the performance of his official duties.

HISTORY: New 1980, p. 10, Act 11, Eff. Jul. 1.

400.506 Commission on aging; personnel, appointment.

Sec. 6. The director shall appoint such other personnel as the commission determines to be necessary for the efficient performance of the duties prescribed by this act.

HISTORY: New 1980, p. 10, Act 11, Eff. Jul. 1.

400.507 Commission on aging; advisory committees, creation, expenses, chairman, report.

Sec. 7. The commission shall create whatever advisory committees it deems necessary in such fields as community services, education and recreation, employment, financial security, health, and housing, and may use its funds to defray the expenses of such advisory committees and their members. The commission, where feasible, shall designate a commission member having special competence in a field as chairman of any advisory committee it may create in that field. Advisory committees shall report to the commission with regard to their activities and findings.

HISTORY: New 1980, p. 10, Act 11, Eff. Jul. 1.

400.508 Commission on aging; duties.

Sec. 8. The commission, through its director, shall take action to carry out the following purposes:

(a) Conduct, and encourage other organizations to conduct, studies of the problems of the state's older people;

(b) Encourage, promote and aid in the establishment of local programs and services for the aging. The commission shall assist local governmental and other agencies by designing surveys that could be used locally to determine needs of older people; by recommending the creation of such services and facilities as appear to be needed; by serving as a clearing house for the collection and distribution of information on aging; and by assisting organizations and communities in such other ways as the commission may deem appropriate;

(c) Conduct programs of public education on the problems of the aging;

(d) Review existing state programs for the aging, and annually make recommendations to the governor and the legislature for improvements in and additions to such programs;

(e) Encourage and assist governmental and private agencies to coordinate their efforts on behalf of the aging in order that such effort be effective and that duplication and wasting of effort be eliminated.

HISTORY: New 1960, p. 10, Act 11, Eff. Jul. 1.

400.509 Commission on aging; demonstration programs of services.

Sec. 9. The commission may establish, under the administration of the director, in selected areas and local communities of the state, demonstration programs of services for the aging. Particular emphasis shall be given to services designed to foster continued participation of older people in family and community life and to prevent, insofar as possible, the onset of dependency and the need for long-term institutional care. The programs shall be established to demonstrate their value and to stimulate local agencies to continue the programs and to create new services where needed.

HISTORY: New 1960, p. 10, Act 11, Eff. Jul. 1.

400.510 Commission on aging; cooperation with federal government.

Sec. 10. The commission shall constitute the designated state agency for handling all programs of the federal government related to the aging requiring action within the state which are not the specific responsibility of another state agency under the provisions of federal law or which have not been specifically entrusted to another state agency by the legislature.

HISTORY: New 1960, p. 10, Act 11, Eff. Jul. 1.

400.511 Commission on aging; gifts, acceptance, reversion.

Sec. 11. The commission may receive on behalf of the state any grant or gift and accept the same, so that the title shall pass to the state. All grants or gifts shall be deposited with the state treasurer and used for the purposes set forth in the grant or gift, if the purposes are within the powers conferred on the commission and the use is approved by the legislature. If the use is not so approved, the grant or gift shall revert to the donor or his administrator or assigns.

HISTORY: New 1960, p. 11, Act 11, Eff. Jul. 1.

400.512 Commission on aging; appropriations; demonstration programs.

Sec. 12. The legislature shall authorize the necessary appropriations to carry out the work of the commission. In respect to local demonstration programs, the appropriations may be made contingent upon local appropriations or gifts in money or in kind for the support of such programs. The board of supervisors of any county or the governing body of any city, village or township in this state may furnish and appropriate money for establishing a demonstration program.

HISTORY: New 1960, p. 11, Act 11, Eff. Jul. 1.

400.513 Repeal; transfer of legislative advisory council records on problems of aging.

Sec. 13. Act No. 200 of the Public Acts of 1955, being sections 400.351 to 400.353 of the Compiled Laws of 1948, is hereby repealed. All records, files and other property, including property held in trust, belonging to the legislative advisory council on problems of the aging, shall be turned over to the commission on aging herein created and shall be continued as part of the records, files and other property thereof.

HISTORY: New 1980, p. 11, Act 11, Eff. Jul. 1.

400.514 Repealed. 1965, p. 376, Act 215, Imd. Eff. Jul. 16.

Section provided for effective date and expiration date for Act No. 11 of 1980.

CHAPTERS 401-403. THE POOR LAW

The Poor Law
Act 146 of 1925

	SECTIONS
Chapter I Support of Poor by Private Persons	401.1—401.21
Chapter II Support and Relief by the Public	402.1—402.45
Chapter III Relief and Support in Counties Other Than County of Settlement	403.1—403.8

Act 146, 1925, p. 188; Eff. Aug. 27.

AN ACT to revise and consolidate the laws relating to the relief and support of poor persons; to prescribe penalties for violations of certain provisions of this act, and to repeal certain acts relating to poor persons.

The People of the State of Michigan enact:

CHAPTER I SUPPORT OF POOR BY PRIVATE PERSONS.

401.1	Poor law; definitions.	partment of social welfare; contempt of
401.2	Poor persons; liability of relatives for support.	court, penalty.
401.3	Failure of relative to provide support; application to probate court, notice; dependent parent.	401.10-401.16 Repealed.
401.4	Failure of relatives to provide support; hearing, order.	401.17 Nonsupport of parent by adult child; penalty.
401.5	Priority of liability of relatives for support.	401.18 Nonsupport of parent; bond, suspension of sentence.
401.6	Direction of proportionate liability.	401.19 Nonsupport of parent; effect of prior abandonment by parent; procedure to enforce support.
401.7	Duration of order; change in terms.	401.20 Nonsupport of parent; summons, contents, serving.
401.8	Cost of application; enforcement of orders.	401.21 Nonsupport of parent; enforcement of order.
401.9	Failure to obey order; civil action by de-	

401.1 Poor law; definitions.

Sec. 1. The words "poor person" as used in this act shall be construed to mean one who has no property, exempt or otherwise, and who is unable, because of physical or mental disabilities or age, to earn a livelihood, or a person who has some means but is eligible to receive relief or assistance granted under the provisions of the social welfare act. The word "settlement" shall be construed to mean the place where any person has last continuously lived, for a period of 1 year, without receiving any public relief or assistance. The word "settled" shall be construed to mean the place of settlement. The words "dependent parent" as used in this act shall be construed to mean a poor person whose estate is insufficient to maintain him and who has an adult child. The words "dependent child" as used in this act shall be construed to mean a poor person under 17 years of age. The word "relative" shall be construed to include a husband.

HISTORY: CL 1929, 8206;—CL 1948, 401.1;—Am. 1953, p. 157, Act 148, Imd. Eff. Jun. 2.

CITED IN OTHER SECTIONS: Sections 401.1 to 401.21 are cited in §§ 330.652, 400.58b, and 400.76.

401.2 Poor persons; liability of relatives for support.

Sec. 2. The husband or wife of any poor person being of sufficient ability, shall relieve, maintain and support the poor person, and the father and mother of a dependent child under age 21, being of sufficient ability, shall jointly or severally relieve,

maintain and support the dependent child, in such manner as shall be approved by the county department of social welfare of the county in which the poor person is settled or is living.

HISTORY: CL 1929, 8209;—CL 1948, 401.2;—Am. 1953, p. 157, Act 148, Imd. Eff. Jun. 2;—Am. 1957, p. 51, Act 44, Eff. Sep. 27;—Am. 1970, p. 263, Act 88, Imd. Eff. Jul. 20.

This section supersedes Sec. 1, R.S. 1846, Ch. 37, being CL 1857, 1418;—CL 1871, 1801;—How. 1741;—CL 1897, 4487;—CL 1915, 5191.
CITED IN OTHER SECTIONS: The above section is cited in § 330.652.

401.3 Failure of relative to provide support; application to probate court, notice; dependent parent.

Sec. 3. Upon the failure of any relative to relieve and maintain any such poor person, it shall be the duty of the county department of social welfare where such poor person may be settled, by the social welfare board or by the director or by the supervisor of social aid, to apply with the advice and assistance of the prosecuting attorney to the probate court of the county where such poor person or relative may dwell or such poor person has his or her legal settlement, for an order to compel such relief; of which application notice shall be given as provided by law. A dependent parent with the approval of the prosecuting attorney may also apply to the probate court where such dependent parent dwells or has his legal settlement for such an order.

HISTORY: Am. 1929, p. 89, Act 49, Eff. Aug. 28;—CL 1929, 8210;—CL 1948, 401.3;—Am. 1953, p. 157, Act 148, Imd. Eff. Jun. 2.

This section as originally enacted superseded Sec. 2, R.S. 1846, Ch. 37, being CL 1857, 1419;—CL 1871, 1802;—How. 1742;—CL 1897, 4488;—CL 1915, 5192.

401.4 Failure of relatives to provide support; hearing, order.

Sec. 4. The court to which such application may be made, shall proceed in a summary way to hear the proofs and allegations of the parties, and shall order such of the relatives aforesaid of such poor person, as appear to be of sufficient ability and as appear to owe a duty of support under this act, to relieve and maintain such poor person, and shall therein specify the sum which will be sufficient for the support of such poor person, and how it is to be paid.

HISTORY: CL 1929, 8211;—CL 1948, 401.4;—Am. 1953, p. 157, Act 148, Imd. Eff. Jun. 2.

This section re-enacts Sec. 3, R.S. 1846, Ch. 37, being CL 1857, 1420;—CL 1871, 1803;—How. 1743;—CL 1897, 4489;—CL 1915, 5193, adding words "to the superintendents of the poor."

401.5 Priority of liability of relatives for support.

Sec. 5. The court shall also in such orders direct the relative or relatives who shall perform that duty, in the following order: The husband or wife shall be first required to maintain the poor person, if of sufficient ability; if there is no husband or wife, or he or she is not of sufficient ability, then the father of the poor person; if there is no father or he is not of sufficient ability, then the children, if they are able to do so; if there are no children, or they are not of sufficient ability, then the mother, if she is able to do so.

HISTORY: CL 1929, 8212;—CL 1948, 401.5;—Am. 1953, p. 158, Act 148, Imd. Eff. Jun. 2;—Am. 1957, p. 52, Act 44, Eff. Sep. 27.

This section supersedes Sec. 4, R.S. 1846, Ch. 37, being CL 1857, 1421;—CL 1871, 1804;—How. 1744;—CL 1897, 4490;—CL 1915, 5194.

401.6 Direction of proportionate liability.

Sec. 6. If it shall appear that any such relative is unable wholly to maintain such poor person, but is able to contribute towards his support, the court may, in its discretion, direct 2 or more relatives of different degrees to maintain such poor person, and shall prescribe the proportion which each shall contribute for that purpose; and if it shall appear that the relatives liable as aforesaid are not of sufficient ability wholly to maintain such poor person, but are able to contribute something therefor, the court shall direct the sum, in proportion to their ability, which such relatives shall severally pay weekly or monthly for that purpose.

HISTORY: CL 1929, 8213;—CL 1948, 401.6;—Am. 1953, p. 158, Act 148, Imd. Eff. Jun. 2.

This section re-enacts Sec. 5, R.S. 1846, Ch. 37, being CL 1857, 1422;—CL 1871, 1805;—How. 1745;—CL 1897, 4491;—CL 1915, 5195, changing words "to wholly" to "wholly to."

401.7 Duration of order; change in terms.

Sec. 7. Such order may specify the time during which the relatives aforesaid shall maintain such poor person, or during which any of the said sums so directed by the court shall be paid, or it may be indefinite, or until the further order of the court; and the said court may from time to time vary such order, whenever circumstances shall require it, on the application either of any relative affected thereby, or of the county department of social welfare, or of the bureau of social aid of the county department of social welfare.

HISTORY: CL 1929, 8214;—CL 1948, 401.7;—Am. 1953, p. 158, Act 148, Imd. Eff. Jun. 2.

This section re-enacts Sec. 6, R.S. 1846, Ch. 37, being CL 1857, 1423;—CL 1871, 1808;—How. 1746;—CL 1897, 4492;—CL 1915, 5196, changing "fourteen" to "ten."

401.8 Cost of application; enforcement of orders.

Sec. 8. The costs and expenses of any application under the provisions of this chapter, shall be ascertained by the court, and paid by the relatives against whom any order may be made, and the payment thereof, and obedience to the order of maintenance, and to any order of such court for the payment of money as aforesaid, may be enforced by process of attachment from such court.

HISTORY: CL 1929, 8215;—CL 1948, 401.8. This section re-enacts Sec. 7, R. S. 1846, Ch. 37, being CL 1857, 1424;—CL 1871, 1807;—How. 1747;—CL 1897, 4493;—CL 1915, 5197.

401.9 Failure to obey order; civil action by department of social welfare; contempt of court, penalty.

Sec. 9. If any relative, who shall have been required by such order to relieve or maintain any poor person, shall neglect to do so, and shall neglect to pay the sum prescribed by the court for the support of such poor person, the county department of social welfare or the bureau of social aid of the county department of social welfare may maintain an action against such relatives, as for moneys paid, laid out and expended, and shall recover therein the sum so prescribed by the said court for every period of time as stated in said order during which the said order shall have been disobeyed, up to the time of such recovery, with costs of suit. If any such relative, being of sufficient ability, fails or refuses to obey the order of the court to relieve or maintain any poor person, and upon proceedings duly had for that purpose, has been found guilty of contempt of court for such failure or refusal, the court, on the making of such order, holding such party in contempt, in addition to the other remedies provided by law, may make an order placing such delinquent on probation or may order him confined in the county jail, where his earnings, or at least 1/2 of such earnings, shall be applied to the support of such poor person until the order or decree of such court has been complied with, or until the further order of the court, but for a period of not exceeding 1 year.

HISTORY: CL 1929, 8216;—CL 1948, 401.9;—Am. 1953, p. 158, Act 148, Imd. Eff. Jun. 2.

This section supersedes, with additions, Sec. 8, R.S. 1846, Ch. 37, being CL 1857, 1425;—CL 1871, 1808;—How. 1748;—CL 1897, 4494;—CL 1915, 5198.

401.10–401.16 Repealed. 1957, p. 425, Act 292, Eff. Sep. 27.

Sections authorized seizure of and collection of rents from or sale of property of father, mother, or husband who has abandoned his or her children or wife, provided for restoration of such property, and permitted sale of poor person's personality for support of such person.

401.17 Nonsupport of parent by adult child; penalty.

Sec. 17. Whoever, being an adult resident of the state and possessed of or able to earn means sufficient to provide food, shelter, care, and clothing, for a parent within this state who is destitute of means of subsistence and unable either by reason of age, infirmity, or illness to support himself, neglects or refuses to supply such parents with necessary shelter, food, care, and clothing, shall be, upon conviction thereof, imprisoned in the county jail or workhouse at hard labor for not less than 3 months nor more than 1 year.

HISTORY: CL 1929, 8224;—CL 1948, 401.17. This section re-enacts Sec. 16 of Act 139 of 1923.

401.18 Nonsupport of parent; bond, suspension of sentence.

Sec. 18. If a person, committed under the last preceding section, before sentence, enters into bond to the court before whom the matter is pending, with good and sufficient surety to be approved by the court, in the penal sum of 1,000 dollars, conditioned that he will furnish such parent with necessary and proper shelter, food, care, and clothing, the court shall suspend sentence.

HISTORY: CL 1929, 8225;—CL 1948, 401.18. This section re-enacts Sec. 17 of Act 139 of 1923.

401.19 Nonsupport of parent; effect of prior abandonment by parent; procedure to enforce support.

Sec. 19. No person shall be required to furnish a parent with maintenance and support if it is proven that such parent abandoned, deserted, or wilfully refused or neglected to support and maintain him while an infant under 16 years of age.

HISTORY: Am. 1929, p. 89, Act 49, Eff. Aug. 28;—CL 1929, 8226;—Am. 1945, p. 227, Act 164, Eff. Sept. 6;—CL 1948, 401.19;—Am. 1953, p. 158, Act 148, Imd. Eff. Jun. 2.

This section, as originally enacted, re-enacted Sec. 18 of Act 139 of 1923.

401.20 Nonsupport of parent; summons, contents, serving.

Sec. 20. A summons may be served on the person named therein, either personally or in such other manner as the judge of probate may in writing direct, and shall require the person so served to attend at the time and place mentioned therein to show cause why the order should not be enforced as may be hereinafter provided.

HISTORY: CL 1929, 8227;—CL 1948, 401.20. This section re-enacts Sec. 19 of Act 139 of 1923.

401.21 Nonsupport of parent; enforcement of order.

Sec. 21. If the person so summoned does not attend, as required by the summons, or show a just and sufficient reason for non-attendance, or does not satisfy the judge of probate that he is unable to pay the sum ordered to be paid, the said judge of probate may enforce the order by the like proceedings, including imprisonment, as are provided in section 9 of this act.

HISTORY: CL 1929, 8228;—CL 1948, 401.21. This section supersedes Sec. 20 of Act 139 of 1923.

CHAPTER II

SUPPORT AND RELIEF BY THE PUBLIC.

402.1-402.4	Repealed.	402.19	Poor person; bringing from without state; security for removal, penalty for refusal.
402.5	Superintendents of poor; powers and duties.	402.20-402.38	Repealed.
	Infirmary; control.	402.39	Semi-annual report of township and city supervisors on expense of support; neglect to file, falsification, penalty.
	Same; rules.	402.40	Repealed.
	Same; employment of keepers.	402.41	Reports of local poor officer; contents, form; failure to make, penalty.
	Purchase of supplies; sale of products.	402.42	Reports of local poor officer; compensation.
	Transportation.	402.43	Annual report of county superintendent of poor; contents.
	Suit.	402.44, 402.45	Repealed.
	Expenses.		
	Accounting; report to supervisors.		
	Same; money paid over to county treasurer.		
	State association.		
402.6-402.17	Repealed.		
402.18	Poor person; bringing from without state; penalties.		

402.1-402.4 Repealed. 1957, p. 425, Act 292, Eff. Sep. 27.

Sections provided for support of poor by county, city, and township and made provisions relating to superintendents of the poor.

402.5 Superintendents of poor; powers and duties.

Sec. 5. They shall have the general superintendence of all the poor who may be in their respective counties, and shall have power, and it shall be their duty:

Infirmary; control.

First, To have charge of the county infirmary that has been or shall be erected, and to provide suitable places for the keeping of such poor, when so directed by the board of supervisors, when houses for that purpose shall not have been erected by the county; and for that purpose to rent a tenement or tenements, and land not exceeding 80 acres, and to cause the poor of the county to be maintained at such places;

Same; rules.

Second, To ordain and establish prudential rules, regulations, and by-laws, and for the government and good order of such places so provided, and of the county infirmaries and for the employment, relief, management, and government of the persons therein placed;

Same; employment of keepers.

Third, To employ 1 or more suitable persons to be keepers of such houses or places, and all necessary officers and servants; and to vest in them such powers for the government of such houses as shall be necessary, reserving to the poor persons, who may be placed under the care of such keepers, the right to appeal to the superintendents;

Purchase of supplies; sale of products.

Fourth, To purchase the furniture, implements, provisions, and materials, that shall be necessary for the maintenance of the poor and their employment and labor, and to sell and dispose of the proceeds of such labor as they shall deem expedient: Provided, That no furniture, implements, provisions, or materials, shall be purchased of a superintendent of the poor; and any superintendent being the owner of any such furniture, implements, provisions, or materials, sold to or purchased by such superintendents, or interested directly or indirectly in the profits on any such furniture, implements, provisions, or materials, by commission or otherwise, shall forfeit his interest in the same; and in addition to such forfeiture, a penalty of 50 dollars for each and every violation of the prohibitions and terms of this proviso is hereby imposed, to be collected by and

in the name of the county treasurer, in the same manner as the forfeiture provided for by section 21 of this chapter.

Transportation.

Fifth, To prescribe the rate of allowance to be made to any person for bringing poor persons to the county infirmary, or place provided for the poor, which amount shall be paid by the county treasurer, on the production of a certificate signed by the chairman and countersigned by the secretary of the board of superintendents;

Suit.

Sixth, To commence any suit wherein they may be entitled to prosecute upon any recognizance bond, or security taken for the indemnity of any township or of the county, and prosecute the same to effect;

Expenses.

Seventh, To draw, from time to time, on the county treasurer for all necessary expenses incurred in the discharge of their duties, which draft shall be paid by him out of the moneys placed in his hands for the support of the poor;

Accounting; report to supervisors.

Eighth, To render to the board of supervisors of their county at their annual meeting, a detailed account of all moneys received and expended by them, or under their directions, and of all their proceedings;

Same; money paid over to county treasurer.

Ninth, To pay over all moneys belonging to the county, remaining in their hands, to the county treasurer, within 15 days after receiving the same.

State association.

Tenth, To associate with the superintendents and directors of the poor of other counties and cities within this state, in the organization of a state association of superintendents of the poor, keepers and matrons of the county infirmaries and city poor directors, and provide for annual meetings and the attendance thereat of such superintendents, matrons and keepers of county infirmaries, as the said superintendents shall determine.

HISTORY: CL 1929, 8233;—CL 1948, 402.5. This section supersedes, with additions, Sec. 5 of Act 148 of 1869, being CL 1871, 1820;—As Am. 1875, p. 115, Act 77, Eff. Aug. 3;—How. 1759;—CL 1897, 4506;—CL 1915, 5210.

402.6-402.17 Repealed. 1957, p. 195, Act 170, Eff. Sep. 27;—1961, p. 268, Act 184, Eff. Sep. 8.

Sections provided for county infirmary or medical care facility and for admission, support and discharge of inmates.

402.18 Poor person; bringing from without state; penalties.

Sec. 18. Any person who shall bring or remove, or cause to be brought or removed, any poor or indigent person, from any place without this state, into any county within it, with intent to make such county chargeable with the support of such poor persons, shall forfeit and pay 50 dollars, to be recovered before any justice of the peace of the county into which such poor person shall be brought, or in which the offender may be; and shall also be obliged to convey such poor person out of the state, or support him at his own expense.

HISTORY: CL 1929, 8246;—CL 1948, 402.18. This section re-enacts Sec. 22 of Act 148 of 1869, being CL 1871, 1837;—How. 1776;—CL 1897, 4523;—CL 1915, 5227, changing word "pauper" to "poor person."

402.19 Poor person; bringing from without state; security for removal, penalty for refusal.

Sec. 19. It shall be lawful for the justice or court before whom such person shall be convicted for a violation of the provisions of the preceding section, to require of such person satisfactory security that he will, within a reasonable time, to be named by the justice or court, transport such person out of the state, or indemnify such county for all charges and expenses which may have been, or may be incurred in the support of such

poor person; and if such person shall neglect or refuse to give such security when required, it shall be the duty of the justice or court to commit him to the county jail for a term not exceeding 3 months.

HISTORY: Am. 1929, p. 297, Act 128, Eff. Aug. 28;—CL 1929, 8247;—CL 1948, 402.19. This section as originally enacted re-enacted Sec. 13 of Act 148 of 1869, being CL 1871, 1838;—How. 1777;—CL 1897, 4524;—CL 1915, 5228, changing word "pauper" to "poor person."

402.20-402.38 Repealed. 1957, p. 425, Act 292, Eff. Sep. 27.

Sections determined how money received by any superintendent or supervisor of any township, city or ward was to be paid to county treasurer, set penalty for failure, required annual expense estimate and auditing of accounts, imposed penalty for failure to report, differentiated between county and township or city support, required yearly expense statements, provided for tax levy and assessments for support of poor.

402.39 Semi-annual report of township and city supervisors on expense of support; neglect to file, falsification, penalty.

Sec. 39. It shall be the duty of the supervisors of townships and cities in those counties where the townships and cities are made liable for their respective poor, on or before the first day of April and October in each year, to report to the county superintendents of the poor, and the township board, or the legislative body of the city, in such form as they shall direct, the number of poor persons who have been relieved or supported in such township or city the preceding year, and the whole expense of such support. Any supervisor or director who shall neglect or refuse to make such report, or who shall willfully make any false report, shall be guilty of a misdemeanor, and on conviction thereof be subject to a fine of not exceeding 1,000 dollars, to be recovered by the prosecuting attorney of the county, in the name of the people of this state, and to be paid into the township or city treasury, as the case may be.

HISTORY: CL 1929, 8267;—CL 1948, 402.39. This section supersedes Secs. 52 and 53 of Act 148 of 1869, as Am. 1871, p. 241, Act 155, Eff. July 1A, being CL 1871, 1867, 1868;—How. 1806, 1807;—CL 1897, 4553, 4554;—CL 1915, 5257, 5258.

402.40 Repealed. 1957, p. 425, Act 292, Eff. Sep. 27.

Section provided that county board of supervisors could, by a 2/3 vote, restore or abolish distinction between town, city and county poor.

402.41 Reports of local poor officer; contents, form; failure to make, penalty.

Sec. 41. It shall be the duty of any director or overseer of the poor authorized by law to furnish relief to poor persons and of the supervisor of each township, district, or ward in this state on the last day of September and on the last day before his term of office shall expire, to make and transmit to the county superintendents of the poor of the county in which such township, district, or ward is situated, a full statement or report of the number of poor persons relieved or maintained by him since the date of his last report, with the names of the heads of families and the number of persons in each family, also the names of persons not members of any family who have received assistance and the causes of their indigence, if he can ascertain the same, the amount paid for transportation, for medical attendance and for funeral expenses, also his charges for services, and any and all other facts and expenditures necessary to a complete showing of his transactions and of the condition of such persons. Said report shall be made in such form as the secretary of state shall prescribe, and the secretary of state shall prepare and annually transmit blanks for that purpose to the county superintendents of the poor, who shall distribute them to the several directors and overseers of the poor and supervisors in their respective counties; and such reports shall be made by the directors, overseers, and supervisors in the counties where the poor are made a township or city charge, as well as in counties where they are all made a county charge, and any supervisor, director, or overseer who shall neglect or refuse to make such report shall be guilty of a misdemeanor, and on conviction thereof may be punished as prescribed by law for the commission of such offenses.

HISTORY: CL 1929, 8269;—CL 1948, 402.41. This section re-enacts Sec. 1 of Act 107 of 1875, as Am. 1879, p. 208, Act 229, Eff. Aug. 30, being How. 1810;—As Am. 1885, p. 74, Act 76, Eff. Sept. 19;—CL 1897, 4573;—CL 1915, 5296; and supersedes, in part, Secs. 1 and 2 of Act 121 of 1895, being How. 1809a, 1809b;—CL 1897, 4576, 4577;—CL 1915, 5301, 5302.

See note under Sec. 1 of this chapter.

MISDEMEANOR: Punishment where no penalty is specifically provided, see Compilers' § 750.504.

402.42 Reports of local poor officer; compensation.

Sec. 42. Every supervisor, director, or overseer of the poor who shall make the reports herein provided for shall receive as full compensation therefor the sum of 5 cents each for the first 25 families and persons not members of any family so relieved, and the sum of 3 cents for each of such families and persons above that number, to be paid by the county treasurer out of the general fund on the certificate of the superintendents of the poor that said reports have been made in all respects as required by law, but no supervisor, director, or overseer shall receive less than 25 cents for each report so made out and forwarded to the superintendents of the poor.

HISTORY: CL 1929, 8270;—CL 1948, 402.42. This section re-enacts Sec. 2 of Act 107 of 1875, as Am. 1879, p. 208, Act 229, Eff. Aug. 30, being How. 1811;—As Am. 1885, p. 75, Act 76, Eff. Sept. 19;—CL 1897, 4574;—CL 1915, 5299.

See note under Sec. 1 of this chapter.

402.43 Annual report of county superintendent of poor; contents.

Sec. 43. That it shall be the duty of the county superintendents of the poor, annually, between the first and tenth days of November, to consolidate on blanks to be furnished by the secretary of state for that purpose, all said reports received by them during the year ending the thirtieth day of September next preceding, and the said superintendents shall incorporate into their annual reports to the secretary of state, the several facts, statements, and expenditures reported to them by the supervisors, directors, and overseers, so that their reports shall make a complete showing of the number of poor persons who have been relieved and maintained in the county during the year, with the names of heads of families, and the causes of their indigency; the amount paid for transportation; for medical attendance; and for funeral expenses; the charges and fees of the several officers authorized by law to furnish relief to poor persons, and all other expenditures incurred in the relief and maintenance of such indigent persons.

HISTORY: CL 1929, 8271;—CL 1948, 402.43. This section re-enacts Sec. 3 of Act 107 of 1875, as Add. 1879, p. 208, Act 229, Eff. Aug. 30, being How. 1812;—CL 1897, 4575;—CL 1915, 5300, changing words "first and twentieth of October" to "first and tenth of November."

See note under Sec. 1 of this chapter.

402.44, 402.45 Repealed. 1957, p. 425, Act 292, Eff. Sep. 27.

Sections made poor person's property subject to suit to recover aid extended, provided for return of any balance after poor person ceased to be public charge.

CHAPTER III
**RELIEF AND SUPPORT IN COUNTIES OTHER THAN COUNTY OF SETTLE-
MENT.**

~~403.1–403.8~~ Repealed.

403.1–403.8 Repealed. 1957, p. 425, Act 292, Eff. Sep. 27.

~~Sections determined which municipality was liable for relief of poor person on basis of where person was settled; provided for transportation to another state; provided procedures.~~

CHAPTER 404. THE POOR LAW—SUPPLEMENTAL CHAPTER

JOINT COUNTY MEDICAL CARE FACILITIES

Act 178 of 1929

- #04.1 Joint county medical care facility; committees, selection of site, officers, report; action of supervisors.
- #04.2 Joint county medical care facilities; board of trustees, appointment, duties.
- #04.3 Joint county medical care facilities; cost of establishment; special tax, limit, accounting; apportionment of cost of operation.
- #04.4 Contracts; bids, rules and regulations; approval of state welfare commission.
- #04.5 Board of trustees; powers and duties; operating personnel; disbursements.
- #04.6 Board of trustees; corporate powers; application of laws concerning construction, operation and maintenance.

ALIENS IN INSTITUTIONS

Act 59 of 1921

- #04.31 Alien inmates of state, county or private institution; report to auditor general; release for deportation.
- #04.32 Institutional records; contents; blanks for recording.

404.34 Noncompliance with act; penalties.

SUBSIDIZATION OF PRIVATE INSTITUTIONS

Act 46 of 1925

- 404.51 Private charitable institutions or agencies; county subsidy.
- 404.52 Private charitable institutions or agencies; restrictions on appropriations; records, public access.
- 404.53 Traveling expenses not paid by county; patient, attendant.

INDIGENT AFFLICTED ADULTS AND PREGNANT WOMEN

Act 267 of 1915

- 404.101-404.112 Repealed.

INDIGENT ADDICTS

Act 68 of 1907

- 404.201 Indigent liquor or drug addict; petition for treatment, contents.
- 404.202 Indigent liquor or drug addict; contract for treatment, expense limitation.
- 404.203 Drunkard; definition.
- 404.204 Institutions eligible for contracts.
- 404.205 Reimbursement of county; amount turned into general fund.

Act 178, 1929, p. 489; Eff. Aug. 28.

AN ACT to provide for the establishment, operation and control of county medical care facilities by 2 or more counties of less than 1,000,000 population. Am. 1953, p. 237, Act 182, Eff. Oct. 2.

The People of the State of Michigan enact:

404.1 Joint county medical care facility; committees, selection of site, officers, report; action of supervisors.

Sec. 1. Any 2 or more counties within this state no one of which has a population of 1,000,000 or more persons may co-operate for the establishment, maintenance and operation of a joint county medical care facility. The board of supervisors of any county may appoint a committee to confer with a like committee similarly chosen by the board of supervisors in any other county or counties and may appoint a committee of 3 for the purpose of selecting a site for a joint county medical care facility. At such meeting the committees shall organize into a joint committee and shall select 1 of the members of such committee chairman and a second member secretary. A full report of the results of such meeting shall be made to the board of supervisors of each county concerned at the last ensuing meeting thereof. Thereupon each said board of supervisors shall have the power to take action with reference to the establishment, maintenance and operation of such joint county medical care facility, as is granted by the statutes of this state with reference to the construction of a medical care facility by a single county, in so far as such provisions are applicable.

HISTORY: CL 1929, 8283;—CL 1948, 404.1;—Am. 1953, p. 237, Act 182, Eff. Oct. 2.

404.2 Joint county medical care facilities; board of trustees, appointment, duties.

Sec. 2. In case the board of supervisors of 2 or more counties shall determine by separate action thereof that a joint county medical care facility shall be constructed, it shall be the duty of each said board to name the 3 members of the social welfare board for their respective county to serve as members of the board of trustees of said joint county medical care facility. Said trustees shall be appointed for like terms and shall qualify in the same manner as is provided for in the office of member of the county social welfare board, and they shall cooperate with the state department of social welfare in the construction and equipment of the necessary building or buildings.

HISTORY: CL 1929, 8284;—CL 1948, 404.2;—Am. 1953, p. 237, Act 182, Eff. Oct. 2.

404.3 Joint county medical care facilities; cost of establishment; special tax, limit, accounting; apportionment of cost of operation.

Sec. 3. The cost of establishment and construction of said county medical care facility shall be borne by each county in proportion to the assessed valuation of said county. The board of supervisors of each county becoming a party to the erection of a joint county medical care facility under the provisions of this act, may raise in any 1 year for construction or maintenance purposes a sum not exceeding .1 mill on each dollar of assessed valuation of said county. Such tax shall be regarded as a special tax, and moneys received therefrom shall be transmitted by the treasurer of the county in which it is collected to the treasurer of the county in which said joint county medical care facility is to be located and constructed. All such moneys shall be and remain in a special fund and shall be used solely for the purposes for which the tax is spread: Provided, however, That the money so received for construction purposes and not needed therefor, may be expended by the board of trustees for the maintenance and operation of said joint county medical care facility. Money expended for the construction, equipment and installation of equipment of any joint county medical care facility shall be paid out by the county treasurer having such fund in charge, on the order of the board of trustees of such joint county medical care facility. The maintenance and operation of such joint county medical care facility shall be borne by each county in proportion to the number of persons kept by each county in said medical care facility.

HISTORY: CL 1929, 8285;—CL 1948, 404.3;—Am. 1953, p. 237, Act 182, Eff. Oct. 2.

404.4 Contracts; bids, rules and regulations; approval of state welfare commission.

Sec. 4. Contracts for the construction and equipping of any joint county medical care facility to be erected under the provisions of this act, shall be let by the board of trustees of said joint county medical care facility subject to the approval of the state department of social welfare. Such work may be let as an entirety or in sections as may be deemed more advantageous. In all cases where the cost of construction exceeds the sum of \$500.00, bids shall be advertised in 1 or more newspapers published and circulated within the counties concerned, not less than 2 weeks prior to the date when bids are to be received. Subject to the provisions of this act, the board of trustees of said joint county medical care facility may adopt reasonable rules and regulations concerning the manner of advertising for bids and the letting of contracts. In all cases, the right to reject any and all bids presented shall be reserved. Each contract let hereunder shall provide that the work shall be done subject to the approval of the state department of social welfare.

HISTORY: CL 1929, 8286;—CL 1948, 404.4;—Am. 1953, p. 238, Act 182, Eff. Oct. 2.

404.5 Board of trustees; powers and duties; operating personnel; disbursements.

Sec. 5. The board of trustees shall make and publish rules and regulations governing the operation of joint county medical care facilities. It shall be the duty of the board of trustees and all employees to observe such rules and regulations. Wilful failure or refusal shall constitute grounds for removal. Subject to this act and to such rules and regulations such board of trustees shall operate the joint medical care facility under its charge and shall employ a superintendent and such other employees as may be necessary, and may fix the compensation thereof. Such compensation shall be paid out of the maintenance fund of the joint county medical care facility in the same manner as the salaries of other county employees are paid. Money to defray the expenses of maintenance shall be paid by the county treasurer having such fund in his custody on the warrant of the president of the board of trustees of the joint county medical care facility, and shall be countersigned by the secretary.

HISTORY: CL 1929, 8287;—CL 1948, 404.5;—Am. 1953, p. 238, Act 182, Eff. Oct. 2.

404.6 Board of trustees; corporate powers; application of laws concerning construction, operation and maintenance.

Sec. 6. Said board of trustees heretofore provided for shall be a corporation and shall possess the usual powers of a corporation for public purposes, and they shall have all powers conferred upon them as conferred upon the county social welfare boards, by the laws relating to the construction, operation and maintenance of county medical care facilities. All laws governing the construction, operation and maintenance of a county medical care facility are applicable to the construction, operation and maintenance of a joint county medical care facility, unless otherwise expressly provided in this act.

HISTORY: CL 1929, 8288;—CL 1948, 404.6;—Am. 1953, p. 238, Act 182, Eff. Oct. 2.

COUNTY INFIRMARIES: See Compilers' § 402.5 et seq.

Act 59, 1921, p. 89; Imd. Eff. Apr. 15.

AN ACT to relieve the county and state from the support of certain classes of aliens who are subject to deportation from the United States; making an appropriation therefor and providing penalties for the non-performance of duties under the provisions of this act.

The People of the State of Michigan enact:

404.31 Alien inmates of state, county or private institution; report to auditor general; release for deportation.

Sec. 1. Whenever any alien is committed to or becomes an inmate of any state, county or private institution, boarding home for children, maternity hospital, licensed under the laws of this state or which is supported in whole or in part by state or county funds, or the Detroit house of correction, it shall be the duty of the keeper, manager, superintendent, warden, or other person in charge of such institution or home to forthwith report to the auditor general that said alien is an inmate of said institution, home or hospital, as the case may be, and it shall thereupon be the duty of the auditor general to keep on file in his office a correct list of all such persons so reported and to immediately report such fact to the nearest office of the United States immigration service. Upon the issuance of an order of deportation by the proper federal authority, and upon the release of such alien from such institution, home or hospital, it shall be the duty of the keeper, manager, superintendent, warden, or other per-

son in charge of such institution to deliver said alien into the custody of the United States officer holding the warrant of deportation.

HISTORY: CL 1929, 8289;—CL 1948, 404.31.

404.32 Institutional records; contents; blanks for recording.

Sec. 2. It shall be the duty of the keeper, manager, superintendent, warden, or person in charge of any of the aforesaid institutions to keep a record of all persons committed to or who become inmates of such institutions, which record shall contain the following information: Name, age, whether married or single, whether he can read or write, place of birth, nationality, names and addresses of parents or nearest relatives, or friends, date of arrival in United States, port of arrival, name of steamship, and if a naturalized citizen of the United States the date and place of naturalization. It shall be the duty of the auditor general, upon request, to furnish each of said institutions printed blanks for the purpose of recording such information.

HISTORY: CL 1929, 8290;—CL 1948, 404.32.

RECORDS: In state prisons and reformatory, see Compilers' § 800.30.

Sec. 3. (This was an appropriation section.)

HISTORY: Rep. 1945, p. 411, Act 267, Imd. Eff. May 25.

404.34 Noncompliance with act; penalties.

Sec. 4. Failure on the part of any person to perform any duty enjoined upon him by the provisions of this act shall be deemed a misdemeanor, and upon conviction thereof such person shall be subject to a fine of not less than 50 dollars nor more than 500 dollars, or to imprisonment in the county jail for a term of not less than 30 days nor more than 6 months; or to both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1929, 8291;—CL 1948, 404.34.

Act 46, 1925, p. 55; Imd. Eff. Apr. 9.

AN ACT to authorize boards of supervisors to make appropriations to subsidize private institutions or agencies functioning within the state of Michigan for the benefit of various classes of people needing special care, training or treatment.

The People of the State of Michigan enact:

404.51 Private charitable institutions or agencies; county subsidy.

Sec. 1. The board of supervisors of each county in this state is hereby authorized and empowered, subject to the provisions of this act, to appropriate such sums of money as it may deem advisable to subsidize private charitable institutions or agencies rendering service to people residing within the state who might otherwise become public charges.

HISTORY: CL 1929, 8292;—CL 1948, 404.51.

404.52 Private charitable institutions or agencies; restrictions on appropriations; records, public access.

Sec. 2. No such appropriation of funds shall be legal unless the institution or agency for which the appropriation is made, is incorporated under the laws of this state, is undenominational and is so organized that its benefits are available to any person regardless of nationality, residing in the state. Each and every institution or agency which benefits by an appropriation made by any board of supervisors shall keep an accurate record and account of all moneys received and expended and file a report of its ex-

penditures at the October session of the board of supervisors following the appropriation. The books containing the receipt and expenditure of funds for the care, training or treatment of its inmates shall be available to any citizen of this state.

HISTORY: CL 1929, 8293;—CL 1948, 404.52.

404.53 Traveling expenses not paid by county; patient, attendant.

Sec. 3. It shall be lawful for any board of supervisors through a committee appointed by it or through its county agent or probate judge, to pay the traveling expenses of any individual to and from any such institution or agency within the state of Michigan. It shall also be lawful to pay the traveling expenses of an attendant conducting such person to or from said institution or agency when the service of an attendant is in the judgment of said committee, county agent or probate judge, necessary for the protection of the person so conveyed.

HISTORY: CL 1929, 8294;—CL 1948, 404.53.

404.101–404.112 Repealed. 1964, p. 393, Act 256, Eff. Aug. 28.

Sections provided medical care for afflicted indigent adults or pregnant women.

Act 68, 1907, p. 71; Eff. Sep. 28.

AN ACT to authorize the boards of supervisors of the several counties of the state of Michigan to make contracts for the cure of drunkenness, the morphine and cigarette habits, and other like addictions.

The People of the State of Michigan enact:

404.201 Indigent liquor or drug addict; petition for treatment, contents.

Sec. 1. Any inhabitant of this state may petition the board of supervisors of the county, wherein any indigent person addicted to the excessive use of any intoxicating liquors or of morphia, laudanum, cocaine, opium or other narcotics to such an extent as to become an habitual drunkard, resides, for leave to send such drunkard, at the expense of the county, to any reputable institute for the treatment of such cases, designated by such board of supervisors under the conditions hereinafter contained, which petition shall set forth the name, age and condition of such drunkard, that such drunkard is not financially able to incur the expense of such treatment, and that such habitual drunkard is willing and has agreed to attend such institute for the cure of drunkenness, which petition shall be verified by the person making such request and shall contain in addition thereto the written agreement of such drunkard to take such treatment, if allowed by the board, and a further statement signed by 3 reputable taxpayers of the county, and the supervisor of the township, ward or village, where such drunkard resides, stating that they are familiar with the facts set forth in the petition and with the financial circumstances of the drunkard and that they deem it a proper case for such action by the board of supervisors.

HISTORY: CL 1915, 5292;—CL 1929, 8304;—CL 1948, 404.201.

DRUG ADDICTS: Commitment to and treatment at Wayne county hospital, see Compilers' § 330.301 et seq. Commitment to institution for the insane, see Compilers' § 330.18.

404.202 Indigent liquor or drug addict; contract for treatment, expense limitation.

Sec. 2. When such petition is filed, the board of supervisors may, if satisfied that the facts set forth in the petition are true, make and enter into a contract with the institu-

tion for the cure of such cases, for the treatment of the same, and the said board of supervisors shall order that the expense for the treatment, not exceeding 100 dollars, be paid out of the county treasury in the manner that other claims and bills against the county are paid.

HISTORY: CL 1915, 5293;—CL 1929, 8305;—CL 1948, 404.202.

404.203 Drunkard; definition.

Sec. 3. A drunkard, as defined herein, shall include all persons who use alcoholic, spirituous, malt, brewed, fermented or vinous liquors, or morphia, laudanum, cocaine, opium or other narcotic to such an extent as to deprive him or her of a reasonable degree of self-control.

HISTORY: CL 1915, 5294;—CL 1929, 8306;—CL 1948, 404.203.

404.204 Institutions eligible for contracts.

Sec. 4. Such contract with such institute for the cure of said cases shall be made and entered into with one which is located in the state of Michigan, that can satisfy said board that not less than 75 per cent of the persons having taken a full course of treatment, consisting of not less than 4 weeks, have been cured and have remained cured for at least 1 year thereafter.

HISTORY: CL 1915, 5295;—CL 1929, 8307;—CL 1948, 404.204.

404.205 Reimbursement of county; amount turned into general fund.

Sec. 5. Any person who shall be treated at any institute under the provisions of this statute may at any time reimburse the county by paying to the county treasurer the amount thereof, and the treasurer shall give him a receipt for the amount so paid, which receipt shall state that such payment is for reimbursement, as aforesaid, and the amount so paid shall be turned into the general fund.

HISTORY: CL 1915, 5296;—CL 1929, 8308;—CL 1948, 404.205.

Sec. 6. (This was a repeal section.)

HISTORY: CL 1915, 5297;—CL 1929, 8309;—Rep. 1945, p. 404, Act 267, Imd. Eff. May 25.

CHAPTER 408. LABOR—DEPARTMENT OF LABOR

WORKMEN'S COMPENSATION COMMISSION

Act 357 of 1947

408.1-408.33 Repealed.

LABOR CONDITIONS

Act 285 of 1909

408.51-408.94 Repealed.

DEAF AND DEAFENED DIVISION

Act 72 of 1937

408.201 Deaf and deafened division of department of labor and industry; creation.

408.202 Deaf and deafened division; director, appointment, qualifications, authority.

408.203 Director, duties; deputy, duties; reports.

408.204 Director; assistants, appointment, compensation.

408.205 Director; compensation, expenses.

VESSELS

Act 113 of 1909

408.251-408.287 Repealed.

STEAM BOILERS

Act 174 of 1917

408.301-408.308 Repealed.

SKI AREA SAFETY ACT OF 1962

Act 199 of 1962

408.321 Ski area safety act of 1962; short title.

408.322 Ski area safety act; definitions.

408.323 Ski area safety board; members, qualifications.

408.324 Ski area safety board; appointment, terms, vacancies.

408.325 Ski area safety board; officers, quorum, meetings, compensation, expenses.

408.326 Ski area safety board; rules and regulations for protection of public.

408.327 Ski area safety board; rules and regulations, promulgation.

408.328 Commissioner of labor; administration of act.

408.329 Ski lifts; permits requirement, inspection.

408.330 Ski lifts; temporary permits.

408.331 Ski lifts; permits, issuance, expiration.

408.332 Ski lifts; erection, alteration, moving, plans and specifications; rope tows.

408.333 Ski lifts; order to cease operation.

408.334 Ski lifts; existing installations.

408.335 Ski lifts; rules and regulations, modification for hardship, record.

408.336 Ski lifts; fees.

Inspection fees.

Review and approval of plans fees.

Fees; payment, receipts.

408.337 Chief inspector; inspection service.

408.338 Revenue; disbursements.

408.339 Notice of public hearing.

408.340 Violation of act; penalty.

408.341 Appropriation.

ELEVATORS

Act 82 of 1937

408.351-408.374 Repealed.

MINIMUM WAGE LAW OF 1964

Act 154 of 1964

408.381 Minimum wage law of 1964; short title.

408.382 Minimum wage law; definitions.

408.383 Applicability of act.

408.384 Minimum hourly rates; changes in cost of living.

408.385 Wage deviation board; appointment, officers, quorum, compensation, expenses.

408.386 Commissioner of labor; rules.

408.387 Wage deviation board; deductions; rates for handicapped.

408.388 Wage deviation board; data from employer, hearings.

408.389 Wage deviation board; report, filing.

408.390 Wage deviation board; reconsideration of deviated wage rate.

408.391 Statement of wages, hours, and deductions; inspection; posting of regulations and orders.

408.392 Commissioner of labor; administration of act; confidentiality of information.

408.393 Payment of less than minimum wage; civil action; filing claim.

408.394 Nonapplication of act; summer camps, handicapped, agricultural workers; piece rate scale.

408.395 Discrimination against employee serving on or testifying to deviation board; penalty.

408.396 Discharge of employees within ten weeks; misdemeanor.

LEGAL DAY'S WORK

Act 137 of 1885

408.401 Legal work day; overtime.

408.402 Legal work day; nonspecific contracts.

408.403 Violation of preceding section; penalty; prosecution.

408.404 Fines; disposition.

408.405 Construction of act as to exempt employees.

RAILROAD EMPLOYEES

Act 177 of 1893

408.441-408.444 Repealed.

MOTORMAN OR CONDUCTOR

Act 361 of 1919

408.461, 408.462 Repealed.

WAGE CLAIMS AND LIENS

Act 224 of 1935

408.501 Wage earner; definition; purpose of act.

408.502 Wage claims and liens; assignment to department of labor and industry, enforcement.

408.503 Complaint; filing, investigation.

408.504 Claims; enforcement proceedings, advancement of costs.

408.505 Witnesses; expenses.

408.506 Department of labor and industry; trustee for wage earner, expenses.

PRIORITY TO DEBTS OWING TO EMPLOYEES

Act 213 of 1966

- 408.511 Suspended business; debts to employees, preferred claims; contest.
 408.512 Statement of preferred claim; filing, contents, attachments; payment.

PAYMENT OF WAGES

Act 62 of 1925

- 408.521 Wages; manner of payment; disagreements, deductions; common carriers.
 408.522 Death of employee; preference of payment; wages, definition.
 408.523 Legal actions; attorney's fees.
 408.524 Department of labor and industry; enforcement of act; violations, prosecution.
 408.525 Violation of act; penalty.
 408.525a Violation of act with intent to defraud; penalty.

Act 59 of 1913

- 408.541-408.544 Repealed.

WAGES ON STATE PROJECTS

Act 166 of 1965

- 408.551 Wages on state projects; definitions.
 408.552 Contracts for state projects; minimum wage provisions, exceptions.
 408.553 Prevailing wage and fringe benefit rates; schedule as part of specifications and bid form.
 408.554 Prevailing wages and fringe benefit rates; establishment; public hearings.
 408.555 Prevailing wage and fringe benefit rates; posting by contractors.
 408.556 Prevailing wages and fringe benefits; failure to pay, termination of contract; contractor's liability and sureties.
 408.557 Violation of act; penalty.
 408.558 Inapplicability of act.

MEDIUM OF PAYMENT OF WAGES

Act 221 of 1897

- 408.561 Wage payment by script, order or evidence of indebtedness; penalty, civil liability.
 408.562 Violation of act; evidence.
 408.563 Violation of act; defendant to actions; voluntary acceptance of script.

FOREIGN WORK

Act 106 of 1903

- 408.581 Work away from home locality; contract, terms; minors under sixteen; misrepresentation, penalty.
 408.582 Fraudulent acceptance of benefits; misdemeanor; prima facie evidence.
 408.583 Violation of act; penalty.

PRIVATE EMPLOYMENT BUREAUS

Act 321 of 1929

- 408.601 Private employment bureaus; superintendent, term, duties, salary, assistant, office location, bond.
 408.602 Private employment agencies; definitions.
 408.603 License; requirement.
 408.604 License; application, content; character references.
 408.605 License; investigation of applicant.

- 408.605a Adoption of name similar to Michigan employment security commission prohibited.

- 408.606 Permits; application, investigation, renewal.

Permit fees; display of permit.

Records.

Exemptions from act.

Part-time or temporary employees; prohibited places.

- 408.607 License; bond.

- 408.608 License; fees, schedule, disposition.

- 408.609 License; contents, issuance, renewal.

- 408.610 Repealed.

- 408.611 License; continuance.

- 408.612 License; suspension and revocation; review; reissuance.

- 408.613 License; transfer.

- 408.614 License; place of business specified.

- 408.615 License; classifications.

- 408.616 License; rules for various classes.

- 408.616a Artist's manager's license; requirements.

- 408.617 License; rules for all classifications.

- 408.617a Contracts or receipts; form, approval; schedule of service charges, filing.

- 408.618 Fraudulent advertising.

- 408.619 Applicant referrals; places prohibited.

- 408.620 Fraud and fee splitting prohibited.

- 408.620a Registration fees prohibited; maximum charges.

- 408.621 Violation of act; penalty.

- 408.623 Severability.

- 408.624 Effective date.

CARNIVAL-AMUSEMENT SAFETY ACT OF 1966

Act 225 of 1966

- 408.651 Carnival-amusement safety act of 1966; short title.

- 408.652 Carnival-amusement safety act; definitions.

- 408.653 Carnival-amusement safety board; membership, appointment, terms, group representation.

- 408.654 Carnival-amusement safety board; meetings; quorum, chairman, clerical and administrative assistants.

- 408.655 Carnival-amusement safety board; members, compensation and expenses.

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BUILDING SAFETY COUNCIL

Act 164 of 1951

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Act 89 of 1963

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408.1-408.33 Repealed. 1969, p. 669, Act 317, Eff. Dec. 31.

Sections related to workmen's compensation department and commissioner of labor.
CITED IN OTHER SECTIONS: The above section is cited in § 16.477.

408.51-408.94 Repealed. 1964, p. 392, Act 256, Eff. Aug. 28;—1967, p. 248, Act 187, Eff. Nov. 2;—1967, p. 579, Act 282, Imd. Eff. Aug. 1.

Sections provided for creation of department of labor; powers and duties; regulation of employment; prescribed equipment and conditions of employment; and prescribed penalties.

Act 72, 1937, p. 97; Eff. Oct. 29.

AN ACT to protect the deaf and deafened; and to create within the department of labor and industry a division to be known as the "division of the deaf and deafened;" and to prescribe its powers and duties.

The People of the State of Michigan enact:

408.201 Deaf and deafened division of department of labor and industry; creation.

Sec. 1. There shall be created in the department of labor and industry a division to be devoted to the interests of the deaf and deafened.

HISTORY: CL 1948, 408.201.

NOTE: Department of labor and industry abolished. See Compilers' §§ 408.31, 408.33.

CITED IN OTHER SECTIONS: Sections 408.201 to 408.205 are cited in § 481.60a.

408.202 Deaf and deafened division; director, appointment, qualifications, authority.

Sec. 2. The commissioner of labor shall appoint a competent person to have charge of such division of the deaf and deafened, who shall be fully conversant with the sign language of the deaf as generally accepted, and who shall have been a resident of the state for at least 5 years prior to such appointment; such appointee to be known as "di-

rector of the division of the deaf and deafened", and to be subject to the regular rules and regulations of the department of labor and industry.

HISTORY: CL 1948, 408.202.

408.203 Director, duties; deputy, duties; reports.

Sec. 3. The director of said division shall collect and tabulate statistics pertaining to the deaf and deafened, their employment and welfare; shall ascertain what trades or occupations are most suitable for them; shall endeavor to create new fields of employment to which they may adapt themselves, and to place them in such various lines of employment; may investigate any, and all, charges of discrimination against them by certain employers, industries, corporations or organizations with whom they may seek employment and combat all unfair discrimination; and shall use his best efforts for the general welfare of all the deaf and deafened within the state.

There shall be a deputy director who shall serve in the capacity of "general field agent" in order to properly contact industrial executives, factory proprietors, and employers of labor in general. He shall conduct a state-wide survey or census of the deaf and deafened of all ages and degrees of deafness at stated regular intervals; he shall collect and disseminate statistics and other information relative to deafness as an insurance risk; he shall endeavor to obtain and compile statistics, facts and data covering the conditions of labor, employment and education of the deaf and deafened in other states and countries with a view to profiting by the experience of others confronted with like problems.

The division shall contract and seek co-operation with all state departments, divisions, officers and state agencies and minor governmental bodies to the end that deaf and deafened persons may be employed in such capacities in the government of the state, or any subdivision thereof, as they may fill as efficiently as other persons. He shall make such reports and recommendations to his superior as may be required by law, or otherwise, and issue such reports in pamphlet form, or otherwise, as may be necessary or desirable to advance the best interests of the division and the deaf and deafened people of the state in general.

HISTORY: CL 1948, 408.203.

408.204 Director; assistants, appointment, compensation.

Sec. 4. The director shall, with the approval of the commissioner of labor, appoint the necessary assistants to properly conduct the offices of his division, whose salaries shall be determined and fixed by the department of labor and industry.

HISTORY: CL 1948, 408.204.

408.205 Director; compensation, expenses.

Sec. 5. The director or assistant of the division shall receive such compensation as shall be determined by the department of labor and industry, and such actual and necessary expenses as shall be incurred in the performance of their official duties, to be paid in the same manner as the compensation and expenses of other state employees are paid. The director is also authorized to incur such other expenses as shall be necessary to carry out the provisions of this act.

HISTORY: CL 1948, 408.205.

408.251-408.287 Repealed. 1965, p. 392, Act 228, Eff. Mar. 31, 1966.

Sections regulated steam vessels and vessels operated by machinery, on waters within jurisdiction of state; exceptions; penalties; declared waters navigated by such vessels public and navigable waters of state.

408.301-408.306 Repealed. 1965, p. 558, Act 290, Eff. Jul. 1, 1966.

Sections regulated use and construction of steam boilers.

Act 199, 1962, p. 441; Imd. Eff. Jun. 7.

AN ACT to provide for the inspection, licensing and regulation of ski areas and ski lifts; to provide for the safety of skiers, spectators and the public using ski areas; to create a ski area safety board in the office of the commissioner of labor; to provide for the disposition of revenues; to make an appropriation; and to provide penalties for violations.

The People of the State of Michigan enact:

408.321 Ski area safety act of 1962; short title.

Sec. 1. This act shall be known and may be cited as the "ski area safety act of 1962".

HISTORY: New 1962, p. 441, Act 199, Imd. Eff. Jun. 7.

408.322 Ski area safety act; definitions.

Sec. 2. As used in this act:

- (a) "Ski area" means an area used for skiing and served by 1 or more ski lifts.
- (b) "Ski lift" means a device for transporting persons uphill on skis, or in cars on tracks, or suspended in the air by the use of cables, chains, belts or ropes, and usually supported by trestles or towers with 1 or more spans. It includes a rope tow.
- (c) "Operator" means a person who owns or controls the operation of a ski lift. An operator includes this state or any subdivision thereof.
- (d) "Area manager" means a person actively engaged in the management of a ski area.
- (e) "Department" means the state department of labor.
- (f) "Commissioner" means the state commissioner of labor.
- (g) "Board" means the ski area safety board.

HISTORY: New 1962, p. 441, Act 199, Imd. Eff. Jun. 7.

408.323 Ski area safety board; members, qualifications.

Sec. 3. A ski area safety board consisting of 7 members is created within the office of the commissioner. The board consists of 3 ski area managers, 1 from the Upper Peninsula and 2 from the Lower Peninsula; 1 engineer with skiing experience; 1 member of the central United States ski association, a nonprofit corporation; 1 person with skiing experience from the Upper Peninsula; and 1 with skiing experience from the Lower Peninsula. The commissioner and an officer of the Michigan tourist council are ex officio members of the board without vote.

HISTORY: New 1962, p. 442, Act 199, Imd. Eff. Jun. 7.

408.324 Ski area safety board; appointment, terms, vacancies.

Sec. 4. Members of the board shall be appointed by the governor with the advice and consent of the senate for terms of 4 years and until their successors are appointed and qualified, except in the first instance 1 member shall be appointed for a term of 1 year, 2 for 2 years, 2 for 3 years and 2 for 4 years. Vacancies in the board shall be filled for the unexpired term.

HISTORY: New 1962, p. 442, Act 199, Imd. Eff. Jun. 7.

408.325 Ski area safety board; officers, quorum, meetings, compensation, expenses.

Sec. 5. The board shall elect a chairman and such other officers as it deems necessary to perform its duties between meetings. A majority of the 7 members shall consti-

tute a quorum. The board shall meet at least once yearly on the call of the chairman or by written request of at least 3 members. Members shall receive no compensation but shall receive their actual and necessary expenses within the legislative appropriation.

HISTORY: New 1962, p. 442, Act 199, Imd. Eff. Jun. 7.

408.326 Ski area safety board; rules and regulations for protection of public.

Sec. 6. The board shall formulate definitions, rules and regulations for the safe construction, installation, repair, use, operation, maintenance and inspection of all ski areas and ski lifts as the board finds necessary for protection of the general public while using ski areas and ski lifts. The definitions, rules and regulations shall be reasonable and based upon generally accepted engineering standards, formulas and practices.

HISTORY: New 1962, p. 442, Act 199, Imd. Eff. Jun. 7.

408.327 Ski area safety board; rules and regulations, promulgation.

Sec. 7. The rules and regulations shall be promulgated in accordance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.82 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

HISTORY: New 1962, p. 442, Act 199, Imd. Eff. Jun. 7.

408.328 Commissioner of labor; administration of act.

Sec. 8. The commissioner, subject to the limitations herein contained and the rules and regulations of the board, shall administer and enforce the provisions of this act.

HISTORY: New 1962, p. 442, Act 199, Imd. Eff. Jun. 7.

408.329 Ski lifts; permits requirement, inspection.

Sec. 9. No person shall operate a ski lift without a permit issued by the commissioner. On or before October 1 of each year an operator shall apply for a permit to the commissioner on a form furnished by the commissioner and containing such information as the board may require. All ski lifts shall be inspected before they are originally put into operation for the public's use and thereafter at least once every 12 months, unless permitted to operate on a temporary permit.

HISTORY: New 1962, p. 442, Act 199, Imd. Eff. Jun. 7.

408.330 Ski lifts; temporary permits.

Sec. 10. The commissioner may issue a temporary permit for 30 calendar days to an operator, who has previously been operating in this state on a regular or annual basis, to continue operation. An inspection of his ski lifts shall be made within 30 days from the issuance of the permit. A ski lift inspected and covered by a permit in the preceding year may operate on a temporary basis until further inspected.

HISTORY: New 1962, p. 442, Act 199, Imd. Eff. Jun. 7.

408.331 Ski lifts; permits, issuance, expiration.

Sec. 11. If upon inspection of ski lift is found to comply with the rules and regulations of the board, the commissioner shall issue a permit to operate. A permit shall expire on September 30 of the following year.

HISTORY: New 1962, p. 443, Act 199, Imd. Eff. Jun. 7.

408.332 Ski lifts; erection, alteration, moving, plans and specifications; rope tows.

Sec. 12. Before a new ski lift is erected, or before a presently existing ski lift is moved to a different location, or whenever any additions or alterations are made which change the structure, mechanism, classification or capacity of any ski lift, the operator shall file with the department detailed, duplicate plans and specifications of such work. The plans and specifications shall be prepared by a qualified tramway firm

or by an engineer, licensed in this state as a professional engineer, in accordance with Act No. 240 of the Public Acts of 1937, as amended, being sections 338.551 to 338.576 of the Compiled Laws of 1948. Upon approval of plans and specifications, the department shall issue a permit for such work. All rope tows shall be excluded from this section.

HISTORY: New 1962, p. 443, Act 190, Imd. Eff. Jun. 7.

408.333 Ski lifts; order to cease operation.

Sec. 13. The commissioner or board may order, in writing, a temporary cessation of operation of a ski lift if it has been determined after inspection to be hazardous or unsafe. Operation shall not resume until such conditions are corrected to the satisfaction of the commissioner or board.

HISTORY: New 1962, p. 443, Act 190, Imd. Eff. Jun. 7.

408.334 Ski lifts; existing installations.

Sec. 14. This act shall not be construed to prevent the use of any existing installation, upon inspection found to be in a safe condition and to conform with the rules and regulations of the board.

HISTORY: New 1962, p. 443, Act 190, Imd. Eff. Jun. 7.

408.335 Ski lifts; rules and regulations, modification for hardship, record.

Sec. 15. If there are practical difficulties or unnecessary hardships for an operator to comply with the rules and regulations under this act, the commissioner, with the approval of the board, may modify the application of such rules or regulations to such a situation, if the spirit of the provisions shall be observed and the public safety is secured. Any operator may make a written request to the board stating his grounds and applying for such modification. Any authorization by the commissioner and the board shall be in writing and shall describe the conditions under which the modification is permitted. A record of all modifications shall be kept in the department and open to the public.

HISTORY: New 1962, p. 443, Act 190, Imd. Eff. Jun. 7.

408.336 Ski lifts; fees.

Sec. 16. (a) An application for a permit shall be accompanied by fees of:

- \$25.00 for an annual permit; or
- \$2.00 for each rope tow,
- \$5.00 for each T bar, J bar or platter pull,
- \$15.00 for each chair lift or skimobile, and
- \$30.00 for each aerial tramway,

if greater than the \$25.00 annual permit fee.

Inspection fees.

(b) Inspection fees shall be as follows:

- \$8.00 for each rope tow,
- \$20.00 for each T bar, J bar or platter pull,
- \$60.00 for each chair lift or skimobile,
- \$120.00 for each aerial tramway, and
- \$50.00 for reinspections or special inspections at an operator's request.

Any operator may employ any person, partnership or corporation, approved by the commissioner and board, to make the inspections. Inspections made by any person, partnership, or corporation, that may be employed by an operator, shall be on forms furnished or approved by the department. Inspection fees shall be waived when the annual permit application is accompanied by such an inspection report.

Review and approval of plans fees.

(c) Fees for review and approval of plans prior to construction shall be \$200.00 for a chair lift, T bar, J bar, platter pull or tramway.

Fees for review and approval of plans for modification and alteration of an existing lift shall be \$50.00.

Fees; payment, receipts.

(d) Fees shall be paid to the department, which shall give receipts therefor.

HISTORY: New 1962, p. 443, Act 199, Imd. Eff. Jun. 7;—Am. 1964, p. 124, Act 130, Eff. Aug. 28.

408.337 Chief inspector; inspection service.

Sec. 17. The department, with the advice and consent of the board, shall employ or retain a person qualified in engineering and training who shall be designated chief inspector. The chief inspector and such additional inspectors and other employees as may be necessary to properly administer this act may be hired on a temporary basis or borrowed from other state departments, or the department may contract with persons, partnerships or corporations for such inspection services on an independent basis.

HISTORY: New 1962, p. 444, Act 199, Imd. Eff. Jun. 7.

408.338 Revenue; disbursements.

Sec. 18. All fees for permits or inspections, or any other income received under this act, shall be paid into the general fund. All salaries and other moneys expended under this act shall be paid by the state treasurer from a fund appropriated by the legislature.

HISTORY: New 1962, p. 444, Act 199, Imd. Eff. Jun. 7.

408.339 Notice of public hearing.

Sec. 19. Notice of any public hearing held under this act shall be published at least once, not less than 10 days prior thereto, in such newspapers of general circulation as the commissioner prescribes.

HISTORY: New 1962, p. 444, Act 199, Imd. Eff. Jun. 7.

408.340 Violation of act; penalty.

Sec. 20. Any person who violates any provision of this act, or rule, regulation or order issued thereunder, or who interferes with, impedes or obstructs in any manner the commissioner or his authorized representative or a board member in the performance of his duties, is guilty of a misdemeanor. Each day such violation or other act continues shall be deemed a separate offense.

HISTORY: New 1962, p. 444, Act 199, Imd. Eff. Jun. 7.

408.341 Appropriation.

Sec. 21. There is hereby appropriated the sum of \$6,000.00 for the purpose of administering this act for the fiscal year ending June 30, 1963.

HISTORY: New 1962, p. 444, Act 199, Imd. Eff. Jun. 7.

408.351-408.374 Repealed. 1967, p. 337, Act 227, Eff. Nov. 2;—1967, p. 504, Act 265, Imd. Eff. Jul. 19.

Sections related to elevators; construction and maintenance; powers and duties of commissioner of labor; safety board; inspection; installation and repair; penalty; carnival or amusement rides.

Act 154, 1964, p. 145; Eff. Aug. 28.

AN ACT to fix minimum wages for employees within this state; to provide for the administration and enforcement of this act; and to prescribe penalties for the violation of this act.

The People of the State of Michigan enact:

408.381 Minimum wage law of 1964; short title.

Sec. 1. This act shall be known and may be cited as the "minimum wage law of 1964".

HISTORY: New 1964, p. 145, Act 154, Eff. Aug. 28.

CITED IN OTHER SECTIONS: Sections 408.381 to 408.398 are cited in § 16.480.

408.382 Minimum wage law; definitions.

Sec. 2. As used in this act:

(a) "Commissioner" means the commissioner of labor.

(b) "Employee" means an individual between the ages of 18 and 65 years employed by an employer on the premises of the employer or at a fixed site designated by the employer.

(c) "Employer" means any person, firm or corporation, including the state and its political subdivisions, agencies and instrumentalities, and any person acting in the interest of such employer, who employs 4 or more employees at any one time within any calendar year. Such employer shall be subject to this act during the remainder of such calendar year.

(d) "Employ" means to engage, suffer or permit to work.

HISTORY: New 1964, p. 145, Act 154, Eff. Aug. 28;—Am. 1966, p. 383, Act 269, Imd. Eff. Jul. 12.

408.383 Applicability of act.

Sec. 3. No employer shall pay any employee at a rate of less than prescribed in this act.

HISTORY: New 1964, p. 145, Act 154, Eff. Aug. 28;—Am. 1966, p. 383, Act 269, Eff. Mar. 1, 1967.

408.384 Minimum hourly rates; changes in cost of living.

Sec. 4. (1) The minimum hourly rate shall be:

(a) Beginning January 1, 1965, \$1.00.

(b) Beginning January 1, 1966, \$1.15.

(c) Beginning January 1, 1967, \$1.25.

(d) Beginning July 1, 1970, \$1.45.

(e) Beginning July 1, 1971, \$1.60.

(2) It is the intent of the legislature that any increases or decreases in the minimum hourly rate, established in this act after 1967, shall reflect corresponding increases or decreases in the cost of living.

HISTORY: New 1964, p. 145, Act 154, Eff. Aug. 28;—Am. 1970, p. 91, Act 36, Imd. Eff. Jun. 24.

408.385 Wage deviation board; appointment, officers, quorum, compensation, expenses.

Sec. 5. After the effective date of this act, the governor shall appoint, with the advice and consent of the senate, a wage deviation board composed of 3 representatives of the employers, 3 representatives of the employees and 3 persons representing the public; 1 of the last 3 shall be designated as chairman. Members shall serve for terms of 3 years, except that of the members first appointed, 1 from each group shall be appointed for 1 year, 1 for 2 years and 1 for 3 years. The commissioner shall be secretary of the wage deviation board. A majority of the members of the board constitutes a quorum and the recommendation or report of the board requires a vote of not less than a majority of its members. Members of the board shall receive compensation of \$25.00 per day for not more than 75 days per year, and the chairman \$35.00 per day for not more than 150 days per year, and may be reimbursed for actual and necessary expense while on official duty.

HISTORY: New 1964, p. 145, Act 154, Eff. Aug. 28;—Am. 1965, p. 433, Act 255, Imd. Eff. Jul. 21;—Am. 1966, p. 217, Act 191, Eff. Mar. 10, 1967.

408.386 Commissioner of labor; rules.

Sec. 6. The commissioner may make rules necessary for administration of this act in accordance with and subject to Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.313 of the Compiled Laws of 1948.

HISTORY: New 1964, p. 146, Act 154, Eff. Aug. 28;—Am. 1970, p. 91, Act 36, Imd. Eff. Jun. 24.

408.387 Wage deviation board; deductions; rates for handicapped.

Sec. 7. On petition of a party in interest or on its own motion, the wage deviation board shall:

(a) Determine the amount of the gratuities and the value to the employee of board and lodging and apparel or other items or services customarily furnished to an employee for his benefit, and establish therefrom a reasonable deduction from the minimum wage set in this act to be paid by the employer. In no case shall the total deduction allowed be more than 25% of the hourly wage rate. The board may grant a stay of present employment situation until such determination.

(b) Establish a suitable scale of rates for apprentices, learners, physically and mentally handicapped persons who are clearly unable to meet normal production standards, which may be less than the regular minimum wage rate for experienced and non-handicapped workers.

HISTORY: New 1964, p. 146, Act 154, Eff. Aug. 28;—Am. 1966, p. 383, Act 260, Eff. Mar. 1, 1967.

408.388 Wage deviation board; data from employer, hearings.

Sec. 8. The wage deviation board may request data of any employer, subject to the provisions of this act, as to the wages paid and hours worked by his employees and may hold such hearings as it deems necessary in obtaining this information.

HISTORY: New 1964, p. 146, Act 154, Eff. Aug. 28.

408.389 Wage deviation board; report, filing.

Sec. 9. The wage deviation board shall submit its report to the commissioner who shall file it in his office as a public record together with the regulations established by the board.

HISTORY: New 1964, p. 146, Act 154, Eff. Aug. 28.

408.390 Wage deviation board; reconsideration of deviated wage rate.

Sec. 10. At any time after a deviated wage rate has been in effect for 6 months or more, the wage deviation board may reconsider the rate.

HISTORY: New 1964, p. 146, Act 154, Eff. Aug. 28.

408.391 Statement of wages, hours, and deductions; inspection; posting of regulations and orders.

Sec. 11. Every employer, subject to the provisions of this act or of any regulation or order issued thereunder, shall furnish the employee a statement of the hours worked by the employee and of the wages paid to him listing deductions made each pay period and the employer shall furnish the commissioner upon demand a sworn statement of the same. Such records shall be open to inspection by the commissioner, his deputy or any authorized agent of the department at any reasonable time. Every employer subject to the provisions of this act or of any regulation or order issued under its provisions shall keep a copy of them posted in a conspicuous place in the area where employees are employed. The commissioner shall furnish copies of this act and the regulations and orders to employers without charge.

HISTORY: New 1964, p. 146, Act 154, Eff. Aug. 28.

408.392 Commissioner of labor; administration of act; confidentiality of information.

Sec. 12. The commissioner of labor shall administer and enforce the provisions of this act; and at the request of the wage deviation board may investigate and ascertain

the wages of employees of any employer subject to the provisions of this act. Members of the wage deviation board, the commissioner and his employees shall not reveal any facts or information obtained in the course of their duties, except insofar as they are required, pursuant to law, to report upon or take official action or testify in any proceedings regarding the affairs of any employer subject to this act.

HISTORY: New 1964, p. 146, Act 154, Eff. Aug. 28.

408.393 Payment of less than minimum wage; civil action; filing claim.

Sec. 13. If any employer pays any employee a lesser amount than the minimum wage provided in this act, the employee, at any time within 3 years, may (a) bring a civil action for the recovery of the difference between the amount paid and the minimum wage provided in this act and an equal additional amount as liquidated damages together with costs and such reasonable attorney's fees as may be allowed by the court, and/or (b) file a claim with the commissioner who shall investigate the claim. If the commissioner determines there is reasonable cause to believe that the employer has violated the provisions of this act and the commissioner is subsequently unable to obtain voluntary compliance by the employer within a reasonable period of time, the commissioner shall bring a civil action under the procedures and remedies as provided in clause (a). No contract or agreement between the employer and the employee or any acceptance of a lesser wage by the employee shall be a bar to the action.

HISTORY: New 1964, p. 147, Act 154, Eff. Aug. 28;—Am. 1966, p. 383, Act 269, Imd. Eff. Jul. 12.

408.394 Nonapplication of act; summer camps, handicapped, agricultural workers; piece rate scale.

Sec. 14. The provisions of this act shall not apply to any employer who is subject to the minimum wage provisions of the federal fair labor standards act of 1938, as amended, except in any case where application of such minimum wage provisions would result in a lower minimum wage than provided in this act, to persons employed in summer camps for not more than 4 months, to handicapped employees covered by a blanket deviation certificate or other special certificate issued under sec. 14 (d) of the federal fair labor standards act of 1938, as amended, or to agricultural fruit growers, pickle growers and tomato growers, or other agricultural employers who traditionally contract for the harvesting on a piecework basis, as to those employees of such employers used for such harvesting until the board shall have acquired sufficient data to determine an adequate basis for the establishment of a scale of piecework and shall determine such a scale equivalent to the prevailing minimum wage for such employment, which determination shall occur no later than May 1, 1967. Such piece rate scale shall be equivalent to the minimum hourly wage in that when the payment by unit of production is applied to a worker of average ability and diligence in harvesting a particular commodity he shall receive an amount not less than the hourly minimum wage.

HISTORY: New 1964, p. 147, Act 154, Eff. Aug. 28;—Am. 1965, p. 572, Act 266, Imd. Eff. Jul. 22;—Am. 1966, p. 384, Act 269, Imd. Eff. Jul. 12;—Am. 1969, p. 325, Act 160, Imd. Eff. Aug. 5.

408.395 Discrimination against employee serving on or testifying to deviation board; penalty.

Sec. 15. Any employer who discharges or in any other manner discriminates against any employee because the employee has served or is about to serve on the wage deviation board or has testified or is about to testify before the board, or because the employer believes that the employee may serve on the board or may testify before the board or in any investigation under the provisions of this act, and any person who violates any provision of this act or of any regulation or order issued under this act, is guilty of a misdemeanor.

HISTORY: New 1964, p. 147, Act 154, Eff. Aug. 28.

408.396 Discharge of employees within ten weeks; misdemeanor.

Sec. 16. Any employer who consistently discharges employees within 10 weeks of their employment and replaces the discharged employees without work stoppage is presumed to have discharged them to evade payment of the wage rates established in this act and shall be guilty of a misdemeanor.

HISTORY: New 1964, p. 147, Act 154, Eff. Aug. 28;—Am. 1966, p. 384, Act 269, Eff. Mar. 1, 1967.

Act 137, 1885, p. 154; Eff. Sep. 19.

AN ACT making 10 hours a legal day's work.

The People of the State of Michigan enact:

408.401 Legal work day; overtime.

Sec. 1. That in all factories, workshops, salt blocks, saw-mills, logging or lumber camps, booms or drives, mines or other places used for mechanical, manufacturing, or other purposes within the state of Michigan, where men or women are employed, 10 hours per day shall constitute a legal day's work; and any proprietor, stockholder, manager, clerk, foreman, or other employers of labor who shall require any person or persons in their employ to perform more than 10 hours per day, shall be compelled to pay such employes for all overtime or extra hours at the regular per diem rate, unless there be an agreement to the contrary.

HISTORY: How. 1907a-5;—CL 1897, 5453;—CL 1915, 5587;—CL 1929, 8486;—CL 1948, 408.401.

CONSTITUTION: See Const. IV, 49.

HOURS OF LABOR: See also Compilers' §§ 409.17-409.19.

408.402 Legal work day; nonspecific contracts.

Sec. 2. That in all contracts, engagements, or agreements to labor in any mechanical, manufacturing, or other labor calling, where such contracts or agreements are silent, or no express conditions specified, 10 hours shall constitute a day's work, and the contract or agreement shall be so construed.

HISTORY: How. 1907a-6;—CL 1897, 5454;—CL 1915, 5588;—CL 1929, 8487;—CL 1948, 408.402.

408.403 Violation of preceding section; penalty; prosecution.

Sec. 3. Any individual, firm, agent of any corporation, or other employers of labor who shall take any unlawful advantage of any person or persons in their employ, or seeking employment, because of their poverty or misfortune, to invalidate any of the provisions of the preceding section, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than 5 dollars, nor more than 50 dollars for each offense, and it shall be the duty of the prosecuting attorney of the county in which such offense was committed, upon receiving complaint, to prosecute all such cases in the name of the people of the state of Michigan, before any justice of the peace or other competent court of jurisdiction.

HISTORY: How. 1907a-7;—CL 1897, 5455;—CL 1915, 5589;—CL 1929, 8488;—CL 1948, 408.403.

408.404 Fines; disposition.

Sec. 4. All fines collected for violation of this act shall be turned over to the school board, or board of education of the city or township wherein such fine may be collected, and the same shall by them be disbursed for and in benefit of the public schools.

HISTORY: How. 1907a-8;—CL 1897, 5456;—CL 1915, 5590;—CL 1929, 8489;—CL 1948, 408.404.

CONSTITUTION: See Const. VIII, 9.

408.405 Construction of act as to exempt employees.

Sec. 5. Nothing in this act shall be construed to apply to domestic or farm laborers, or other laborers who agree to work more than 10 hours per day.

HISTORY: How. 1997a-9;—CL 1897, 5457;—CL 1915, 5501;—CL 1929, 8490;—CL 1948, 408.405.

408.441-408.444 Repealed. 1969, p. 532, Act 289, Imd. Eff. Aug. 11.

Sections related to railroad employees; rest; legal day; overtime compensation; penalty.

408.461, 408.462 Repealed. 1969, p. 297, Act 147, Eff. Mar. 20, 1970.

Sections regulated operation of streetcars and interurban cars upon streets and public highways.

Act 224, 1935, p. 371; Eff. Sep. 21.

AN ACT to provide for the assignment of wage claims and mechanics and other liens of workers to the department of labor and industry in certain cases; to prescribe the powers and duties of the department of labor and industry in the enforcement and collection thereof; and relative to costs and service of process in actions therefor, and fees of certain officers.

The People of the State of Michigan enact:

408.501 Wage earner; definition; purpose of act.

Sec. 1. The term "wage earner" as used in this act shall be construed to mean workers having wage claims or mechanics and other liens for work and labor performed. It is the purpose of this act to protect wage earners not financially able to obtain their day in court, and for the protection of their rights.

HISTORY: CL 1948, 408.501.

408.502 Wage claims and liens; assignment to department of labor and industry, enforcement.

Sec. 2. The department of labor and industry, through any commissioner or deputy commissioner, shall have the power and authority to take assignments of wage claims and incidental expense accounts and advances in connection with wage claims, and mechanics and other liens of wage earners, and to prosecute actions for the collection of such wages and liens of such persons, who, in the judgment of any commissioner or deputy, are financially unable to employ counsel in such cases where the claim is considered valid and enforceable, and to file preferred claims, mechanics' liens and other liens of wage earners and enforce the same in the name of such commissioner or deputy, for the use and benefit of such wage earner.

HISTORY: CL 1948, 408.502.

NOTE: Department of labor and industry abolished; see Compilers' repealed §§ 406.21, 406.33.

408.503 Complaint; filing, investigation.

Sec. 3. In order to take advantage of the provisions of this act, the person claiming to be the injured and aggrieved wage earner shall file a complaint with the department of labor and industry. The complaint shall be investigated to determine whether the claim is considered enforceable and whether the wage earner is financially unable to enforce the claim.

HISTORY: CL 1948, 408.503.

408.504 Claims; enforcement proceedings, advancement of costs.

Sec. 4. The institution of proceedings to enforce the claim shall be in the discretion of the department of labor and industry. The costs of the proceedings shall be advanced by the department of labor and industry from the appropriation of said department, reimbursement to be made therefor as hereinafter provided: Provided, That such advancements shall not exceed 500 dollars at any 1 time. Any sheriff or deputy

sheriff or constable requested by the commissioner or any deputy commissioner shall serve summons or process within his jurisdiction against the defendant in the cause and subpoena witnesses within his jurisdiction for trial or hearing, and levy any attachment, garnishment or execution within his jurisdiction, without cost to said commissioner or deputy commissioner.

HISTORY: CL 1948, 408.504.

408.505 Witnesses; expenses.

Sec. 5. The wage earner shall, in every instance, furnish at his own expense such witnesses as may be deemed necessary for a full and proper presentation and enforcement of the matters involved.

HISTORY: CL 1948, 408.505.

408.506 Department of labor and industry; trustee for wage earner, expenses.

Sec. 6. The department of labor and industry shall be the trustee for the wage earner in proceedings under this act, and shall turn over and account for any funds collected, after having deducted such reimbursements herein provided for and/or further deductions appearing to said commissioner or deputy commissioner reasonable and proper under the facts and circumstances surrounding the case, to meet the expenses of the department.

HISTORY: CL 1948, 408.506.

Sec. 7. (This was a severing clause section.)

HISTORY: Rep. 1945, p. 414, Act 267, Imd. Eff. May 25.

Act 213, 1966, p. 241; Eff. Mar. 10, 1967.

AN ACT to give priority to certain debts owing to or for the benefit of employees.

The People of the State of Michigan enact:

408.511 Suspended business; debts to employees, preferred claims; contest.

Sec. 1. When the business of a person or entity is suspended by the action of creditors, or is placed in the custody of a receiver or trustee, debts owing to or for the benefit of non-salaried employees of the business which have accrued by reason of their employment, including amounts payable to third persons on account of health, welfare, pension or profit sharing plans for the benefit of employees, shall be preferred claims. Such employees or trustees on their behalf shall be preferred creditors and shall be first paid in full before other unsecured creditors are paid. An interested person may contest any such claim by filing exceptions thereto, supported by affidavit, with the officer having the custody of such property, and the claim shall be processed or reduced to judgment in accordance with law.

HISTORY: New 1966, p. 241, Act 213, Eff. Mar. 10, 1967.

408.512 Statement of preferred claim; filing, contents, attachments; payment.

Sec. 2. An employee or other person on his behalf entitled to preference hereunder shall file a statement under oath showing the amount due, the period during which such amount accrued and shall attach to such claim any written contract of employment and any written agreement governing the compensation of such employee, including the trust agreement under which any trustee makes claim, to the officer, person or court charged with such property, within 30 days after the creditor's action or placing of the business in the custody of a receiver or trustee. The person or court re-

ceiving such statement shall pay the amount of such claim when allowed to the person entitled thereto.

HISTORY: New 1908, p. 241, Act 213, Eff. Mar. 10, 1907.

Act 62, 1925, p. 82; Eff. Aug. 27.

AN ACT regulating the time and manner of payment of wages to employes and to certain relatives and creditors in case of the employe's death; the taxing of an attorney fee in actions brought by employes to collect wages in addition to other costs; making it the duty of the department of labor and industry to enforce its provisions, and to provide a penalty for the violation of same.

The People of the State of Michigan enact:

408.521 Wages; manner of payment; disagreements, deductions; common carriers.

Sec. 1. Every employer of labor in the state except employers of farm labor paid daily on a piece rate basis, on or before the first day of each calendar month, shall pay to each employee engaged in his or its employment, the wages earned during the first half of the preceding calendar month, ending with the fifteenth day thereof, and on or before the fifteenth day of each calendar month to each employee the wages earned by him during the last half of the preceding calendar month. Payment of wages may be made more often than herein provided. Any employee, leaving his or her employment between the dates of any established payday hereunder, shall be paid the wages earned and due at the time of leaving, within 3 days after a demand has been made for them. But, any employee, discharged from his or her employment or absent from his or her place of employment on such regular payday shall be paid the wages earned and due such employee forthwith as soon as the amount due can with the utmost diligence be ascertained, unless upon such demand, none of the provisions of this act shall apply to employees working under contract, where the amount due cannot be ascertained until the termination of the contract, but in all cases of employees working under contract, the employer shall pay to such employee semimonthly wages earned by such employee as nearly as they can be estimated, and final and complete payment shall be made at the termination of the contract. In the case of a disagreement between an employee and an employer regarding the amount of wages due to an employee, the employer shall be deemed to have complied with the provisions of this act if the payment of the wages claimed to be correct by the employer is paid to the employee on the regular payday on which such wages are due, and in case the employee proves his claim for more wages due him than has been paid by the employer, the employer shall pay the additional amount due the employee immediately. The payment of such wages and compensation shall be paid in lawful money of the United States or by any good and valuable negotiable check or draft payable on presentation thereof at some bank or established place of business without discount, in lawful money of the United States and not otherwise. Nothing in this act shall be construed as to prohibit a deduction from the wages or compensation of any employee, any indebtedness or obligation owed by such employee to the employer, rates or assessments becoming due to any hospital association or to any relief, savings or other department or association maintained by the employer for the benefit of the employees. All employers, including those who employ farm and domestic labor, the state and any political subdivision thereof, shall furnish their employees at the time of payment of wages or compensation with an itemized statement of any and all deductions made therefrom.

HISTORY: CL 1900, §400;—Am. 1943, p. 14, Act 14, Eff. Jul. 30;—CL 1948, 408.521;—Am. 1960, p. 327, Act 163, Imd. Eff. Aug. 5.

408.522 Death of employee; preference of payment; wages, definition.

Sec. 2. In case of the death of any employee, the employer, including the state and any political subdivision thereof only for the purpose of this section, may pay the wages due to such deceased employee to the spouse, children, father or mother, sister or brother of the deceased employee. Preference shall be given to these persons in the order named unless the employee, by a sworn statement which has been filed with the employer prior to death, has established a different order, without requiring letters of administration to be issued upon the estate of the deceased employee. If the deceased employee does not leave a spouse, children, father, mother, sister or brother surviving him, the employer may pay the wages due such deceased employee to the creditors of such deceased employee as follows: Undertaker, physician, hospital, boardinghouse keeper and nurse, each their pro rata share of wages due such employee, upon a sworn statement of the amount due, without letters of administration being issued. "Wages" includes reimbursement for travel or other expenses which were due to the deceased employee. Payment of such wages shall be a full discharge and release of the employer from the wages so due and paid.

HISTORY: CL 1929, 8500;—CL 1948, 408.522;—Am. 1956, p. 9, Act 8, Eff. Sept. 13;—Am. 1965, p. 230, Act 143, Imd. Eff. Jul. 12.

408.523 Legal actions; attorney's fees.

Sec. 3. Whenever it shall become necessary for the employee to maintain an action at law, for the recovery or collection of any wages due as provided for by this act, and when a regularly licensed attorney is employed, then such judgment in addition to the legal rate of interest and taxable costs shall include an attorney fee of not less than 5 dollars nor more than 15 dollars in the discretion of the court in favor of the successful party to be taxed as part of the costs in the case.

HISTORY: CL 1929, 8501;—CL 1948, 408.523.

408.524 Department of labor and industry; enforcement of act; violations, prosecution.

Sec. 4. It shall be the duty of the department of labor and industry to enforce the provisions of this act and upon due notice the prosecuting attorney of any county in which a violation of this act has occurred shall prosecute the same according to law.

HISTORY: CL 1929, 8502;—CL 1948, 408.524.

408.525 Violation of act; penalty.

Sec. 5. Any employer, unless prevented by act of God, proceedings in bankruptcy, or orders or processes of any court of competent jurisdiction, or circumstances over which such employer has no control, who shall fail to make payment of the wages due any employee as provided in this act, shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine of not to exceed \$100.00.

HISTORY: CL 1929, 8503;—Am. 1947, p. 163, Act 122, Eff. Oct. 11;—CL 1948, 408.525.

408.525a Violation of act with intent to defraud; penalty.

Sec. 5a. Any employer who shall, with intent to defraud, fail to make payment of the wages due any employee as provided in this act, shall be guilty of a misdemeanor and upon conviction thereof, shall be punishable by a fine of not to exceed \$250, or imprisonment in the county jail for not to exceed 6 months, or by both such fine and imprisonment in the discretion of the court.

HISTORY: Add. 1947, p. 164, Act 122, Eff. Oct. 11;—CL 1948, 408.525a.

Sec. 6. (This was a severing clause section.)

HISTORY: CL 1929, 8504;—Rep. 1945, p. 413, Act 267, Imd. Eff. May 25.

408.541-408.544 Repealed. 1970, p. 174, Act 77, Imd. Eff. Jul. 16.

Sections regulated time of payment of wages to employees of specified businesses or industries.

Act 166, 1965, p. 265; Eff. Mar. 31, 1966.

AN ACT to require prevailing wages and fringe benefits on state projects; to establish the requirements and responsibilities of contracting agents and bidders; and to prescribe penalties.

The People of the State of Michigan enact:

408.551 Wages on state projects; definitions.

Sec. 1. As used in this act:

(a) "Construction mechanic" means any skilled or unskilled mechanic, laborer, workman, helper, assistant or apprentice working on a state project but shall not include executive, administrative, professional, office or custodial employees.

(b) "State project" means any new construction, alteration, repair, installation, painting, decorating, completion, demolition, conditioning, reconditioning or improvement of public buildings, works, bridges, highways or roads authorized by a contracting agent.

(c) "Contracting agent" means any officer, board or commission of the state, or any state institution supported in whole or in part by state funds, authorized to enter into a contract for a state project or to perform the same by the direct employment of labor.

(d) "Commissioner" means the commissioner of labor.

(e) "Locality" means the county, city, village or township in which the physical work on any state project is to be performed.

HISTORY: New 1965, p. 265, Act 166, Eff. Mar. 31, 1966.

408.552 Contracts for state projects; minimum wage provisions, exceptions.

Sec. 2. Every contract executed between a contracting agent and a successful bidder as contractor and entered into pursuant to advertisement and invitation to bid for a state project which requires or involves the employment of construction mechanics, other than those subject to the jurisdiction of the state civil service commission, and which is sponsored or financed in whole or in part by the state shall contain an express term that the rates of wages and fringe benefits to be paid to each class of mechanics by the bidder and all of his subcontractors, shall be not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed. Contracts on state projects which contain provisions requiring the payment of prevailing wages as determined by the United States secretary of labor pursuant to the federal Davis-Bacon act (United States code, title 40, section 276a et seq) or which contain minimum wage schedules which are the same as prevailing wages in the locality as determined by collective bargaining agreements or understandings between bona fide organizations of construction mechanics and their employers are exempt from the provisions of this act.

HISTORY: New 1965, p. 265, Act 166, Eff. Mar. 31, 1966.

408.553 Prevailing wage and fringe benefit rates; schedule as part of specifications and bid form.

Sec. 3. A contracting agent, before advertising for bids on a state project, shall have the commissioner determine the prevailing rates of wages and fringe benefits for all classes of construction mechanics called for in the contract. A schedule of these rates shall be made a part of the specifications for the work to be performed and shall be printed on the bidding forms where the work is to be done by contract. If a contract is not awarded or construction undertaken within 90 days of the date of the commis-

sioner's determination of prevailing rates of wages and fringe benefits, the commissioner shall make a redetermination before the contract is awarded.

HISTORY: New 1965, p. 265, Act 166, Eff. Mar. 31, 1966.

408.554 Prevailing wages and fringe benefit rates; establishment; public hearings.

Sec. 4. The commissioner shall establish prevailing wages and fringe benefits at the same rate that prevails on projects of a similar character in the locality under collective agreements or understandings between bona fide organizations of construction mechanics and their employers. Such agreements and understandings, to meet the requirements of this section, shall not be controlled in any way by either an employee or employer organization. If the prevailing rates of wages and fringe benefits cannot reasonably and fairly be applied in any locality because no such agreements or understandings exist, the commissioner shall determine the rates and fringe benefits for the same or most similar employment in the nearest and most similar neighboring locality in which such agreements or understandings do exist. The commissioner may hold public hearings in the locality in which the work is to be performed to determine the prevailing wage and fringe benefit rates. All prevailing wage and fringe benefit rates determined under this section shall be filed in the office of the commissioner of labor and made available to the public.

HISTORY: New 1965, p. 266, Act 166, Eff. Mar. 31, 1966.

408.555 Prevailing wage and fringe benefit rates; posting by contractors.

Sec. 5. Every contractor and subcontractor shall keep posted on the construction site, in a conspicuous place, a copy of all prevailing wage and fringe benefit rates prescribed in a contract and shall keep an accurate record showing the name and occupation of and the actual wages and benefits paid to each construction mechanic employed by him in connection with said contract. This record shall be available for reasonable inspection by the contracting agent or the commissioner.

HISTORY: New 1965, p. 266, Act 166, Eff. Mar. 31, 1966.

408.556 Prevailing wages and fringe benefits; failure to pay, termination of contract; contractor's liability and sureties.

Sec. 6. The contracting agent, by written notice to the contractor and the sureties of the contractor known to the contracting agent, may terminate the contractor's right to proceed with that part of the contract, for which less than the prevailing rates of wages and fringe benefits have been or will be paid, and may proceed to complete the contract by separate agreement with another contractor or otherwise, and the original contractor and his sureties shall be liable to the contracting agent for any excess costs occasioned thereby.

HISTORY: New 1965, p. 266, Act 166, Eff. Mar. 31, 1966.

408.557 Violation of act; penalty.

Sec. 7. Any person, firm or corporation or combination thereof, including the officers of any contracting agent, violating the provisions of this act is guilty of a misdemeanor.

HISTORY: New 1965, p. 266, Act 166, Eff. Mar. 31, 1966.

408.558 Inapplicability of act.

Sec. 8. The provisions of this act shall not apply to contracts entered into or the bids made before the effective date of this act.

HISTORY: New 1965, p. 266, Act 166, Eff. Mar. 31, 1966.

Act 221, 1897, p. 278; Eff. Aug. 30.

AN ACT to prohibit any corporation from selling, giving, delivering or issuing to any person employed by him or it, in payment of wages due for labor, or as advances on the wages of labor not due, any script, order or other evidence of indebtedness purporting to be payable or redeemable otherwise than in money, except by consent of the employe, and to provide a penalty therefor.

The People of the State of Michigan enact:

408.561 Wage payment by script, order or evidence of indebtedness; penalty, civil liability.

Sec. 1. That it shall be unlawful for any corporation to sell, give, deliver or in any manner issue, directly or indirectly, to any person employed by him or it, in payment of wages due for labor, or as advances on the wages of labor not due, any script, token, order, or other evidence of indebtedness purporting to be payable or redeemable otherwise than in money. Any violation of the provisions of this section shall be punishable by a fine of not less than 25 dollars nor more than 100 dollars or imprisonment for not more than 30 days or both such fine and imprisonment in the discretion of the court, and any such script, token, order, or other evidence of indebtedness issued in violation of the provisions of this act, whatever its provisions as to the time or manner of payment shall be, in legal effect, an instrument for the unconditional payment of money only on demand, and the amount thereof may be collected in money by an holder thereof in a civil action against the corporation selling, delivering or in any manner or for any purpose issuing the same; and such holder may be either the person to whom such instrument was originally issued or who acquired the same by purchase and delivery.

HISTORY: CL 1897, 5489;—CL 1915, 7208;—CL 1929, 8509;—CL 1948, 408.561.

408.562 Violation of act; evidence.

Sec. 2. Any script[,], token, order, or other evidence of indebtedness, issued in violation of the provisions of this act, and presented by the holder thereof, shall be taken as prima facie evidence, in any court of competent jurisdiction, of the guilt or indebtedness of any corporation selling, giving, delivering or in any manner issuing the same.

HISTORY: CL 1897, 5490;—CL 1915, 7209;—CL 1929, 8510;—CL 1948, 408.562.

408.563 Violation of act; defendant to actions; voluntary acceptance of script.

Sec. 3. Any person selling, giving, delivering or in any manner issuing said script, token, order, or other evidence of indebtedness in behalf of any corporation in violation of the provisions of the preceding sections shall be the defendant to the criminal action, and the corporation shall be held as defendant to the civil action: Provided, That the provisions of this act shall not apply, when any employe shall voluntarily request or consent to receive script, tokens or orders upon any person, company or corporation in payment, or part payment, of wages due, or to become due, to such employe.

HISTORY: CL 1897, 5491;—CL 1915, 7210;—CL 1929, 8511;—CL 1948, 408.563.

Sec. 4. (This was a repeal section.)

HISTORY: CL 1897, 5491n;—CL 1915, 7211;—CL 1929, 8512;—Rep. 1945, p. 403, Act 267, Imd. Eff. May 25.

Act 106, 1903, p. 128; Eff. Sep. 17.

AN ACT to prescribe the duties and liabilities of employers and employes arising from the offer and acceptance of inducements for the performance of labor or service for hire at some point away from the home locality.

The People of the State of Michigan enact:

408.581 Work away from home locality; contract, terms; minors under sixteen; misrepresentation, penalty.

Sec. 1. Any person, company or corporation, or any agent or officer thereof who shall induce another person, by promise of wages or other valuable consideration, to agree to work for the person, company or corporation in whose behalf the offer of inducements is made, at a point away from his or her home locality, shall specify in writing the terms and conditions under which the said work is to be performed, the rate of wages and how, when and where said wages are agreed to be paid, and may furnish of copy of such statement of agreement to the person so induced by the promises therein to agree to work for the person, company or corporation offering said inducements: Provided, That it shall be unlawful for any person to make a tender of inducement to go away from the home locality to work, to any child under 16 years of age unless the written consent of the parents of such child has been first obtained, as well as the consent of the truant officer or county agent of the board of corrections and charities for the locality where said child belongs; and in case such consent is obtained and the child goes abroad under the influence of the inducements so offered, such child under 16 years of age shall be safely returned to its home at any time when its parents shall request, in writing, such return. Any person or any agent or officer of any corporation who shall, in offering inducements to any person to work for hire at any place apart from his or her home locality, misrepresent any of the conditions of such employment as mentioned above, shall be liable to pay to the person injured by such misrepresentation, the full amount of the damage sustained and shall be further liable to the penalties provided in section 3 of this act.

HISTORY: CL 1915, 5580;—CL 1929, 8009;—CL 1948, 408.581.

BOARD OF CORRECTIONS AND CHARITIES: Abolished; powers and duties transferred to state department of social welfare, see Compilers' § 400.19.

THEATRICAL WORK: At a distance, secured through private employment agency, see Compilers' § 408.616 subd. 3b.

408.582 Fraudulent acceptance of benefits; misdemeanor; prima facie evidence.

Sec. 2. Every person, who, with intent to defraud, shall accept or receive transportation provided by or at the instance or expense of his employer, from any point in this state to or in the direction of the place where he has contracted to perform labor for, or render services to such employer, or who shall knowingly, and with intent to defraud, accept or receive the benefit of any other pecuniary advancements made by or at the instance and cost of his employer, under an agreement on the part of such person to perform labor or render services in repayment of the cost of such transportation or of such other benefits, shall be deemed and adjudged guilty of a misdemeanor if he shall neglect or refuse to render services or perform labor of an equal value to the full amount paid for such transportation or other benefits, or shall neglect or refuse to pay such employer in money the amount paid therefor. The value of the services to be rendered, or labor to be performed shall be determined by the price agreed to be paid therefor by such employer under his contract with the employee. The failure or refusal of any such employee to perform such labor or to render such services in accordance with his contract, or to pay in money the amount paid for such transportation or other benefits, shall be prima facie evidence of his intent to defraud.

HISTORY: CL 1915, 5581;—CL 1929, 8610;—CL 1948, 408.582.

408.583 Violation of act; penalty.

Sec. 3. Every person found guilty of violating the provisions of this act shall be pun-

ished by a fine not exceeding 25 dollars or by imprisonment of not less than 10 nor more than 60 days.

HISTORY: CL 1915, 5582;—CL 1929, 8611;—CL 1948, 408.583.

Act 321, 1929, p. 895; Eff. Jan. 1, 1930.*

AN ACT to regulate private employment agencies and those dealing with them; to provide for a license or a permit for the operation thereof and a fee therefor; to provide for a bond and for penalties; to make an appropriation therefor, and to repeal Act No. 255 of the Public Acts of 1925 and all other acts in conflict therewith.

The People of the State of Michigan enact:

408.601 Private employment bureaus; superintendent, term, duties, salary, assistant, office location, bond.

Sec. 1. The governor shall appoint an administrator of this act, who shall be known as the state superintendent of private employment bureaus, and shall operate under the direction of the commissioner of labor. His term of office shall be coincidental with the term of office of the governor. It shall be the duty of said state superintendent of private employment bureaus to administer this act and he or his deputies shall have the power and authority of sheriffs and other peace officers to make arrests for the violation of the provisions of this act. It shall also be his duty to investigate all complaints against employment bureaus and to take such action as he may deem necessary to prevent fraud, to inspect during business hours all private employment agencies, to keep a book of registration in which shall be entered the names and places of business of all persons to whom a license or permit is issued under this act, to examine all applications for licenses and permits and pass judgment upon them, to issue the classes of licenses and permits as hereinafter provided for.

The state superintendent of private employment bureaus shall receive such salary as the legislature shall appropriate. He may employ an assistant at such compensation as the legislature may appropriate. He may employ such additional staff under civil service procedures as is required to administer this act consistent with the number of licensed bureaus. The superintendent at the time of his appointment or during the tenancy of his office as such shall not be in the employ of the state or any other municipalities thereof in any other capacity. He shall establish an office in the city of Detroit and before entering upon the duties of his office he shall give a bond to the people of the state of Michigan for the faithful receipt and accounting of all moneys received by him in the performance of his duties, the amount to be fixed by the secretary of state undersigned by a surety company at the expense of the state treasury and to be approved by the auditor general and attorney general, said bond shall be filed in the office of the secretary of state.

HISTORY: CL 1929, 8584;—Am. 1933, p. 17, Act 20, Imd. Eff. Feb. 28;—CL 1948, 408.601;—Am. 1965, p. 625, Act 330, Eff. Sep. 1.

FORMER ACTS: Act 301 of 1913, being CL 1915, 5415-5422; Act 250 of 1925.

COMPILERS' NOTE: The catchlines following the act section and subsection numbers of the sections of this act were incorporated as a part of the act when enacted.

*EFFECTIVE DATE: See Compilers' § 408.624.

TERM OF OFFICE: Of governor, see Const. V, 21.

CITED IN OTHER SECTIONS: Sections 408.601 to 408.624 are cited in § 16.427.

408.602 Private employment agencies; definitions.

Sec. 2. The term "employment agent" or "employment agency" as used in this act means any person engaged for gain or profit in the business or profession of serving, assisting or counselling employees seeking employment or employers seeking to pro-

cure employees. The term "theatrical employment agency" as used in this act means the business of conducting an agency, bureau or office for the purpose of procuring or offering, promising or attempting to provide engagements for circus, vaudeville, theatrical or other entertainments or exhibitions or performances, or of giving information as to where such engagements may be procured or provided.

The term "theatrical engagement" as used in this act means any engagement or employment of a person as an actor, entertainer or performer in a circus, vaudeville, theatrical or other entertainment, exhibition or performance.

The term "emergency engagement" as used in this act means an engagement which has to be performed within 48 hours from the time when the contract for such engagement is made.

The word "employer" as used in this act, means any person employing or seeking to employ any person for hire.

The word "employee" as used in this act means any person performing or seeking to perform work or service of any kind or character whatsoever for hire.

The word "person" as used in this act means any person, firm, association or corporation.

The term "artist's manager" as used in this act means any person, firm, association or corporation acting as manager, business advisor or rendering technical assistance to an entertainer for which the person, firm, association or corporation is to receive remuneration out of future earnings of the entertainer.

HISTORY: CL 1929, 8585;—CL 1948, 408.602;—Am. 1965, p. 625, Act 330, Eff. Sep. 1.

408.603 License; requirement.

Sec. 3. License required. No person shall open, operate or maintain an employment agency in the state of Michigan without first procuring a license from the state superintendent of private employment bureaus: Provided, That regularly established educational institutions, religious, labor, charitable, benevolent organizations and departments or bureaus maintained for the purpose of obtaining employment for which no fee, compensation or other valuable consideration is charged or received, directly or indirectly, shall be exempt from the requirement of a license, but shall not open, operate or maintain such employment bureau or department until a permit has been secured from the state superintendent of private employment bureaus.

HISTORY: CL 1929, 8586;—CL 1948, 408.603.

408.604 License; application, content; character references.

Sec. 4. Every applicant for a license shall file with the state superintendent of private employment bureaus a written application on a form approved by the superintendent stating the name and home address of the applicant, the kind of license desired, the street and number of the building in which the employment agency is to be maintained, if an office building the number of the office, the name of the person who is to have the general management of the office, the names of those financially interested therein, the name under which the business of the office is to be carried on, whether or not the applicant is financially interested in any other business and if so, the nature of such business and at what address and city it is carried on. Such application shall be signed by the applicant and sworn to before anyone qualified by law to administer oaths. If the applicant is a corporation the application shall state the names and home addresses of all the officers and directors of such corporation and shall be signed and sworn to by the president, treasurer and secretary thereof. If the applicant is a *partnership* the application shall state the names and home addresses of all *partners therein* and shall be signed and sworn to by all of them. Such application shall *also state whether or not* said applicant or applicants is at the time of making application *or has at any previous time* been engaged or interested in or employed by anyone

engaged in the business of conducting an employment agency either in this state or any other, and if so, where and when. The applicant shall file at least 3 letters of character reference from persons of reputed business or professional integrity located in the county where such applicant intends to conduct his business.

HISTORY: CL 1929, 8587;—CL 1948, 408.604;—Am. 1965, p. 626, Act 330, Eff. Sep. 1.

408.605 License; investigation of applicant.

Sec. 5. Investigation of applicant for license. Upon filing of an application for a license as provided in section 4, hereof, the state superintendent of private employment bureaus shall cause an investigation to be made as to the character and financial standing of the applicant, if the applicant is a corporation, of all the officers thereof, if a partnership, of all partners, also of the person who is to have the general management of the office and as to the location of the office. The application shall be rejected if the state superintendent of private employment bureaus shall find that any of the persons named as applicants in the application or the general manager of the office are not of good moral character, business integrity or financial responsibility and if there is any good sufficient reason within the meaning and purpose of this act for rejecting such application. Unless the applicant shall be rejected for 1 or more of the causes specified above it shall be granted. A detailed record of such investigation shall be made in writing and become a part of the official records of the state superintendent of private employment bureaus.

HISTORY: CL 1929, 8588;—CL 1948, 408.605.

408.605a Adoption of name similar to Michigan employment security commission prohibited.

Sec. 5a. No private employment agency shall adopt or use a name similar to that of the Michigan employment security commission, nor hereafter adopt or use a name likely to be confused with any other free placement bureau. A question of name similarity shall be determined by the state superintendent of private employment bureaus.

HISTORY: Add. 1965, p. 626, Act 330, Eff. Sep. 1.

408.606 Permits; application, investigation, renewal.

Sec. 6. Every applicant for a permit shall file with the state superintendent of private employment bureaus a written application in the form required by him. Upon filing of an application for a permit, provided for in section 3, the state superintendent of private employment bureaus shall cause an investigation to be made. He shall refuse to grant a permit for any good and sufficient reason within the meaning of this act. If an application for a permit is issued to the applicant it shall state the name and address of the institution, organization, firm, person, corporation or association to which such permit issued, the name of the person who is to have immediate charge, the name under which the bureau or department is to be carried on and the address and the date and number of the permit. Every such permit unless previously revoked shall remain in force until December 31 next after its issue. Every application for a permit shall be granted or refused within 30 days from date of filing. Application forms for renewal of permits shall be furnished by the state superintendent of private employment bureaus to each applicant on or before November 15 of each year. An application for renewal of a permit shall be filed with the superintendent at least 2 weeks before existing permit expires.

Permit fees; display of permit.

(a) A charge of \$5.00 shall be made for the issuance of such a permit. Such permit fees shall be turned over by the state superintendent of private employment bureaus to the state treasury and credited to the general fund. Every permit shall be hung in a conspicuous place in the main office where the bureau or department conducted under such permit is carried on.

Records.

(b) Every holder of a permit shall keep or cause to be kept a record of the name and address of every employee directed to or placed in employment together with the kind of employment to which the employee was directed, or which he accepted, a record of the names and addresses of all employers to whom an employee is directed or with whom employment is accepted. Such records shall also contain the date of every transaction. All such records shall be kept for at least 1 year and shall be open at all reasonable times to the inspection of the state superintendent of private employment bureaus at the place where said bureau or department is conducted for the purpose only of satisfying said state superintendent of private employment bureaus that the records are being kept in conformity with this act.

Exemptions from act.

(c) This act does not apply to any person, who maintains an employment office for his own intra-organization purposes exclusively, nor to the Michigan employment security commission.

Part-time or temporary employees; prohibited places.

(d) A person employing individuals to render part-time or temporary personal services to, for or under the direction of a third person is not an employment agency within the meaning of this act if the person employing the individuals, in addition to wages or salaries, pays federal social security taxes, state and federal unemployment insurance, carries workmen's compensation insurance as required by state law, and sustains responsibility for the acts of his employees while rendering services to, for or under the direction of a third person. The person employing individuals to render part-time or temporary personal services shall not send the employees to any place where a strike, lockout or labor dispute exists.

HISTORY: CL 1929, 8599;—Am. 1931, p. 357, Act 206, Eff. Sep. 18;—Am. 1933, p. 17, Act 20, Imd. Eff. Feb. 28;—CL 1948, 408.606;—Am. 1965, p. 626, Act 330, Eff. Sep. 1.

408.607 License; bond.

Sec. 7. Bond. Every application for a license shall be accompanied by a bond in the sum of 1,000 dollars by a duly authorized surety company to be approved by the state superintendent of private employment bureaus and filed by the state superintendent of private employment bureaus in the office of the secretary of state, and shall be conditioned that the person or persons applying for the license shall comply with the terms of each and every contract entered into between the person or persons and any employe or employer, and said bond shall further be conditioned to guarantee to the employer or employe the return of any and all moneys paid out by him as set forth in section 17(d) of this act. Such bond shall further be conditioned so that the revocation of any license shall not affect the coverage provided by the bond as to any acts that occurred prior to the date of such revocation. If at any time in the opinion of the state superintendent of private employment bureaus the surety shall become irresponsible, the person holding such license shall upon notice given by the said state superintendent of private employment bureaus give a new bond, subject to the provisions of this section. The failure to give a new bond within 10 days after such notice shall operate as a revocation of a license.

HISTORY: CL 1929, 8599;—CL 1948, 408.607.

408.608 License; fees, schedule, disposition.

Sec. 8. License fee. The license fee shall be as follows: In all cities or towns having a population of less than 100,000, the license fee shall be 50 dollars. In all cities having a population between 100,000 and 250,000 the license fee shall be 75 dollars. In all cities having a population between 250,000 and 500,000, the license fee shall be 100 dollars. In all cities having a population of more than 500,000, the license fee shall be

200 dollars. Such population to be based on and determined by the last preceding federal census of such cities. Such license fees shall be turned over by the state superintendent of private employment bureaus to the state treasury and credited to the general fund.

HISTORY: CL 1929, 8591;—Am. 1933, p. 18, Act 20, Imd. Eff. Feb. 28;—CL 1948, 408.608.

408.609 License; contents, issuance, renewal.

Sec. 9. The license shall state the name of the employment agent, and if a corporation the names of all the officers, if a partnership the names of all the partners, the location of the office where the business is to be conducted, the name of the person who is to be charged with the general management of the office and the name under which the business is to be carried on. The license shall also be numbered and dated and state whether it is class 1, a class 2, class 3 or class 4 license as hereinafter provided. Every application for a license shall be granted or refused within 30 days from the date of filing and application forms for renewal of licenses shall be furnished by the state superintendent of private employment bureaus to each applicant on or before November 15 of each year. An application for renewal of a license shall be filed with the superintendent at least 2 weeks before the existing license expires.

HISTORY: CL 1929, 8592;—CL 1948, 408.609;—Am. 1965, p. 627, Act 330, Eff. Sep. 1.

408.610 Repealed. 1965, p. 633, Act 330, Eff. Sep. 1.

Section required superintendent of private employment bureaus to prepare copies of act relating to private employment bureaus to be displayed on premises of employment agents.

408.611 License; continuance.

Sec. 11. Continuance of license. Every license unless previously revoked shall remain in force until December thirty-first, next after its issue.

HISTORY: CL 1929, 8594;—CL 1948, 408.611.

408.612 License; suspension and revocation; review; reissuance.

Sec. 12. (a) Should the state superintendent of private employment bureaus find that the employment agent has violated any of the general provisions of this act or those governing his class of license or has acted dishonestly in connection with his business or has improperly conducted his business or that any other good and sufficient reason exists within the meanings and purpose of this act, said state superintendent of private employment bureaus shall suspend or revoke said license or refuse to grant a new license upon the termination thereof, but in any case no such action shall be taken until a written notice has been served on said employment agent, specifying the charges against him and he has been given a fair hearing with respect thereto;

(b) The decision of the state superintendent of private employment bureaus either reviewing, suspending or revoking a license under this act shall be subject to review by writ of certiorari to the circuit court of the county where the applicant conducts his business or intends to establish it;

(c) Whensoever for any cause a license is revoked, or its renewal is denied, the state superintendent of private employment bureaus shall not within 3 years from date of such action issue another license to the person or persons whose license was involved or to his or their representatives or to any person with whom he or they are to be associated. This provision shall not apply to any case where an appeal has been taken as provided for under subdivision (b) of this section and the court has found for the employment agent.

HISTORY: CL 1929, 8595;—CL 1948, 408.612;—Am. 1965, p. 627, Act 330, Eff. Sep. 1.

408.613 License; transfer.

Sec. 13. Transfer of license. No licenses granted under the terms of this act shall be transferable, except that the employment agent may at any time admit a partner to the business as herein provided. However, no employment agent shall permit any per-

son not mentioned in the license to become connected with the business as a partner, or as general manager or as an active officer of a corporation, unless the written consent of the state superintendent of private employment bureaus shall first be obtained. Such consent may be withheld for any reason for which an original application for a license might have been rejected, if the person in question has been mentioned therein. If the consent is given, the name or names of the person or persons so becoming connected with the employment agency shall be endorsed upon the license.

HISTORY: CL 1929, 8596;—CL 1948, 408.613.

408.614 License; place of business specified.

Sec. 14. Place of business. No employment agent shall open, conduct or maintain an employment agency at any other place than that specified in the license without first obtaining the written consent of the state superintendent. So long as the employment agency shall continue to act as such under its license it shall maintain and keep open an office or place of business at the place specified in the license.

HISTORY: CL 1929, 8597;—CL 1948, 408.614.

408.615 License; classifications.

Sec. 15. (a) Licenses granted under the provisions of this act shall be of 4 classes, designated as a class 1 license, a class 2 license, a class 3 license and a class 4 license. A class 1 license shall entitle the holder thereof to serve those in all occupations not enumerated in classes 2, 3 and 4, except teachers' employment agencies.

(b) A class 2 license shall entitle the holder thereof to engage in the business or profession of serving those seeking employment and those seeking employees in technical, clerical, accounting, executive, professional nursing, sales, engineering in all its branches, and like pursuits.

(c) A class 3 license shall entitle the holder thereof to engage in the business or profession of serving those seeking employment or those seeking employees in circus, vaudeville, theatrical or entertainments, exhibitions or performances and allied pursuits.

(d) A class 4 license shall entitle the holder to engage in the business or profession of serving as manager, business advisor or rendering technical service to an entertainer. An artist's manager shall be licensed under a class 4 license regardless of where such business is conducted.

(e) Nothing in this act shall be construed to prohibit an employment agent holding a class 1 license from serving those who fall within the classification set forth in subdivision (b) of section 15 governing a class 2 license, provided the agency is conducted under the rules governing a class 2 license; but under no condition shall a licensee be allowed to conduct a theatrical agency under any but a class 3 or 4 license. Any question of classification shall be determined by the state superintendent of private employment bureaus. An appeal may be taken by an employment agent as provided for in section 12 covering revocation of licenses.

HISTORY: CL 1929, 8598;—CL 1948, 408.615;—Am. 1965, p. 628, Act 330, Eff. Sep. 1.

408.616 License; rules for various classes.

Sec. 16. The rules in this and the following section shall govern the classes of licenses so designated:

CLASS 1 LICENSE

(a) Every employment agent licensed under a class 1 license shall enter into a written agreement with every employee, employer or both, for service to be rendered for which a charge is to be made to the employee or employer by the employment agency. The agreement shall contain the date, the name and address of the employment agency, the name of the licensee, and shall clearly set forth the agency's service charges and time and methods of payment, and a stipulation of refund when supposed

to be permanent employment becomes temporary. On either the face or the back of the agreement shall appear the definition of "acceptance", "permanent employment", "temporary employment" and "charge for supposed to be permanent employment that proves to be temporary".

(b) No employment agent holding a class 1 license shall direct any employee to employment at any place outside of the office of such employment agent without giving to such employee in written form the name and address of the employment agency, the name of the licensee, the name of the employee so directed, the name of the employment agent's representative so directing, the name and address of the employer to whom the employee is directed, the kind of employment to be obtainable at such a place and the wage or salary that such proposed employment is to pay. Nothing herein shall be construed to prohibit an employment agent from directing an employee by telephone to apply for employment, but such telephone message shall be confirmed on the regular above prescribed form in writing by the employment agent within 24 hours after the telephone conversation and a carbon copy of each confirmation shall be kept on file at the place of business of said employment agent for a period of at least 1 year.

CLASS 2 LICENSE

Every employment agent licensed under class 2 license shall enter into a written agreement with every employee, employer, or both, for service to be rendered for which a charge is to be made to the employee or employer by the employment agent, which agreement shall contain the date, the name and address of the employment agency, the name of the licensee, and shall clearly set forth the agency's service charges and the time and methods of payment; and a stipulation of refund when supposed to be permanent employment becomes temporary; and on either the face or the back of such contract shall appear the definition of "accept", "permanent employment", "temporary employment" and "charge for supposed to be permanent employment that proves to be temporary". Nothing herein shall be construed to prohibit an employment agency for good and sufficient reason from rendering service to an employee or an employer without these parties having first entered into a written agreement, in which event an agreement form shall immediately be dispatched to the employer or employee by said employment agent within 24 hours after an employee has been directed to an employer or an employer has been directed to an employee.

CLASS 3 LICENSE

(a) Every employment agent conducting a theatrical employment agency, before making a theatrical engagement, except an emergency engagement, for an employee with any employer for services in any such engagement shall prepare and file in such agency a written statement signed and verified by such employment agent setting forth how long the employer has been engaged in the theatrical business. Every such statement shall be kept for the period of 1 year. Such statement shall set forth whether or not such employer while financially interested in a theatrical business has failed to pay salaries or left stranded any company, group or employee during the 5 years preceding the date of application and further shall set forth the names of at least 2 persons as references. If such employer is a corporation, such statement shall set forth the names of the officers and directors thereof and the length of the time such corporation or any of its officers have been engaged in the theatrical business and the amount of the paid-up capital stock. It shall further state, whether any such officers or directors while previously engaged in the theatrical business have failed to pay salaries or left stranded any company, group or employee. If any allegation in such written verified statement is made upon information or belief, the person verifying the statement shall set forth the sources of his information and the grounds of his belief. Such statement so

on file shall be kept for the benefit of any employees whose services are sought by any such employer.

(b) Every employment agency conducting a theatrical employment agency who shall procure for or offer to an employee a theatrical engagement shall have executed in duplicate a contract containing the name and address of the employee, the name and address of the employer, and that of the employment agent acting for such employer in employing such employee; the character of the entertainment to be given or services to be rendered; the number of performances per day or per week that are to be given; by whom the transportation is to be paid, and if by the employee, either the cost of the transportation between the places where said entertainment or services are to be given or rendered, or the average cost of transportation between the places where such services are to be given or rendered; and if a dramatic engagement the cost of transportation to the place where the services begin if paid by the employee; and the gross commissions or fees to be paid by said employee and to whom.

HISTORY: CL 1929, 8599;—CL 1948, 408.616;—Am. 1965, p. 628, Act 330, Eff. Sep. 1.

408.616a Artist's manager's license; requirements.

Sec. 16a. CLASS 4 LICENSE.

Every artist's manager licensed under a class 4 license shall enter into a written agreement with every artist-entertainer or client for service to be rendered for which a charge is to be made, which agreement shall provide:

(a) The term of employment of the artist's manager by the artist or client, and the compensation or rate of compensation to be paid by the artist or client to the artist's manager or agency.

(b) The artist's manager shall use all reasonable efforts to procure employment for the artist or client in the field or fields in which the artist's manager or agency is representing the artist or client.

(c) Failure of the artist to obtain bona fide employment from a responsible employer in a field or fields in which the artist or client is represented by the artist's manager for more than 6 months shall be deemed cause for termination of the agreement by either party, or in lieu thereof, the agreement shall guarantee to the artist or client a minimum amount of earnings per year to be derived from employment or paid by the artist's manager, but the artist or client, at all times during such 6 months or a year, shall be ready, willing, able and available to accept employment and to render the services required in connection with the employment. Notice of the intention of either party to terminate the agreement shall be given in writing to the other party.

(d) A complete detailed accounting shall be given to the artist or client every 6 months. The accounting shall be certified by a certified public accountant and shall be forwarded to the artist or client, together with all moneys that are owed to the date of the accounting.

(e) An agreement shall be in writing and signed by the artist's manager and the artist or client. Oral contracts are void and unenforceable.

A copy of every agreement shall be forwarded to the state superintendent of private employment bureaus and shall be valid and enforceable in courts of law unless objection, in writing, to the agreement is made by the superintendent within 30 days after receipt of the copy of the agreement.

No artists' managers' agreement shall be approved while there is on file with the superintendent a copy of an agreement pertaining to the same artist or client.

HISTORY: Add. 1965, p. 630, Act 330, Eff. Sep. 1.

408.617 License; rules for all classifications.

Sec. 17. In addition to the foregoing rules governing specific classifications the following rules shall govern each and every employment agent:

(a) Every license of whatever classification shall be hung in a conspicuous place in the main office of the employment agency.

(b) Every employment agent shall give to every person from whom a payment is received for services rendered or assistance given, a receipt bearing the name and address of the employment agency, the name of the licensee, the name of the person receiving the money, the amount of the payment, the date of payment, and for what it is paid. Every such receipt shall be numbered and bound in duplicate form. The duplicate shall be kept at least 1 year at the office of the licensed agent.

(c) Every employment agent shall keep for the period of at least 1 year a complete record of all orders for employees received from employers and the full name of the person placing the order, the date on which the order is placed, the name and address of every employee directed to an employer, the nature of the employment and the name and address of the employer to whom the employee is directed. A record shall also be kept of the name and address of every employee accepting employment, the name and address of the employer with whom employment is accepted, the nature of the employment, the probable duration of the employment, the rate of wages or salary to be paid to the employee, the amount of the employment agent's service charges, the dates and amounts of payments, the date and amount of refund, if any, a space for remarks, under which shall be recorded anything of an individual nature to amplify the foregoing record as information in the event of any question arising concerning the transaction. Such records shall during business hours be open to the inspection of the state superintendent of private employment bureaus at the address where said employment agency is conducted for the sole purpose of satisfying said state superintendent of private employment bureaus that they are being kept in conformity with this act. Should the said state superintendent of private employment bureaus be in possession of facts which justify the believing that the agent is guilty of practices prohibited in this act, he shall request the employment agent for the privilege of examining the agency records, and such request shall be granted by the agency unless the employment agent has reasons to believe that the request of the said state superintendent of private employment bureaus is for the purpose of securing confidential information concerning the business of the agency or the employer. Then the employment agent may refuse the request of the state superintendent of private employment bureaus, in which case the state superintendent of private employment bureaus may take action as provided under section 12 of this act. Upon written complaint of an employee or an employer the state superintendent of private employment bureaus may require of the employment agent against whom the complaint is made a detailed account in writing and under oath of the transaction referred to in the complaint, but in no other case shall the employment agent be required to file any form or report as to the business conducted by said employment agent. In the event that the state superintendent of private employment bureaus has reason to question the detailed report so submitted to him by the employment agent, the said state superintendent of private employment bureaus shall have authority to demand of the employment agent the production of said records for examination by him.

An employment agency shall maintain for a period of 1 year a file of all job advertisements, identified by date and publication name.

(d) No employment agent shall direct an employee to employment without having obtained either orally or in writing a bona fide order therefor, and if no employment of the kind specified by the employment agent existed at the place to which such em-

ployee was directed or if no other employment in substitution thereof is accepted by the employee, the employment agent shall within 24 hours of demand refund to the employee any sums paid by the employee for transportation in going to and returning from such place. Nothing in this act shall prevent an employment agent from directing an employee to an employer where the employer has previously requested that he be accorded interviews with employees of certain types and qualifications, even though no actual vacancy existed in the employer's organization at the time the employee was so directed, nor shall it prevent an employment agent from attempting to sell the services of an employee to an employer, even though no order has been placed with the employment agent. If the employee is acquainted with the facts when directed to the employer, no employment agent shall be liable to an employee for the expenses the employee has had as provided herein.

(e) No employment agent shall by himself or by his agent or agents solicit or persuade any employee to leave any employment which was secured for said employee through the negotiations of said employment agent, or his agent or agents.

(f) No employment agent shall by himself or through any of his agents persuade, induce or solicit any employer to discharge any employee.

(g) Nothing herein shall prohibit the state superintendent of private employment bureaus from prescribing or accepting alternative forms of contracts or receipts which may be used by class I, class II or class III employment agencies for specific occupations in which the nature and duration of employment reasonably justifies the use of a contract or receipt different from that prescribed herein.

(1) Contracts or agreements and receipts between licensees and applicants or employers shall contain the following exact language except for the several agency names:

(Agency name) is licensed, bonded and operates under the laws of the state of Michigan and is regulated by the state superintendent of private employment bureaus, 1702 Cadillac Square building, Detroit, Michigan 48226. (Phone 222-6346).

(2) The following shall appear on all contracts or agreements immediately before the signature of the applicant:

I have read and understand this contract ("yes" or "no")

I hereby acknowledge receipt of a copy of this contract ("yes" or "no")

(h) An employment agency at the time of employing a person authorized to interview or counsel with applicants or employers, or authorized to sign receipts or contracts on behalf of the agency shall immediately notify the state superintendent of private employment bureaus in writing of the name and residence address of each such person. An employment agency shall immediately notify the superintendent in writing of the name and residence address of each person no longer authorized to interview or counsel with applicants or employers or to sign receipts or contracts on behalf of the agency.

HISTORY: CL 1929, 8600;—Am. 1947, p. 440, Act 275, Eff. Oct. 11;—CL 1948, 408.617;—Am. 1965, p. 630, Act 330, Eff. Sep. 1.

408.617a Contracts or receipts; form, approval; schedule of service charges, filing.

Sec. 17a. (a) No form of contract or receipt shall be printed or used by an employment agency unless the same has first been accepted by the state superintendent of private employment bureaus. A contract or receipt shall be accepted unless it fails to comply with this act. Acceptance of the form of contract or receipt shall be indicated by an indorsement thereon by the state superintendent, copy of which shall be retained by the employment agency. No form of contract or receipt previously accepted

shall be reprinted or reproduced unless it has been resubmitted to the state superintendent for review and has been accepted by an indorsement of the state superintendent.

(b) An employment agent shall make as a part of the contract and shall file with the state superintendent of private employment bureaus a schedule of service charges to be made and collected in the conduct of his business. Proposed changes in the service charge schedule shall be filed with the state superintendent for acceptance prior to being put into use.

HISTORY: Add. 1965, p. 632, Act 330, Eff. Sep. 1.

408.618 Fraudulent advertising.

Sec. 18. False advertising. No employment agent shall wilfully cause to be printed, published or circulated a false or fraudulent notice or advertisement for employes or for obtaining employment.

HISTORY: CL 1929, 8601;—CL 1948, 408.618.

408.619 Applicant referrals; places prohibited.

Sec. 19. An employment agency shall not knowingly procure, entice, send or aid or abet in procuring, enticing or sending a woman or girl to practice prostitution, or to enter as an inmate or a servant a house of ill fame, or other place resorted to for prostitution, or for the purpose of taking part or performing in unclean, nude, licentious, lewd or vicious shows.

An employment agency shall not knowingly or negligently send an applicant to a place where a strike or lockout exists or is impending without informing the applicant of the strike or lockout, and shall enter a statement of such fact upon the referral slip given to the applicant.

HISTORY: CL 1929, 8602;—CL 1948, 408.619;—Am. 1965, p. 632, Act 330, Eff. Sep. 1.

408.620 Fraud and fee splitting prohibited.

Sec. 20. No employment agent or his agent shall give, offer or promise to an agent, employee or servant any gift or gratuity whatever with intent to influence his action in relation to the business of his principal, employer or master, and no agent, employee or servant shall request or accept a gift of gratuity or a promise to make a gift or to do an act beneficial to himself, under an agreement or with an understanding with an employment agent or his agent that he shall act in any particular manner in relation to the business of his principal, employer or master. No employment agent or his agent shall give, offer or promise to an employer or his agent any gift or gratuity whatever with intent to influence his action in employing or discharging employees and no employer or his agents shall accept a gift or gratuity or a promise to make a gift or to do an act beneficial to himself, under an agreement or with an understanding with an employment agent or his agent, that he shall employ or discharge employees. No employment agency shall share a placement fee with any person other than a duly licensed agency of this, or another state in which a license is required. No person shall be excused from attending, testifying or producing books, papers, contracts, agreements and documents before any courts or in obedience to the subpoena of any court having jurisdiction of the offense described herein, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture, but no person shall be liable to any suit or procedure, civil or criminal, for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, before said court or in obedience to its subpoena or in any such case or proceeding.

HISTORY: CL 1929, 8603;—CL 1948, 408.620;—Am. 1965, p. 632, Act 330, Eff. Sep. 1.

408.620a Registration fees prohibited; maximum charges.

Sec. 20a. No employment agency or his agent shall require or accept from an applicant a registration fee, deposit, portion of a service charge or any other charge whatsoever for any service until a bona fide acceptance of employment has been effected. The total charge shall not exceed the service charge provided in the agreement.

HISTORY: Add. 1947, p. 442, Act 275, Eff. Oct. 11;—CL 1948, 408.620a;—Am. 1965, p. 633, Act 330, Eff. Sep. 1.

408.621 Violation of act; penalty.

Sec. 21. Penalties. Any person found guilty of the violation of any section of this act shall be guilty of a felony and shall be subject to a fine of not less than 300 dollars or more than 1,000 dollars, or by imprisonment not to exceed 4 years or both, at the discretion of the court.

HISTORY: CL 1929, 8604;—CL 1948, 408.621.

Sec. 22. (This was an appropriation section.)

HISTORY: CL 1929, 8605;—Rep. 1945, p. 412, Act 267, Imd. Eff. May 25.

408.623 Severability.

Sec. 23. Validity of this act. Should 1 or more of the provisions of this act be held invalid, such invalidity shall in no manner affect any of the valid provisions hereof.

HISTORY: CL 1929, 8606;—CL 1948, 408.623.

408.624 Effective date.

Sec. 24. Act effective. This act shall become effective on the first day of January, 1930.

HISTORY: CL 1929, 8607;—CL 1948, 408.624.

Sec. 25. (This was a repeal section.)

HISTORY: CL 1929, 8608;—Rep. 1945, p. 407, Act 267, Imd. Eff. May 25.

ACT REPEALED: Act 255, 1925.

Act 225, 1966, p. 281; Imd. Eff. Jul. 11.

AN ACT to provide for the inspection, licensing and regulation of carnival and amusement rides; to provide for the safety of the public using carnival and amusement rides; to create a carnival-amusement safety board in the department of labor; to provide for the disposition of revenues; to make an appropriation; and to provide penalties for violations.

The People of the State of Michigan enact:

408.651 Carnival-amusement safety act of 1966; short title.

Sec. 1. This act shall be known and may be cited as the "carnival-amusement safety act of 1966".

HISTORY: New 1966, p. 282, Act 225, Imd. Eff. Jul. 11.

CITED IN OTHER SECTIONS: Sections 408.651 to 408.667 are cited in § 16.496.

408.652 Carnival-amusement safety act; definitions.

Sec. 2. As used in this act:

(a) "Carnival or amusement ride" means a device which carries or conveys passengers along, around or over a fixed or restricted route or course for the purpose of giving its passengers amusement, pleasure, thrills or excitement.

(b) "Director" means the director of the department of labor.

(c) "Operator" or "owner" means a person who owns or controls or has the duty to control the operation of an amusement ride. It includes the state or any of its subdivisions.

HISTORY: New 1966, p. 282, Act 225, Imd. Eff. Jul. 11.

408.653 Carnival-amusement safety board; membership, appointment, terms, group representation.

Sec. 3. There is created the carnival-amusement safety board to consist of 7 members. One member shall be the director of the department of labor. Six members shall be appointed by the governor with the advice and consent of the senate. The term of members shall be 4 years, except of the first members appointed by the governor, 2 shall be appointed for 2 years, 2 for 3 years and 2 for 4 years. Of the 6 appointed members of the board, 1 shall be representative of the amusement park operators, 1 shall be representative of the carnival ride operators, 1 shall be representative of the retail merchants association, 1 shall be a registered professional engineer and 2 shall be representatives of the general public.

HISTORY: New 1906, p. 282, Act 225, Imd. Eff. Jul. 11.

408.654 Carnival-amusement safety board; meetings; quorum, chairman, clerical and administrative assistants.

Sec. 4. A majority of the 7 members of the board constitutes a quorum. The board shall meet at least twice yearly and at the call of the chairman or by written request of at least 3 members. The board shall elect a chairman and such other officers as it deems necessary to perform its duties between meetings and may hire such clerical and administrative help as it deems necessary, to be paid out of the appropriation to the board.

HISTORY: New 1906, p. 282, Act 225, Imd. Eff. Jul. 11.

408.655 Carnival-amusement safety board; members, compensation and expenses.

Sec. 5. The members of the board shall receive compensation for their services at the rate of \$20.00 per day for meeting days and shall be entitled to actual and necessary expenses while on the business of the board.

HISTORY: New 1906, p. 282, Act 225, Imd. Eff. Jul. 11.

408.656 Carnival-amusement safety board; promulgation of definitions, codes, rules and regulations.

Sec. 6. The board shall promulgate and formulate definitions, codes, rules and regulations for the safe installation, repair, maintenance, use, operation and inspection of all carnival-amusement rides as the board finds necessary for the protection of the general public using carnival and amusement rides. The definitions, codes, rules and regulations shall be reasonable and based upon generally accepted engineering standards, formulas and practices and shall be issued in accordance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

HISTORY: New 1906, p. 282, Act 225, Imd. Eff. Jul. 11.

408.657 Administration of act.

Sec. 7. The director of the department of labor shall administer and enforce all provisions of this act and all codes, rules and regulations promulgated by the board.

HISTORY: New 1906, p. 282, Act 225, Imd. Eff. Jul. 11.

408.658 Schedule of inspection and permit fees.

Sec. 8. The board shall determine a schedule of inspection and permit fees.

HISTORY: New 1906, p. 282, Act 225, Imd. Eff. Jul. 11.

408.659 Inspectors; appointment, qualifications.

Sec. 9. The department may hire inspectors to inspect carnival-amusement rides. The chief carnival-amusement ride inspector shall be licensed in the state as a profes-

sional engineer, in accordance with Act No. 240 of the Public Acts of 1937, as amended, being sections 338.551 to 338.576 of the Compiled Laws of 1948.

HISTORY: New 1966, p. 283, Act 225, Imd. Eff. Jul. 11;—Am. 1967, p. 504, Act 265, Imd. Eff. Jul. 19.

408.660 Carnival-amusement ride; permit requirement, application, annual inspection.

Sec. 10. No person shall operate a carnival-amusement ride without a permit issued by the director. On or before March 1 of each year an operator shall apply for a permit to the director on a form furnished by the director and containing such information as the board may require. All carnival-amusement rides shall be inspected before they are originally put into operation for the public's use and thereafter at least once every year, unless authorized to operate on a temporary permit. Carnival-amusement rides may also be inspected each time they are disassembled and reassembled.

HISTORY: New 1966, p. 283, Act 225, Imd. Eff. Jul. 11.

408.661 Permit; issuance.

Sec. 11. If, after inspection, a carnival-amusement ride is found to comply with the rules and regulations of the board, the director shall issue a permit to operate.

HISTORY: New 1966, p. 283, Act 225, Imd. Eff. Jul. 11.

408.662 Erection or alteration of ride; notice of intent, plans or diagrams.

Sec. 12. Before a new carnival-amusement ride is erected, or whenever any additions or alterations are made which change the structure, mechanism, classification or capacity of any carnival-amusement ride, the operator shall file with the department a notice of his intention and any plans or diagrams requested by the director.

HISTORY: New 1966, p. 283, Act 225, Imd. Eff. Jul. 11.

408.663 Order for temporary cessation of operation; unsafe condition, correction.

Sec. 13. The director or board may order, in writing, a temporary cessation of operation of a carnival-amusement ride if it has been determined after inspection to be hazardous or unsafe. Operation shall not resume until such conditions are corrected to the satisfaction of the director or board.

HISTORY: New 1966, p. 283, Act 225, Imd. Eff. Jul. 11;—Am. 1967, p. 504, Act 265, Imd. Eff. Jul. 19.

408.664 Construction of act as to existing installations.

Sec. 14. This act shall not be construed to prevent the use of any existing installation which upon inspection is found to be in a safe condition and in conformance with the rules and regulations of the board.

HISTORY: New 1966, p. 283, Act 225, Imd. Eff. Jul. 11.

408.665 Hardship cases; modification of rules and regulations, request, written authorization, record.

Sec. 15. If there are practical difficulties or unnecessary hardships for an operator to comply with the rules and regulations under this act, the director, with the approval of the board, may modify the application of such rules or regulations if the spirit of the rules and regulations shall be observed and the public safety is secure. Any operator may make a written request to the board stating his grounds and applying for such modification. Any authorization by the director and the board shall be in writing and shall describe the conditions under which the modifications are permitted. A record of all modifications shall be kept in the department and open to the public.

HISTORY: New 1966, p. 283, Act 225, Imd. Eff. Jul. 11.

408.666 Liability insurance or bond; amount required.

Sec. 16. No person shall operate a carnival-amusement ride unless at the time there is in existence (a) a policy of insurance in an amount of not less than \$50,000.00 insuring the owner or operator against liability for injury suffered by persons riding the car-

nival-amusement ride, or (b) a bond in a like amount: Provided, however, That the aggregate liability of the surety under any such bond shall not exceed the face amount thereof, or (c) cash or other security acceptable to the board.

HISTORY: New 1966, p. 283, Act 225, Imd. Eff. Jul. 11.

408.667 Interference with authorized personnel; misdemeanor.

Sec. 17. Any person who interferes with, impedes or obstructs in any manner the director of labor, authorized representative or a board member in the performance of his duties is guilty of a misdemeanor.

HISTORY: New 1966, p. 284, Act 225, Imd. Eff. Jul. 11;—Am. 1967, p. 504, Act 265, Imd. Eff. Jul. 19.

408.701-408.703 Repealed. 1963, p. 102, Act 89, Eff. Jul. 1.

Sections created administrative building safety council within department of labor, and prescribed its powers and duties.

Act 89, 1963, p. 100; Eff. Jul. 1.

AN ACT relating to construction safety; to create the state safety commission; to prescribe its powers and duties; to provide fees; and to prescribe penalties for violation of this act; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

408.711 Construction safety act of 1963; short title.

Sec. 1. This act shall be known and may be cited as the "construction safety act of 1963".

HISTORY: New 1963, p. 100, Act 89, Eff. Jul. 1.

CITED IN OTHER SECTIONS: Sections 408.711 to 408.724 are cited in § 408.803.

408.712 Construction safety act; definitions.

Sec. 2. As used in this act:

(a) "Commission" means the state construction safety commission created by this act.

(b) "Construction industry" means construction firms, employers and contractors (but not including firms or companies, whose principal business is other than construction work, provided their construction work consists only of maintenance construction work performed on their own property by their own employees) whose classification as construction industry is in accordance with the standard industrial classification manual prepared by the technical committee on industrial classifications, office of statistical standards, 1967 edition, and who are subject to the workmen's compensation law.

HISTORY: New 1963, p. 100, Act 89, Eff. Jul. 1;—Am. 1964, p. 288, Act 217, Eff. Jan. 1, 1965;—Am. 1965, p. 82, Act 50, Imd. Eff. Jun. 9;—Am. 1970, p. 499, Act 156, Imd. Eff. Jan. 1, 1971.

408.713 State construction safety commission; members, appointment, qualifications, term.

Sec. 3. The state construction safety commission shall consist of 7 members appointed by the governor with the advice and consent of the senate. Three members of the commission shall be actively engaged in the construction industry on the management level. Three members shall be actively engaged in the construction industry at the employee level of the building trades. The seventh member shall be a representative of the workmen's compensation insurance industry authorized to do business in this state. Members of the commission shall serve for 3 years, except that of the members first appointed, 3 shall serve for 1 year, 3 for 2 years and 1 for 3 years, and until their successors are appointed and qualified.

HISTORY: New 1963, p. 100, Act 89, Eff. Jul. 1;—Am. 1970, p. 499, Act 156, Imd. Eff. Jan. 1, 1971.

CITED IN OTHER SECTIONS: The above section is cited in § 16.483.

408.714 Construction safety commission; members, compensation and expenses.

Sec. 4. The members of the commission shall receive no compensation, but shall be entitled to their actual and necessary expenses incurred in the performance of their duties.

HISTORY: New 1963, p. 100, Act 89, Eff. Jul. 1.

408.715 Construction safety commission; quorum; action.

Sec. 5. Four members of the commission constitute a quorum, but the commission shall take no action without the concurrence of a majority of the commission.

HISTORY: New 1963, p. 101, Act 89, Eff. Jul. 1;—Am. 1970, p. 499, Act 156, Imd. Eff. Jan. 1, 1971.

408.716 Construction safety commission; director, qualifications, salary; other employees.

Sec. 6. The commission may employ a director not within the classified service who shall have had at least 10 years of management in the construction industry, and such other professional, technical and clerical employees as are necessary within limits of appropriations made by the legislature. The director shall receive such salary as is appropriated by the legislature.

HISTORY: New 1963, p. 101, Act 89, Eff. Jul. 1;—Am. 1965, p. 82, Act 50, Imd. Eff. Jun. 9;—Am. 1970, p. 499, Act 156, Imd. Eff. Jan. 1, 1971.

408.717 Construction safety rules and regulations; promulgation.

Sec. 7. The commission may promulgate safety rules and regulations for the inspection and use of equipment and for safe working conditions, based upon generally accepted nationwide engineering standards and practices. The rules and regulations shall be in accordance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

HISTORY: New 1963, p. 101, Act 89, Eff. Jul. 1;—Am. 1965, p. 82, Act 50, Imd. Eff. Jun. 9;—Am. 1966, p. 58, Act 33, Eff. Mar. 10, 1967.

408.718 Regional construction safety training program; safety ratings, determination.

Sec. 8. The commission may cooperate with other public and private agencies for the purposes of promoting construction safety and may conduct regional construction safety training programs. The commission shall establish safety ratings for all registered employers. Such ratings shall be determined by the ratio which his rate of injuries bears to the statewide rate of injuries of all registered employers. In determining the annual safety rating, the commission shall consider for each employer the degree of hazard; total number of compensable time loss injuries and the total number of man-hours worked. Each registered employer shall furnish to the commission complete information regarding the total number of compensable time loss injuries and the total man-hours worked during the preceding year.

HISTORY: New 1963, p. 101, Act 89, Eff. Jul. 1;—Am. 1970, p. 499, Act 156, Imd. Eff. Jan. 1, 1971.

408.719 Investigations; safety record; violation of rules.

Sec. 9. The commission shall investigate any registered employer whose safety record fails to meet the set minimum standards for his classification, or may investigate alleged violations of its rules upon written notification from an employee or his agent, after said employee or agent has reported the alleged violation in writing to the employer and given him a reasonable length of time in which to correct the alleged violation.

HISTORY: New 1963, p. 101, Act 89, Eff. Jul. 1;—Am. 1970, p. 499, Act 156, Imd. Eff. Jan. 1, 1971.

408.720 Registration; application, fee; certificate of registration, expiration; appropriation.

Sec. 10. All employers as defined in section 2, paragraph (b), engaged in the construction industry shall register with the commission. Applications for registration shall be on forms furnished by the commission and shall contain the name and business address of the applicant and the phase of the construction industry in which the applicant is engaged. Applications shall be accompanied by an annual registration fee of \$10.00 for employers of less than 3 employees and \$35.00 for employers of 3 or more employees. The commission shall issue a certificate of registration which shall be posted in the main office of the employer. Certificates of registration shall expire on December 31 in the year in which issued and applications for renewal shall be filed on or before the expiration date. All revenues received by the commission shall be deposited in the state treasury to the credit of the general fund, and the legislature shall not appropriate to the commission an amount in excess of the revenues received by the commission.

HISTORY: New 1963, p. 101, Act 89, Eff. Jul. 1;—Am. 1964, p. 289, Act 217, Eff. Jan. 1, 1965;—Am. 1970, p. 500, Act 156, Imd. Eff. Jan. 1, 1971.

408.721 Registration; suspension or revocation, procedure.

Sec. 11. The commission may suspend or revoke the registration of any employer who violates any provisions of this act or any of the rules. In all cases involving the suspension or revocation of a registration, the commission shall observe the following procedure:

(a) The commission shall provide the registrant with a written notice by registered mail citing the violation and shall include in such notice a copy of this act and the rules.

(b) The commission shall allow the registrant a reasonable length of time to respond either in person or by registered mail, but not to exceed 30 days.

(c) After a response has been received by the commission, the commission shall decide at its next regular meeting either to continue or suspend the registration and notify the registrant by registered mail within 10 days of its action.

(d) If the registrant fails to respond to the written notice within the specified time, the commission may suspend his registration and notify him accordingly.

(e) A registration that has been suspended shall remain suspended until reinstated by the commission and a new application for registration shall not be honored by the commission from any employer while his registration is suspended.

(f) Any employer subject to the provisions of this act who performs construction work without having a valid registration issued by the commission is guilty of a misdemeanor.

HISTORY: New 1963, p. 101, Act 89, Eff. Jul. 1;—Am. 1970, p. 500, Act 156, Imd. Eff. Jan. 1, 1971.

408.722 Construction safety commission; annual report.

Sec. 12. The commission shall report annually to the legislature.

HISTORY: New 1963, p. 102, Act 89, Eff. Jul. 1.

408.723 Effective date of act.

Sec. 13. This act shall take effect on July 1, 1963.

HISTORY: New 1963, p. 102, Act 89, Eff. Jul. 1.

408.724 Repeal.

Sec. 14. Act No. 164 of the Public Acts of 1951, being sections 408.701 to 408.703, is repealed.

HISTORY: New 1963, p. 102, Act 89, Eff. Jul. 1.

Act 290, 1965, p. 551; Eff. Jul. 1, 1966.

AN ACT to regulate the use, construction, installation and repair of boilers; to create a board of boiler rules; to prescribe uniform rules and regulations for boilers; to provide for the licensing of boiler inspectors, installers and repairers; to provide fees for licenses, permits, inspections and certificates; to provide penalties for the violation of this act; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

408.751 Boiler act of 1965; short title.

Sec. 1. This act shall be known and may be cited as the "boiler act of 1965".

HISTORY: New 1965, p. 551, Act 290, Eff. Jul. 1, 1966.

CITED IN OTHER SECTIONS: Sections 408.751 to 408.776 are cited in § 16.485.

408.752 Definitions.

Sec. 2. As used in this act:

(a) "Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum by the application of heat from combustible fuels, electricity or nuclear energy. The term does not include such facilities of an integral part of a continuous processing unit but shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

(b) "Power boiler" means a closed vessel in which steam or other vapor is generated at a pressure of more than 15 p.s.i.g. by the direct application of heat.

(c) "High pressure, high temperature water boiler" means a water heating boiler operating at pressure exceeding 160 p.s.i.g. or temperatures exceeding 250 degrees Fahrenheit.

(d) "Low pressure boiler" means a steam boiler operated at pressures not exceeding 15 p.s.i.g., or a hot water heating boiler operated at pressures not exceeding 160 p.s.i.g. or temperatures not exceeding 250 degrees Fahrenheit.

(e) "Certificate inspection" means an inspection, the report of which is used by the chief inspector to decide whether or not a certificate as provided by section 19 (c) may be issued. This certificate inspection shall be an internal inspection when construction permits; otherwise it shall be as complete an inspection as possible.

(f) "External inspection" means an inspection which does not involve examination of the internal surfaces of the pressure parts of the boiler.

(g) "Second-hand boiler" means a boiler which has changed ownership and location after primary use.

(h) "Heating surface" means the heating surface determined by the boiler manufacturer and recorded in his manufacturer's data report or by rules established by the board for those boilers, the manufacturer's data report of which is not available or the boiler is not stamped with its heating surface.

(i) "Process boiler" means a boiler operated at any pressure or temperature from which more than 10% of its capacity is used for direct steam humidification or direct process work.

(j) "Boiler for agricultural purposes" means a portable boiler used in fields or similar open areas for the sole purpose of operating farm equipment or farm machinery.

HISTORY: New 1965, p. 551, Act 290, Eff. Jul. 1, 1966;—Am. 1970, p. 349, Act 103, Imd. Eff. Jul. 23.

408.753 Board of boiler rules; members, terms, removal, vacancies, meetings, election of officers; quorum; expenses, salary.

Sec. 3. (1) There is created within the department of labor a board of boiler rules, hereafter referred to as the board, which in addition to the commissioner of labor shall consist of 10 members, each of whom shall have at least 10 years' experience in the design, erection, fabrication, installation, operation, repair or inspection of boilers and shall be appointed by the governor with the advice and consent of the senate, 2 for a term of 1 year, 2 for terms of 2 years, 3 for terms of 3 years and 3 for terms of 4 years. At the expiration of their respective terms of office, their successors shall be appointed for terms of 4 years each. The governor at any time may remove any member of the board for inefficiency or neglect of duty in office. Upon the death or incapacity of any member, the governor shall fill the vacancy for the remainder of the vacated term with a representative of the same interests with which his predecessor was identified. Of these 10 appointed members, 2 shall be representatives of owners and users of boilers within the state, 1 of whom shall represent owners and users of power boilers operating at 1,000 p.s.i.g. or more, 2 shall be representatives of organized labor in the state engaged in the erection, fabrication, installation, operation or repair of boilers, 1 shall be a representative of water tube boiler manufacturers doing business within the state, 1 shall be a representative of fire tube boiler manufacturers doing business within the state, 1 shall be a representative of a boiler insurance company licensed to do business within the state, 1 shall be a representative of the mechanical contractors within the state having experience in the installation, piping or operation of boilers, 1 shall be a representative of boiler repair contractors within the state in the business of repairing boilers by welding and riveting, and 1 shall be a representative of the consulting engineers within the state having boiler experience. The board shall hold an organization meeting within 60 days after this act shall become effective. Annually, at the first meeting, the board shall elect a chairman, vice chairman and secretary. The board shall meet at least quarterly or more frequently at the call of the chairman or any 4 members of the board with 10 days' notification of all members. Six members of the board shall constitute a quorum for the transaction of business. No approval, decision or ruling of the board shall become effective unless supported by 6 members of the board. The board may request qualified consultants to appear before it for the purpose of advising the board, who shall receive their actual and necessary expenses incurred while in the performance of their duties as consultants.

(2) The members of the board with the exception of the commissioner of labor shall serve without salary but shall receive their actual and necessary expenses incurred while in the performance of their duties as members of the board.

HISTORY: New 1965, p. 551, Act 290, Eff. Jul. 1, 1966.

408.754 Formulation and promulgation of definitions, rules and regulations.

Sec. 4. (1) The board shall formulate definitions and rules for the safe construction, installation, inspection and repair of boilers in this state.

(2) The definitions and rules so formulated for new construction shall be based upon and, at all times, follow the generally accepted nationwide engineering standards, formulae and practices established and pertaining to boiler construction and safety, and the board may by resolution adopt an existing published codification thereof, known as the boiler and pressure vessel code of the American society of mechanical engineers, with the amendments and interpretations.

(3) The board shall formulate rules for the safe inspection and maintenance of boilers, which were in use in this state prior to July 1, 1966. The rules so formulated shall be based upon and at all times follow the generally accepted nationwide engineering

standards and may be based upon an existing published codification of such rules known as the inspection code of the national board of boiler and pressure vessel inspectors.

(4) The rules formulated by the board shall be promulgated in accordance with Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948. Anything in this act to the contrary notwithstanding, the rules heretofore published in the administrative code and in effect on July 12, 1966 shall continue in effect until suspended, abrogated or revised by the board of boiler rules.

(5) Departure from these requirements shall be permitted in unusual situations involving boilers of special design or construction where the board is satisfied that the proposed facility will provide a degree of safety commensurate with the intent of this act.

HISTORY: New 1965, p. 552, Act 290, Eff. Jul. 1, 1966;—Am. 1966, p. 395, Act 273, Imd. Eff. Jul. 12;—Am. 1970, p. 350, Act 103, Imd. Eff. Jul. 23.

408.755 Nonconforming boilers; special design; special installation and operating permit.

Sec. 5. No boiler which does not conform to the rules and regulations formulated by the board governing new construction and installation shall be installed and operated in this state after July 1, 1966, unless the boiler is of special design or construction, and is not covered by the rules and regulations, nor is in any way inconsistent with such rules and regulations, in which case a special installation and operation permit may at its discretion be granted by the board.

HISTORY: New 1965, p. 552, Act 290, Eff. Jul. 1, 1966;—Am. 1966, p. 395, Act 273, Imd. Eff. Jul. 12.

408.756 Maximum allowable pressure; safety standards; sale or reinstallation.

Sec. 6. (1) The maximum allowable pressure of a boiler carrying the American society of mechanical engineers' code symbol shall be determined by the applicable sections of the code under which it was constructed and stamped.

(2) The maximum allowable pressure of a boiler which does not carry the American society of mechanical engineers' code symbol may be computed in accordance with the inspection code of the national board of boiler and pressure vessel inspectors.

(3) This act shall not be construed as in any way preventing the use, sale or reinstallation of an existing boiler, if it has been made to conform to the rules and regulations of the board governing existing installations, if it has been found upon inspection to be in a safe condition.

HISTORY: New 1965, p. 553, Act 290, Eff. Jul. 1, 1966.

408.757 Exemptions.

Sec. 7. (1) This act shall not apply to boilers under federal control, nor to boilers used in the power plants of self-propelled vehicles designed primarily for the transportation of persons or property upon a highway, except vehicles used exclusively upon stationary rails or tracks.

(2) The following boilers are exempt from the requirements of sections 19, 20, 21 and 24 of this act:

(a) Boilers used solely for agricultural purposes.

(b) Steam or vapor boilers carrying a pressure of not more than 15 p.s.i.g., which are located in private residences or in apartment houses of less than 6 families.

(c) Hot water boilers operated at pressures not exceeding 160 p.s.i.g., or temperatures not exceeding 250 degrees Fahrenheit which are located in private residences or in apartment houses of less than 6 families.

HISTORY: New 1965, p. 553, Act 290, Eff. Jul. 1, 1966;—Am. 1970, p. 350, Act 103, Imd. Eff. Jul. 23.

408.757a Antique traction steam boilers; inspection, fee; hobby engines.

Sec. 7a. Antique traction steam boilers shall comply with the rules promulgated by the board and shall be inspected annually. If such annual inspection is made by a deputy inspector, the fee shall be \$10.00. A certificate of inspection shall be issued by the department of labor upon compliance with the applicable rules.

This act shall not apply to miniature steam or marine engines used as a hobby.

HISTORY: Add. 1969, p. 319, Act 157, Eff. Oct. 1.

408.758 Chief inspector; appointment, qualifications, duties.

Sec. 8. (1) The commissioner of labor shall appoint, subject to civil service rules, a resident of this state, who shall have had at the time of such appointment not less than 10 years' experience in the inspection, construction, maintenance, repair or operation of high pressure boilers, as a mechanical engineer, steam operating engineer, boiler-maker or boiler inspector, and who shall have passed the same kind of examination as that prescribed under section 12, to be chief inspector or, in lieu of such examination, shall hold a license or a certificate of competency as an inspector of boilers for a state that has a standard of examination substantially equal to that of this state or a license as an inspector of boilers issued by the national board of boiler and pressure vessel inspectors.

(2) The chief inspector, if authorized by the commissioner of labor, shall:

(a) Cause the prosecution of all violators of the provisions of this act.

(b) Issue, or suspend, or revoke for cause, inspection certificates as provided for in section 20 of this act.

(c) Take action necessary for the enforcement of the laws of the state governing the use of boilers to which this act applies.

(d) Keep a complete record of the type, dimensions, maximum allowable pressure, age, location and date of the last recorded inspection of all boilers to which this act applies.

(e) Publish and distribute, among manufacturers and others requesting them, copies of the rules and regulations adopted by the board.

HISTORY: New 1965, p. 553, Act 290, Eff. Jul. 1, 1966.

408.759 Deputy inspectors; employment, qualifications.

Sec. 9. The commissioner of labor, subject to civil service rules, shall employ deputy inspectors who shall be responsible to the chief inspector and who shall have had at the time of appointment not less than 5 years' experience in the inspection, construction, maintenance, repair or operation of high pressure boilers as a mechanical engineer, steam operating engineer, boiler-maker or boiler inspector, and who shall have passed the examination provided for in section 12 of this act, or, in lieu of such examination, shall hold a license or a certificate of competency as an inspector of boilers for a state that has a standard of examination substantially equal to that of this state or a license as an inspector of boilers issued by the national board of boiler and pressure vessel inspectors.

HISTORY: New 1965, p. 553, Act 290, Eff. Jul. 1, 1966.

408.760 Inspectors' bonds; amounts, payment.

Sec. 10. The chief inspector shall furnish a bond in the sum of \$5,000.00 and each of the deputy inspectors, employed and paid by the state, shall furnish a bond in the sum of \$2,000.00, conditioned upon the faithful performance of their duties and upon a

true account of moneys handled by them respectively and the payment thereof to the proper recipient. The cost of the bonds shall be paid by the state.

HISTORY: New 1965, p. 554, Act 290, Eff. Jul. 1, 1966.

408.761 Special inspectors; qualifications; license, application, fee, renewal; compensation; duties.

Sec. 11. (1) The commissioner, upon the request of any company authorized to insure against loss from explosion of boilers in this state, any city having an authorized boiler inspection department, or any company operating boilers in this state for which the owner or user maintains a regularly established inspection service which is under the supervision of 1 or more registered professional engineers regularly employed by such owner or user, shall issue to any inspectors of the company licenses as special inspectors if each such inspector before receiving his licenses satisfactorily passes the examination provided for by section 12 of this act, or, in lieu of such examination, holds a license or a certificate of competency as an inspector of boilers for a state that has a standard of examination substantially equal to that of this state or a license as an inspector of boilers and pressure vessels issued by the national board of boiler and pressure vessel inspectors. A license as a special inspector for an inspector of a company operating boilers in this state shall be issued only if, in addition to meeting the requirements stated herein, the inspector is employed full time by the company and his duties include making inspections of boilers used, or to be used, by such company, and not for resale.

(2) An application for a license as an inspector of boilers shall be filed with the department of labor accompanied by a fee of \$10.00. Application for examination for special inspectors as provided in section 12 shall be filed with the department of labor accompanied by a fee of \$10.00 at least 30 days prior to the examination date. This fee shall entitle the applicant to take the examination provided in section 12 twice if necessary and if successful in passing either examination, to a license. An additional fee of \$10.00 shall accompany each subsequent application. Each license issued to special inspectors shall be renewed annually upon application accompanied by a fee of \$5.00.

(3) The special inspectors shall receive no salary from, nor shall any of their expenses be paid by, the state, and the continuance of a special inspector's license shall be conditioned upon his continuing in the employ of the boiler insurance company, city or of the company so operating boilers in this state and upon his maintenance of the standards imposed by this act.

(4) The special inspectors shall inspect all boilers insured, operated or under the jurisdiction of the employer and, when so inspected, the owners and users of such boilers shall be exempt from the payment to the department of the inspection fee provided for in section 21.

HISTORY: New 1965, p. 554, Act 290, Eff. Jul. 1, 1966;—Am. 1970, p. 351, Act 103, Imd. Eff. Jul. 23.

408.762 Examination for inspectors; content; reexamination; record for inspection.

Sec. 12. Examination for chief, deputy or special inspectors shall be in writing and shall be held by the board, with at least 2 members of the board present at all times during the examination. Such examination shall be confined to questions, the answers to which will aid in determining the fitness and competency of the applicant for the intended service, and may be those prepared by the national board of boiler and pressure vessel inspectors. If an applicant for an inspector's license fails to pass the examination, he may appeal to the board for another examination which shall be given by the board within 90 days. The record of an applicant's examination shall be accessible to the applicant and his employer.

HISTORY: New 1965, p. 554, Act 290, Eff. Jul. 1, 1966.

408.763 Installers and repairmen; license, examination, fee, renewal; exemptions from examination.

Sec. 13. (1) No person shall engage in the business of installing boilers unless he shall first obtain a license from the commissioner of labor.

(2) No person shall engage in the business of repairing boilers unless he shall first obtain a license from the commissioner of labor.

(3) The board may conduct examinations for licenses to establish the competency of the applicant.

(4) Licenses shall be issued by the commissioner of labor upon recommendation of the board and upon payment of a fee of \$30.00 for each application.

(5) The licenses shall be renewed annually upon payment of a fee of \$30.00.

(6) An individual in the employ of a licensee shall not be required to be licensed.

(7) Until July 1, 1967, the board shall recommend for licensing without examination an applicant who submits evidence satisfactory to the board that he has had at least 5 years' experience in the class of boiler installation or repair for which he is applying for a license.

HISTORY: New 1965, p. 555, Act 290, Eff. Jul. 1, 1966;—Am. 1966, p. 395, Act 273, Imd. Eff. Jul. 12.

408.764 License suspensions; notice, appeals, revocation; hearings; reinstatement.

Sec. 14. (1) An inspector's, repairer's or installer's license may be suspended by the chief inspector for the incompetence of the holder thereof or for wilful falsification of any matter or statement contained in his application or in a report of any inspection made by him. Written notice of the suspension shall be given by the chief inspector within not more than 10 days to the licensee, his employer and the board. A person whose license has been suspended may appeal to the board as provided in section 22 and be present in person and be represented by counsel at the hearing of the appeal.

(2) If the board has reason to believe that a licensee is no longer qualified to hold his license, the board, upon not less than 10 days' written notice to the licensee and his employer, shall hold a hearing at which the licensee and his employer shall have an opportunity to be heard. If, as a result of the hearing, the board finds that the licensee is no longer qualified to hold his license, the board shall recommend to the commissioner that the license be revoked and the commissioner shall thereupon revoke such license forthwith.

(3) A person whose license has been suspended may apply, after 90 days from the date of the suspension, for reinstatement of the license.

HISTORY: New 1965, p. 555, Act 290, Eff. Jul. 1, 1966.

408.765 License lost or destroyed; reissuance, fee.

Sec. 15. If a license is lost or destroyed, a new license shall, upon application and payment of a fee of \$5.00, be issued in its place without another examination.

HISTORY: New 1965, p. 555, Act 290, Eff. Jul. 1, 1966.

408.766 Repealed. 1966, p. 397, Act 273, Imd. Eff. Jul. 12.

Section required permits for installation or alteration of boilers and prescribed fees.

408.767 Installation or alteration of boilers; permit; fee.

Sec. 17. No person shall install or alter a boiler without first securing a permit to install or alter from the boiler division of the department of labor. Permits shall be issued only to persons licensed as provided in section 13 and no work shall be performed ex-

cept by or under the immediate supervision of such licensed person. A permit fee of \$5.00 shall be paid directly to the department of labor and shall accompany the permit to install or alter application, except there shall be no permit fee required for boilers exempt from inspection by section 7.

HISTORY: New 1965, p. 555, Act 290, Eff. Jul. 1, 1966;—Am. 1966, p. 396, Act 273, Imd. Eff. Jul. 12;—Am. 1970, p. 351, Act 103, Imd. Eff. Jul. 23.

408.768 Repair of boiler; permit, fee.

Sec. 18. No person shall make repairs to boilers without first securing a permit to repair from the boiler division of the department of labor, unless repairs have been authorized by a licensed inspector pending issuance of the permit or unless such repairs are emergency maintenance performed by qualified welders regularly employed by firms utilizing properly qualified welding procedures to weld on boilers owned and operated by such firms. Permits shall be issued only to persons licensed to repair boilers and no work shall be performed except by or under the immediate supervision of such licensed persons. A permit fee of \$5.00 shall be paid directly to the department of labor and shall accompany the permit to repair application, except payment of permit to repair fees will not be required from firms utilizing properly qualified welding procedures and regularly employing qualified welders, registered with the boiler division of the department of labor, to weld on boilers owned and operated by such firms.

HISTORY: New 1965, p. 555, Act 290, Eff. Jul. 1, 1966.

408.769 Access to premises; inspections, classes and tests.

Sec. 19. (1) The commissioner of labor, the chief inspector or any deputy inspector shall have free access, during reasonable hours, to any premises in the state where a boiler is being constructed, installed, repaired or operated for the purpose of ascertaining whether the boiler is in accordance with the provisions of this act.

(2) Each boiler used or proposed to be used within this state, except boilers exempt under section 7, shall be thoroughly inspected as to their construction, installation and condition as follows:

(a) Power boilers, process boilers and high pressure high temperature water boilers shall receive a certificate inspection annually and shall also be externally inspected annually while under pressure within 6 months from the date of the internal inspection.

(b) Low pressure steam or vapor heating boilers, hot water heating boilers and hot water supply boilers shall receive a certificate inspection biennially.

(c) A grace period of 2 months beyond the periods specified in subdivisions (a) and (b) of this subsection may elapse between certificate inspections and the board may permit longer periods between certificate inspections.

(3) The inspection shall be made by the chief inspector, by a deputy inspector or by a special inspector provided for in this act.

(4) If, at the discretion of the inspector, a hydrostatic test is necessary, it shall be made by the boiler owner or user.

(5) All boilers, other than cast iron sectional boilers, to be installed in this state shall be inspected during construction as required by the applicable rules of the board by an inspector licensed to inspect boilers in this state, or, if constructed outside of the state, by an inspector holding a license as an inspector of boilers for a state that has a standard of examination substantially equal to that of this state as provided in section 12, or a license issued by the national board of boiler and pressure vessel inspectors.

HISTORY: New 1965, p. 556, Act 290, Eff. Jul. 1, 1966;—Am. 1966, p. 396, Act 273, Imd. Eff. Jul. 12;—Am. 1970, p. 352, Act 103, Imd. Eff. Jul. 23.

408.770 Inspection reports; filing; fee; inspection certificate; duration; suspension.

Sec. 20. (1) The chief boiler inspector, his deputy inspectors and each company or city not exempt from this act employing special inspectors, within 30 days following each boiler certificate inspection required by this act, shall file a report of the inspection with the chief inspector upon appropriate forms approved by the board which may be those forms recommended by the national board of boiler and pressure vessel inspectors. Reports of external inspections shall not be required except when such inspections disclose that the boiler is in a dangerous condition.

(2) If the report filed pursuant to subsection (1) shows that a boiler is found to comply with the rules of the board, the owner or user thereof shall pay \$5.00 directly to the department of labor, which shall issue to the owner or user an inspection certificate bearing the date of inspection and specifying the maximum pressure under which the boiler may be operated. The inspection certificate shall be valid for not more than 12 months from its date in the case of power boilers, except that the certificate shall be valid during any grace period provided in accordance with section 19. Inspection certificates shall be valid for not more than 24 months in the case of low pressure steam or vapor heating boilers, hot water heating boilers or hot water supply boilers, except that the certificate shall be valid during any grace period provided in accordance with section 19. Certificates shall be posted under glass in the room containing the boiler inspected. If the boiler is not located within the building, the certificate shall be posted in a location convenient to the boiler inspected, or in any place where it will be accessible to interested parties.

(3) No inspection certificate issued for an insured boiler by a special inspector shall be valid after the boiler for which it was issued shall cease to be insured by a company duly authorized by this state to carry such insurance if the insurance was terminated as a result of unsafe conditions or of violations of the rules of the board.

(4) The chief inspector at any time may suspend an inspection certificate when, in his opinion, the boiler for which it was issued cannot be operated without menace to the public safety, or when the boiler is found not to comply with the rules herein provided. Each suspension of an inspection certificate shall continue in effect until the boiler has been made to conform to the rules of the board, and until the inspection certificate has been reinstated.

HISTORY: New 1965, p. 556, Act 290, Eff. Jul. 1, 1966;—Am. 1970, p. 352, Act 103, Imd. Eff. Jul. 23.

408.771 Inspection fees; deposition.

Sec. 21. (1) The owner or user of a boiler required by this act to be inspected by the chief inspector, or his deputy inspector, shall pay directly to the department of labor upon completion of inspection, fees in accordance with the following schedule:

(a) Power boilers:

Certificate inspections

Boilers of 50 sq. ft. of heating surface or less	\$10.00
Boilers over 50 sq. ft. of heating surface and less than 4,000 sq. ft. of heating surface	\$25.00
Boilers 4,000 sq. ft. of heating surface or more and less than 10,000 sq. ft. of heating surface	\$30.00
Boilers 10,000 sq. ft. of heating surface or more	\$35.00

External inspections

Boilers of 50 sq. ft. of heating surface or less	\$ 5.00
Boilers over 50 sq. ft. of heating surface	\$ 7.00

Except as provided in subdivisions (c) and (d), not more than the equivalent of the certificate inspection and external inspection fees shall be charged or collected for all inspections of any boiler in any one year.

(b) Low pressure boilers:

Certificate inspections

Heating boilers without a manhole \$ 7.00

Heating boilers with a manhole \$12.00

Hot water supply boilers \$ 5.00

Except as provided in subdivisions (c) and (d), not more than 1 fee shall be charged or collected for any and all inspections as above of any low pressure boiler in any required inspection period.

(c) When it is necessary to make a special trip to witness the application of a hydrostatic test, an additional fee based on the scale of fees applicable to a certificate inspection of the boiler shall be charged.

(d) All other inspections, including shop inspections and inspection of secondhand or used boilers made by the chief or deputy inspector shall be charged for at the rate of \$20.00 for the first hour and \$10.00 for each subsequent hour up to 5 p.m. during normal work days. Additional hours will be charged at the rate of \$15.00 an hour.

(2) The chief inspector shall deposit all fees received in the state treasury, to the credit of the general fund.

HISTORY: New 1965, p. 557, Act 290, Eff. Jul. 1, 1966;—Am. 1970, p. 353, Act 103, Imd. Eff. Jul. 23.

408.772 Appeals to board.

Sec. 22. Any person aggrieved by an order or act of the commissioner of labor or the chief inspector, under this act, within 15 days' notice thereof, may appeal from such order or act to the board which within 30 days thereafter shall issue an appropriate order either approving or disapproving the order or act. A copy of the order by the board shall be given to all interested parties.

HISTORY: New 1965, p. 557, Act 290, Eff. Jul. 1, 1966.

408.773 Inapplicability of act; construction of act as to repairs in public utilities and industrial plants.

Sec. 23. The provisions of this act shall not be applicable to or in any city having a population of 1,000,000 or more.

Nothing in this act shall be construed to require a license or permit to repair boilers located in public utilities or industrial plants which repair and maintain their own boilers in accordance with accepted procedures and practices; or to require a license to replace a boiler with a similar unit in such public utilities or industrial plants.

HISTORY: New 1965, p. 558, Act 290, Eff. Jul. 1, 1966;—Am. 1966, p. 396, Act 273, Imd. Eff. Jul. 12.

408.774 Unlawful operation of boilers; penalty.

Sec. 24. It shall be unlawful for any person, firm, partnership or corporation to operate in this state a boiler without a valid inspection certificate. The operation of a boiler without such inspection certificate, or at a pressure exceeding that specified in such inspection certificate, is a misdemeanor on the part of the owner, user or operator thereof and shall be punishable by a fine not exceeding \$500.00, or imprisonment not to exceed 60 days, or both. Each day of the unlawful operation is a separate offense.

HISTORY: New 1965, p. 558, Act 290, Eff. Jul. 1, 1966;—Am. 1966, p. 396, Act 273, Imd. Eff. Jul. 12.

408.775 Unlawful installation or repair; penalty; exception.

Sec. 25. It shall be unlawful for any person, firm, partnership or corporation to install or repair in this state, a boiler without a valid license to install or repair. The installation or repair of boilers without a valid license is a misdemeanor on the part of the installer or repairer. The provisions of this section shall not apply to the repair or

replacement of boilers exempted from the license and permit provisions of this act by section 23.

HISTORY: New 1965, p. 558, Act 290, Eff. Jul. 1, 1966;—Am. 1970, p. 353, Act 103, Imd. Eff. Jul. 23.

408.776 Effective date of act.

Sec. 26. This act shall take effect July 1, 1966.

HISTORY: New 1965, p. 558, Act 290, Eff. Jul. 1, 1966.

Act 227, 1967, p. 332; Eff. Nov. 2.

AN ACT to regulate the inspection, construction, installation, alteration, maintenance, repair and operation of elevators and the licensing of elevator contractors; to prescribe the functions of the director of labor; to create, and prescribe the functions of, the elevator safety board; to provide penalties for violations of the act; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

408.801 Elevators; applicability of definitions in American standard safety code.

Sec. 1. The definitions in section 3 of the standard are applicable to this act, except where they conflict with definitions in this act.

HISTORY: New 1967, p. 332, Act 227, Eff. Nov. 2.

408.802 Elevators; definitions.

Sec. 2. (1) "Approved" means that which the director designates as acceptable to the department.

(2) "Board" means the elevator safety board.

(3) "Bureau" means the bureau of safety and regulation in the department of labor.

(4) "Department" means the department of labor.

(5) "Director" means the director of labor or his duly designated representative.

(6) "Division" means the elevator safety division of the bureau.

(7) "Dormant elevator" means an elevator that is still intact and on the premises but the premises are vacated or the equipment is entirely disconnected in an approved manner.

(8) "Repairs" where used herein shall mean only such work as is necessary to maintain present equipment in a safe and serviceable condition and to adjust or replace defective, broken or worn parts, with parts made of equivalent material, strength and design, and where the replacing part performs the same function as the replaced part.

(9) "Major alteration" means an alteration as defined in the standard. Any person, firm or corporation performing such major alteration shall obtain a permit from the department as outlined in section 15 of this act.

HISTORY: New 1967, p. 332, Act 227, Eff. Nov. 2.

408.803 Elevators; definitions.

Sec. 3. (1) "Elevator" means the machinery, construction, apparatus and equipment of an incline lift, escalator, moving walk or device serving 2 or more landings used in raising and lowering a car, cage or platform which is guided. It includes a passenger elevator, freight elevator, gravity elevator, workmen's elevator, dumbwaiter, manlift and other lifting or lowering apparatus which is guided. It does not include:

(a) An elevating device within the scope of the mining act, Act No. 163 of the Public

Acts of 1911, as amended, being sections 425.101 to 425.113 of the Compiled Laws of 1948.

(b) A feeding machine or belted bucket, scoop, roller or any similar type of freight conveyor.

(c) A lubrication hoist or other similar mechanism.

(d) A piling or stacking machine used within 1 story, and not penetrating a floor.

(e) A device in a private residence other than one carrying persons.

(f) An outside material hoist used for raising or lowering construction materials while a building or structure is under construction within the scope of the construction safety act, Act No. 89 of the Public Acts of 1963, as amended, being sections 408.711 to 408.724 of the Compiled Laws of 1948.

(2) "Elevator contractor" means a person, firm or corporation engaged in the business of constructing, installing, maintaining, repairing or altering elevators, including the installing or maintaining of electric wiring, fixtures, apparatus and appliances in connection with the operation or control thereof.

(3) "Elevator contractor license" means a license issued by the director to an elevator contractor covering the construction, installation, alteration, maintenance or repair by him of elevators.

HISTORY: New 1967, p. 332, Act 227, Eff. Nov. 2.

408.804 Elevators; definitions.

Sec. 4. (1) "General inspector" means a person holding a general certificate of competency and employed by this state as an elevator inspector or in an elevator inspection supervisory capacity.

(2) "Incline lift" means an elevator designed and operated for the conveyance of persons or material from 1 level to another. It does not include the enclosure or building, or an incline lift under the jurisdiction of the ski area safety board.

(3) "Inspector" means a general or special inspector.

(4) "Special inspector" means a person who holds a special certificate of competency and is commissioned as provided in this act.

(5) "Standard" means the American standard safety code for elevators, dumbwaiters, escalators and moving walks, A 17.1-1965.

HISTORY: New 1967, p. 333, Act 227, Eff. Nov. 2.

408.805 Inapplicability of act to certain municipalities.

Sec. 5. This act does not apply to or in any city, village or township having elevator inspection regulations under ordinances comparable to this act.

HISTORY: New 1967, p. 333, Act 227, Eff. Nov. 2.

408.806 Elevators; compliance with American code, conflicts.

Sec. 6. An elevator shall be constructed, equipped, maintained, repaired, and used with respect to the supporting members, car or platform, hoistways, guides, cables, doors and gates, safety stops and mechanisms, electrical apparatus and wiring, mechanical apparatus, counterweights, and all other appurtenances in accordance with the American standard safety code for elevators, dumbwaiters, escalators and moving walks, A 17.1-1965, and subsequent editions and amendments if adopted by the board, and rules made by the board. In case of conflict between the rules and the standard, the rules shall apply.

HISTORY: New 1967, p. 333, Act 227, Eff. Nov. 2.

408.807 Elevator safety board; creation; membership, appointment, terms, vacancies, compensation and expenses.

Sec. 7. The elevator safety board consisting of 10 members is created, 1 of whose members is the director. The governor shall appoint, with the advice and consent of

the senate, the other 9 members for terms of 4 years, except that of the members first appointed, 2 each shall be appointed for terms of 1, 2 and 3 years, and 3 shall be appointed for terms of 4 years. The governor shall fill a vacancy on the board for the remainder of the unexpired term with a representative of the same interest as that of his predecessor. Of the appointed members, 1 shall be a representative of owners and lessees of elevators within this state, 2 shall be representatives of insurance companies authorized to insure elevators in this state, 2 shall be representatives of the elevator constructors' union, 1 shall be a representative of a municipality in the state having a population of at least 500,000, 1 shall be a representative of architects and consulting engineers, and 2 shall be representatives of manufacturers of elevators used in this state. The members of the board shall serve without salary and shall receive their actual travel expenses to be paid in accordance with state accounting laws and procedure.

HISTORY: New 1967, p. 333, Act 227, Eff. Nov. 2.

CITED IN OTHER SECTIONS: The above section is cited in § 16.487.

408.808 Elevator safety board; powers and duties.

Sec. 8. The board shall have the following powers and duties:

(a) To make, amend or repeal in accordance with Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948, rules for the inspection, design, construction, installation, alteration, maintenance and use of elevators in this state.

(b) To prepare examinations, interview applicants to determine their qualifications and examine qualified applicants for elevator contractor licenses or certificates of competency and to certify to the director the names of persons who successfully pass the examination given by the board.

(c) When submitted by the director to grant exceptions or variations in any particular case from the literal requirements of this act or rules adopted by the board when it is clearly evident that they are necessary to prevent undue hardship or when existing conditions prevent compliance with the literal requirements, if the board believes reasonable safety will be secured thereby.

(d) To hear and decide appeals referred to the board by the director when requested to do so by any person, firm or corporation aggrieved by an order or act of the department or its authorized representatives and to adopt rules of procedure for such appeals.

(e) To conduct hearings to determine whether an elevator contractor license or certificate of competency or commission should be suspended or revoked and to make recommendation to the director.

(f) To establish fees.

HISTORY: New 1967, p. 334, Act 227, Eff. Nov. 2.

408.809 Director of labor; enforcement of act and rules, variations and modifications.

Sec. 9. The director shall enforce the provisions of this act and the rules made by the board and where, owing to special conditions, a literal enforcement of the provisions of these rules will result in unnecessary hardship or involve practical difficulties, the director shall have power upon application in specific cases to authorize such variations or modifications of the terms of these rules as will not be contrary to the public interest and so the spirit of these rules shall be observed, public safety secured and substantial justice done.

HISTORY: New 1967, p. 334, Act 227, Eff. Nov. 2.

408.810 General and special inspectors; qualifications, certificates of competency.

Sec. 10. (1) A person is not authorized to serve as a general inspector unless he has had 3 years' experience in elevator construction or the equivalent as determined by the board, and holds a general certificate of competency issued by the director. A person is not authorized to serve as a special inspector unless he has had 3 years' experience in designing, installing, maintaining or inspecting elevators and holds a special certificate of competency issued by the director.

Applicants for examination as elevator inspectors; form; requirements; fee.

(2) An applicant for examination as an inspector of elevators shall submit to the department a completed application on a form to be furnished by the department. The application shall record the applicant's formal education, names and addresses of his previous employers, dates of employment and type of work performed. He shall also submit a letter from 1 or more of his previous employers certifying as to his character and experience. The required examination fee shall accompany the application.

Acceptance or rejection of applications and applicants.

(3) An application shall be rejected which contains any wilful falsification. Qualifications of the applicant shall be determined by the board. A qualified applicant for a certificate of competency as a general or special inspector shall be examined by the board. The applicant shall be accepted or rejected on the merits of his application and examination.

Issuance of certificates of competency; reexamination.

(4) Upon recommendation by the board, a certificate of competency for the inspection of elevators shall be issued to a successful applicant by the director. A rejected applicant is entitled after the expiration of 90 days, and upon payment of the required examination fee, to another examination. If an applicant fails to pass the prescribed examination a second time, he will not be permitted to be reexamined for 1 year after the second examination.

HISTORY: New 1967, p. 334, Act 227, Eff. Nov. 2.

408.811 Special inspectors; designation by insurers or local units; commissions; renewal fees; compensation.

Sec. 11. From the holders of special certificates of competency in the inspection of elevators, a company authorized to insure elevators in this state, may designate persons who are commissioned by the state to inspect elevators in the state covered by such company's policies. A local government having an approved elevator inspection department may designate persons to inspect elevators in such governments' jurisdiction. When requested, such persons shall have issued to them by the director, upon payment of the required fee, commissions to serve as special inspectors of elevators in the state. Commissions shall be renewed annually upon payment of the required fee. Special inspectors shall not be compensated by this state.

HISTORY: New 1967, p. 335, Act 227, Eff. Nov. 2.

408.812 Elevator contractors' licenses; applications, qualifications, expiration; exemptions.

Sec. 12. A person, firm or corporation who is to install, construct, repair, alter and maintain an elevator shall secure from the director an elevator contractor license. The license shall be issued by the director, after his receipt of an acceptable application in writing and of the fee, to a person, firm or corporation found qualified to perform such work, and who is certified by the board as having successfully passed the examination given by the board. The application is not acceptable to the board until the applicant has shown by sworn affidavit that he or the person qualified for the applicant has had

at least 5 years' experience as an elevator constructor or journeyman, or equivalent. A license shall expire on December 31 of the year in which it is issued.

The contractor licensing requirements under this section for maintenance and repair work, as defined in this act, shall not apply to any firm, person, or corporation maintaining elevators in their leased or owned premises: Provided, That such elevators are not used by the general public, and that the work is performed by their permanent employees in accordance with approved procedures and practices.

HISTORY: New 1967, p. 335, Act 227, Eff. Nov. 2.

408.813 Certificates of competency, commissions and licenses; reissuance when lost or destroyed.

Sec. 13. A certificate of competency, commission or elevator contractor license shall be reissued upon receipt of an application by the director and payment of the renewal fee without another examination, when it is proven to the director's satisfaction that the document is lost or destroyed.

HISTORY: New 1967, p. 335, Act 227, Eff. Nov. 2.

408.814 Certificates of competency, commissions and licenses; suspension or revocation; grounds, hearing, notice.

Sec. 14. A certificate of competency, commission or elevator contractor license may be suspended or revoked by the director upon recommendation of the board for incompetence, neglect, misrepresentation or failure to comply with the requirements of this act, or with the rules made by the board. Such a document shall not be suspended or revoked until a hearing has been conducted after at least 15 days' written notice has been mailed to the holder of the document by ordinary mail. The hearing shall be held before the board not more than 30 days after the date of the notice, unless the hearing date is extended for cause shown.

HISTORY: New 1967, p. 335, Act 227, Eff. Nov. 2.

408.815 Permits for installation or alterations; plans and specifications, approval; forms; fees; emergency alterations; issuance by municipality.

Sec. 15. (1) A person, firm or corporation shall not install or alter an elevator without first having obtained a permit therefor from the department. A permit shall be issued only to a person, firm or corporation licensed by the director as an elevator contractor. Elevator hoistway enclosures shall meet the requirements of the standard. A permit to install a stair climber type of incline lift in other than a private residence shall not be issued unless special permission is granted by the director. Detailed plans and specifications of all elevator equipment and the elevator hoistway enclosure, in triplicate, shall be submitted by the licensee to the department and shall be approved by the department before the permit is issued. Permit applications shall be made on forms furnished by the department. The applicable fee shall be paid prior to issuance of the permit. In case of emergency alterations, the permit shall be obtained within 72 hours from the time of alteration.

(2) In a municipality maintaining its own approved elevator inspection department, such plans and specifications shall be submitted to such department for its approval and, if approved, a permit for the installation or alteration of such elevator shall be issued by the municipality.

HISTORY: New 1967, p. 336, Act 227, Eff. Nov. 2.

408.816 Fees for services; determination, payment, deposits.

Sec. 16. (1) Fees for the following matters shall be determined by the board:

Commission

Certificate of competency examination

Elevator contractor license
Contractor examination
Permit, each elevator or device
Certificate of operation
Appeal for hearing before board
Inspection by general inspector
Special

(2) Fees shall be paid by cash, money order or certified check to the director. Money orders or checks shall be made payable to "Treasurer—State of Michigan". Fees received by the director shall be transmitted to the state treasurer for deposit in the general fund. These funds shall be disbursed only as appropriated by the legislature.

HISTORY: New 1967, p. 336, Act 227, Eff. Nov. 2.

408.817 Inspections; entry on premises, assistance.

Sec. 17. The director and his inspectors during reasonable hours may enter any premises within this state without hindrance for the purpose of examining equipment covered by this act in accordance with the rules promulgated by the board. The holder of a certificate of operation shall provide assistance required by the director or the inspector in making the inspection.

HISTORY: New 1967, p. 336, Act 227, Eff. Nov. 2.

408.818 Certificates of operation; annual issuance.

Sec. 18. The director shall issue a certificate of operation annually in accordance with the rules promulgated by the board.

HISTORY: New 1967, p. 336, Act 227, Eff. Nov. 2.

408.819 Sealing elevator out of service; grounds.

Sec. 19. A general inspector may seal an elevator out of service in accordance with the rules promulgated by the board or when any of the following conditions exist:

- (a) When in case of emergency, in the opinion of the general inspector, the elevator is in such condition as to render it unsafe for operation.
- (b) Failure to secure a certificate of operation or to renew such certificate.
- (c) Failure to comply with a correction order issued by an inspector.

HISTORY: New 1967, p. 336, Act 227, Eff. Nov. 2.

408.820 Smoking in passenger elevators prohibited; posting sign; receptacles.

Sec. 20. (1) It is unlawful for a person to smoke or to carry lighted tobacco in any form in a passenger elevator in any building, structure or premises in this state. A person having control or management of any building, structure or premises equipped with a passenger elevator shall not permit smoking or the carrying of lighted tobacco in any form in any such elevator.

(2) The owner, occupant, firm or corporation having control or management of a building, structure or premises equipped with 1 or more passenger elevators shall:

(a) Post in each elevator a sign reading, "Smoking prohibited by law—violators subject to fine of \$50.00 or 90 days imprisonment".

(b) Provide and locate near each elevator entrance at each floor a noncombustible receptacle approved by the state fire marshal for the proper disposal of cigar and cigarette stubs, pipe ash or lighted tobacco in any form.

HISTORY: New 1967, p. 337, Act 227, Eff. Nov. 2.

408.821 Violation of act or rules; operation of sealed elevator, penalties.

Sec. 21. (1) Any person, firm or corporation who violates any provision of this act or any rules made by the board, or who fails or neglects to pay the fees herein authorized, for the first offense shall be punished by a fine of not more than \$50.00, and for each subsequent offense by a fine of not more than \$100.00, or imprisonment in the county jail for not more than 90 days, or both.

(2) Any person, firm or corporation who operates or continues to operate an elevator, sealed out of service, without the approval of the director shall be punished by a fine not to exceed \$25.00 for each day the elevator is operated without such approval in addition to the penalties in (1).

HISTORY: New 1967, p. 337, Act 227, Eff. Nov. 2.

408.822 Saving clause.

Sec. 22. A prosecution arising from a violation of the act repealed herein pending at the time this act becomes effective, or a prosecution which may be started within 1 year after the effective date of this act in consequence of any violation of the repealed act which was committed previous to the effective date of this act, shall be tried and determined as if such act had not been repealed.

HISTORY: New 1967, p. 337, Act 227, Eff. Nov. 2.

408.823 Repeals.

Sec. 23. Act No. 82 of the Public Acts of 1937, as amended, being sections 408.351 to 408.374 of the Compiled Laws of 1948, is repealed.

HISTORY: New 1967, p. 337, Act 227, Eff. Nov. 2.

408.824 Elevator safety board; membership, rules and fees, continuation.

Sec. 24. The membership of the board as now constituted shall continue to serve in accordance with their terms of office and the rules and fees heretofore established in Act No. 360 of the Public Acts of 1965, as amended, being sections 408.364 and 408.365 of the Compiled Laws of 1948, shall remain in full force and effect until the board shall appropriately revise, change or amend them, anything to the contrary herein contained notwithstanding.

HISTORY: New 1967, p. 337, Act 227, Eff. Nov. 2.

Act 282, 1967, p. 573; Imd. Eff. Aug. 1.

AN ACT to create within the department of labor a board of safety compliance and appeals, an occupational safety standards commission and a safety education and training division; to prescribe the duties of employers as to places of employment; to prescribe the responsibilities of employees; to prescribe the powers and duties of certain state agencies; to provide penalties for violation of this act; to impose an annual levy to provide revenue for the administration of this act; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

408.851 Occupational safety; definitions.

Sec. 1. As used in this act:

(a) "Employer" means any individual or type of organization, including the state and all its political subdivisions, which has in its employ 1 or more individuals performing services for it in employment.

(b) "Employee" means a person permitted to work by an employer in employment.

(c) "Commission" means the occupational safety standards commission.

- (d) "Board" means the board of safety compliance and appeals.
- (e) "Place of employment" means the plant or premises in or about which an employee is permitted to work.
- (f) "Department" means the department of labor.
- (g) "Director" means the director of the department or his duly designated representative.
- (h) "Division" means the safety education and training division.
- (i) "Standard" has the same meaning as, and includes, the words "regulation", "code", and "rule".
- (j) "Employment" includes all services for pay under a contract of hire except service in agricultural or domestic employment.

HISTORY: New 1967, p. 573, Act 282, Imd. Eff. Aug. 1.

408.852 Occupational safety; duties of employers.

Sec. 2. Each employer shall establish and maintain conditions of work which are reasonably safe and healthful for employees. Each employer's methods, processes, devices and safeguards, including methods of sanitation and hygiene, shall be such as are reasonably necessary to protect the life, health and safety of his employees.

HISTORY: New 1967, p. 574, Act 282, Imd. Eff. Aug. 1.

408.853 Safety devices, practices and orders; removal or damage, interference and noncompliance prohibited.

Sec. 3. No employee shall wilfully remove, displace, damage, destroy or carry off any safety device or safeguard furnished or provided for use in any employment or place of employment, or interfere in any way with the use thereof by any other person. No employee or agent of employees shall interfere with the use of any method or process adopted for the protection of any employee in such employment or place of employment, or of any other person lawfully within such place of employment, or fail to follow and obey orders necessary to protect the life, health and safety of such employees and any other person lawfully within such place of employment.

HISTORY: New 1967, p. 574, Act 282, Imd. Eff. Aug. 1.

408.854 Occupational safety standards commission; creation; members, appointment, terms, vacancies; quorum; meetings; compensation.

Sec. 4. (1) An occupational safety standards commission consisting of 9 members is created within the department of labor. The commission members shall be chosen as follows: 3 shall represent the management of principal industries in the state, one of which shall represent a company with 200 or less employees; 3 shall represent labor with no more than 1 from any international union; 2 shall represent insurance organizations doing business in this state, 1 each from stock and mutual interests; and 1 member at large. The director shall be an ex officio member and shall serve as secretary of the commission. The commission shall elect, from among its members by a concurring vote of not less than 5 members, such other officers as may be necessary to carry out the duties thereof.

(2) The governor, with the advice and consent of the senate, shall appoint the members of the commission for terms of 3 years, or until their successors are appointed and qualified, except that of the members first appointed, 3 shall be appointed for 3 years and 3 for 2 years and 3 for 1 year. Vacancies shall be filled by appointment for the unexpired term by the governor in the same manner as the original appointments.

(3) A majority of the commission members constitutes a quorum. Members of the commission, other than the secretary, shall receive \$25.00 for each day or part thereof, not to exceed 25 days in any calendar year and the chairman shall receive \$35.00 for each day, not to exceed 50 days in any calendar year, necessarily spent in the dis-

charge of their official duties and, in addition, their reasonable and necessary travel and other expenses in accordance with standard travel regulations. The commission shall meet not less than 4 times in any calendar year, at the call of its chairman, or upon the request of any 4 members.

HISTORY: New 1967, p. 574, Act 282, Imd. Eff. Aug. 1.

408.855 Safety standards; adoption; promulgation, limitation.

Sec. 5. (1) Notwithstanding the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948, the commission may adopt reasonable safety standards in accordance with the provisions herein provided designed for the prevention of accidents in all places of employment and for the protection of the life, health and safety of employees, and amend or rescind such standards.

(2) Authority to promulgate safety standards is limited to that not granted to other state departments, other agencies within the department, other legally constituted boards or commissions or the federal government.

HISTORY: New 1967, p. 574, Act 282, Imd. Eff. Aug. 1.

408.856 Safety standards; development; advisory committees, duties, members; proposals, hearing, adoption, filing and publication, approval, effect.

Sec. 6. (1) In the development of any proposed safety standard, the commission shall appoint and consult with an advisory committee which shall be representative of the major interests to be affected by the proposed standard and the members of which shall be experienced in the field to which the proposed standard would apply. At least half of the members of each such advisory committee shall be persons devoting major portions of their time to occupational safety management functions.

(2) All proposals for standards developed by advisory committees shall be the subject of a public hearing conducted by the commission in accordance with the provisions herein provided, the provisions of Act No. 88 of the Public Acts of 1943, as amended, and subject to Act No. 197 of the Public Acts of 1952, as amended, to the contrary notwithstanding. If, after such hearing and consideration of the matter by the commission, a majority of the members of the commission adopt a proposed standard, a copy thereof shall be filed in the office of the secretary of state and notice thereof given to interested parties by all reasonable means. Upon filing and publication, the standard shall become effective immediately and shall remain effective until the final adjournment of the regular session of the legislature next following its adoption. If the standard is approved by a concurrent resolution adopted by both houses of the legislature before the final adjournment of such legislative session, the standard shall continue in effect until amended or repealed as provided by law. If not so approved within such time, the standard shall cease to have any effect subsequent to the final adjournment of such regular session of the legislature. If the legislature fails to approve the rules and regulations, the commission shall submit new rules and regulations to the next session of the legislature.

HISTORY: New 1967, p. 575, Act 282, Imd. Eff. Aug. 1.

408.857 Safety standards; applicability or legal validity, determination by declaratory judgment action; modification, procedure.

Sec. 7. (1) Subsequent to the promulgation of a standard by the commission, any question as to its applicability or legal validity may be adjudicated by an action for a declaratory judgment filed by any affected person or firm, or its agent, in the circuit court for the county of Ingham or in the county in which such person resides or does business.

(2) Where objection is not raised to the legal validity or to the applicability of a standard promulgated by the commission, but only to alleged practical difficulties or unnecessary hardships in carrying out the provisions of the standard, modification of the provisions of the standard may be made if the spirit of the standard is observed and public safety and health secured. A person or firm thus affected by a standard and desiring modification shall present a request to the commission stating, in writing, the grounds therefor and showing to the satisfaction of the commission that the proposed modification will provide a degree of protection of safety and health equal to or greater than that provided for in the standard. Modification, if granted, shall apply only to the petitioner, for the specific job situations and equipment cited and for the period of time specified. A properly indexed record of modifications shall be maintained by the department and be available for inspection by authorized persons.

HISTORY: New 1967, p. 575, Act 282, Imd. Eff. Aug. 1.

408.858 Director of labor; administration of act, investigations; orders, enforcement.

Sec. 8. (1) The director shall administer and enforce the provisions of this act.

(2) Authorized employees of the department may enter and inspect places of employment, including premises and buildings under construction, demolition or repair, at all reasonable times, in order to investigate such facts, conditions, practices or matters as deemed appropriate, and to determine whether any person is violating any provisions of this act or any standard promulgated thereunder.

(3) Upon receipt by the department of a signed complaint of violation of this act or of any standard promulgated thereunder, an authorized employee shall investigate the alleged violation and inform the complainant the result of the investigation.

(4) If, as the result of investigation, the authorized employee believes there is a violation of an existing safety standard, he may issue a safety order. The order shall describe the violation and suggest the action required to eliminate the violation and the date by which the violation shall be eliminated. The date shall be set with due regard to the seriousness of the hazard and the difficulty of eliminating it. The safety order shall be served upon or sent by certified mail to the employer in question and a copy shall be filed at the time of issuance with the bureau of safety and regulation.

(5) The employer to whom a safety order is directed shall notify the department of his compliance therewith on a form provided to him by the department.

(6) If an employer fails to comply with a safety order issued under this section, the director may grant an additional time for compliance therewith, modify, alter or dismiss the safety order or refer the matter to the board.

HISTORY: New 1967, p. 575, Act 282, Imd. Eff. Aug. 1.

408.859 Board of safety compliance and appeals; members, appointment, terms; chairman; meetings; compensation and expenses, duties.

Sec. 9. (1) A board of safety compliance and appeals, consisting of 5 members, is created within the department of labor. Members of the board shall be appointed by the governor with the advice and consent of the senate for terms of 4 years, or until their successors are appointed and qualified, except that, of the members first appointed, 1 each shall be appointed for 1, 2 and 3 years, and 2 shall be appointed for 4 years. The members of the board shall be selected as follows: 2 of the members shall be affiliated with labor organizations but not more than 1 of whom shall be from the same international union, and 2 of the members shall be representative of employer interests. The chairman of the board shall be the fifth member and shall be selected for appointment from a list of nominees containing 1 name each from the full members in good standing of each Michigan chapter of the American society of safety engineers. The first chairman of the board shall have a 4-year term. Vacancies shall be filled in

the same manner as the original appointments, except that a vacancy occurring during the term of office shall be filled by appointment for the unexpired term.

(2) The members of the board shall meet as necessary to discharge their duties under this act; and they shall hold regular quarterly meetings at their offices in Lansing on the first Wednesday in February, May, August and November. Interim meetings may be called at any time by the chairman of the board or by any 3 members of the board. A majority of the members of the board constitutes a quorum. The members shall receive their reasonable and necessary travel and other expenses in accordance with standard travel regulations. The chairman of the board shall receive \$35.00 for each day or part thereof, necessarily spent in the discharge of his official duties not to exceed 50 days in any calendar year and the other members of the board shall receive \$25.00 for each day or part thereof, necessarily spent in the discharge of their official duties, not to exceed 25 days in any calendar year.

(3) The board shall conduct hearings and determine compliance or noncompliance with safety orders issued as prescribed in section 8. When a safety order has been referred to the board as provided in section 8, the board shall schedule a hearing before not less than a quorum of 3 members of the board and shall give reasonable notice thereof to the employer to whom the order was issued and to the department.

(4) Proceedings in any hearing shall be conducted in accordance with the procedures applicable to the trial of contested cases under Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

(5) After due hearing, by vote of not less than 3 members of the board, the board may:

- (a) Dismiss the safety order.
- (b) Modify the safety order.
- (c) Extend the time for the employer to establish compliance with the safety order.
- (d) Issue a final order sustaining the safety order and direct compliance therewith by a specified date.

(6) If an employer fails to comply with a final order of the board, the board shall notify the director who shall proceed to enforce the order in accordance with the provisions of this act.

HISTORY: New 1967, p. 576, Act 282, Imd. Eff. Aug. 1.

408.860 Noncompliance with safety order; cessation order, injunction; penalty.

Sec. 10. (1) If an employer fails to comply with a final safety order of the board, the director, upon receipt of notice of noncompliance, shall issue an order directing the employer to cease operating so much of his business or enterprise as is necessary to eliminate the hazard which is the subject of the order.

(2) If an employer fails to comply with an order issued by the director under subsection (1), he shall refer the matter to the prosecuting attorney of the county in which the violation exists who shall promptly institute proceedings in the circuit court for such county for an injunction to enforce the order of the director. Proceedings in connection with an application for an injunction shall be conducted de novo. If for any reason the prosecuting attorney fails to act on a case referred to him under this subsection, the director shall refer the case to the attorney general for his review.

(3) Any person, firm or corporation failing to comply with any standard or interfering with, impeding or obstructing in any manner the administration of standards pursuant to the provisions of this act is guilty of a misdemeanor.

HISTORY: New 1967, p. 577, Act 282, Imd. Eff. Aug. 1.

408.861 Public policy of state.

Sec. 11. The following is declared to be the public policy of the state: Occupational accidents produce economic and social loss, impair productivity and retard the advancement of standards of living. Both humane and economic considerations recommend the establishment and implementation of effective injury control measures. A unified, continuing, professional effort is required. A dynamic program of safety education and training is the best known solution to control of occupational accidents.

HISTORY: New 1967, p. 577, Act 282, Imd. Eff. Aug. 1.

408.862 Safety education and training division; creation; limitations.

Sec. 12. (1) To implement a safety education and training program, a safety education and training division is created in the department of labor.

(2) This program shall be limited in application to those jurisdictions assigned to the department.

HISTORY: New 1967, p. 577, Act 282, Imd. Eff. Aug. 1.

408.863 Safety education and training division; functions, duties and responsibilities.

Sec. 13. The functions of the safety education and training division shall include, but are not limited to, the following duties and responsibilities:

(a) Development of a statewide safety education and training program to acquaint employers, supervisors, employees and union leaders with the most modern and effective techniques of accident investigation and prevention.

(b) Development and promotion of the consultative educational approach as a desirable and effective long range solution to occupational safety problems.

(c) Development of training programs for state safety inspectors of the department.

(d) Planning, organizing and attending occupational safety seminars, conferences and meetings designed for management, supervisory personnel, employees and union representatives.

(e) Definition and establishment of necessary research projects.

(f) Arrangement and procurement of necessary contractual services and training aids.

(g) Development of specific occupational safety programs for employer groups.

(h) Provision of occupational safety pamphlets, booklets, brochures and other appropriate safety media.

HISTORY: New 1967, p. 577, Act 282, Imd. Eff. Aug. 1.

408.864 Safety education and training division; staff, establishment, duties.

Sec. 14. The director shall establish within the department an experienced and competent staff to discharge the duties and responsibilities in sections 11 to 17.

HISTORY: New 1967, p. 578, Act 282, Imd. Eff. Aug. 1.

408.865 Employers' annual report; summary, publication; confidentiality.

Sec. 15. (1) To assure the availability of accurate, timely statistical data concerning occupational safety, all employers having 1 or more employees simultaneously employed shall submit annual reports, on a form and in a manner prescribed by the director, of all disabling work injuries as defined and in accordance with the "standard method of recording and measuring work injury experience" (Z16.1, latest edition) of the United States of America standards institute. Reports shall not call for employees to be identified by name.

(2) The department may exempt from this requirement those classes of employers for whose operations adequate records of safety experience are already available or the department may exempt any employer from this requirement when, in the judg-

ment of the director, the submission of annual reports by such employer is not necessary to carry out the purposes of this act and would be an undue burden upon such employer because of size, the nature of its operation or other special circumstances.

(3) The department shall publish each year a detailed summary of the statistical data received from employers; and this summary shall be published within 3 months after the due date of the annual employer report. A copy of such summary shall be available on request to each reporting establishment required to file reports of disabling work injuries and shall be made available to anyone having a legitimate interest in the subject matter of the report.

(4) The statistical summary shall not be prepared, published or released in such a manner as to disclose information concerning any individual employer unless prior permission has been obtained from the employer in writing. The quarterly reports of each reporting establishment shall remain confidential and shall not be released or revealed to any individual, firm, corporation, association or to any branch or agency of federal, state or local government without prior permission of the reporting establishment.

HISTORY: New 1967, p. 578, Act 282, Imd. Eff. Aug. 1.

408.866 Annual tax levy; workmen's compensation rates; depositing funds; payment.

Sec. 16. (1) To accomplish the purposes and objectives of sections 11 to 13, there shall be assessed annually, a levy based on the total annual workmen's compensation losses paid by employers under the Michigan workmen's compensation act, in the previous calendar year, excluding medical payments. The levy shall be $\frac{3}{4}$ of 1%. Each insurance carrier licensed to do workmen's compensation business in the state, the state accident fund and each self-insured employer authorized to make workmen's compensation payments directly to their employees shall pay this levy directly to the department. Such levy assessments shall constitute an element of loss for the purpose of establishing rates for workmen's compensation insurance. All funds derived from this levy shall be deposited in the general fund of the state and shall be appropriated by the legislature for the operation of this act. In no case shall such appropriation exceed 75% of the total income provided for in this act.

(2) The director shall determine the needs of the program, by statistical data on disabling work injuries; depth and scope of the program as evidenced by the needs and demands of employers and the present, planned and anticipated budgetary needs of the program, and submit same to the legislature.

(3) The annual levy payment is due and payable from all employers on July 1 except that, in the first year, it shall be due on July 1, 1967, or the effective date of this act if the effective date is subsequent to July 1, 1967.

HISTORY: New 1967, p. 578, Act 282, Imd. Eff. Aug. 1.

408.867 Noncompliance with sections 15 or 16; misdemeanor.

Sec. 17. Any employer or insurance company failing to comply with any of the provisions of sections 15 and 16 is guilty of a misdemeanor.

HISTORY: New 1967, p. 578, Act 282, Imd. Eff. Aug. 1.

408.868 Repeal; saving clause.

Sec. 18. (1) Act No. 285 of the Public Acts of 1909, as amended, being sections 408.51 to 408.94 of the Compiled Laws of 1948, is repealed: Provided, however, That until the commission herein established promulgates standards in accordance with this act, the provisions of Act No. 285 of the Public Acts of 1909, as amended, being sections 408.51 to 408.94 of the Compiled Laws of 1948, are in full force and effect. The commission shall, as new standards are promulgated, advise the legislature of sections being amended and substituted.

(2) Any hearing or other proceedings pending before the director of labor shall not be abated but shall be conducted and determined by the director in accordance with the statutes governing such hearing or proceedings.

HISTORY: New 1967, p. 579, Act 282, Imd. Eff. Aug. 1.

CHAPTER 409. LABOR—JUVENILE EMPLOYMENT

JUVENILE EMPLOYMENT ACT Act 157 of 1947	
409.1	Hittle juvenile employment act; short title.
409.2	Minors under 18; employment prohibited; high school graduates.
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409.4	Minors under 18; work permits, prerequisites. Employer's statement; contents. Evidence of age; approval by parent or guardian.
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409.22	Theatrical or musical production employing minor; commissioner's approval, restrictions.
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409.23	Employment in liquor establishment or female as messenger prohibited when under 18.
409.24	Legal employment of minor.
409.25	Enforcement of act; complaints; commissioner's inspection of places of employment, work permits, age certificates, employer's records.
409.26	Unlawful employment of minor; obstruction of inspection, penalty.
409.27	Federal act violations; duty of attorney general.
409.28	Street trade; definition.
409.29	Hittle juvenile employment act; definitions.
409.30	Work permits; validation by commissioner.

Act 157, 1947, p. 217; Eff. Oct. 11.

AN ACT to provide for the legal employment and protection of minors under 18 years of age; to define legal employment; to prohibit the employment of minors under 18 years of age without work permit, except as otherwise provided in this act; to provide for the issuance and revocation of work permits and age certificates; to provide for the regulation of hours and conditions of employment of minors; and to provide for the enforcement of this act and prescribe penalties for the violation of this act.

The People of the State of Michigan enact:

409.1 Hittle juvenile employment act; short title.

Sec. 1. This act shall be known and may be cited as "the Hittle juvenile employment act."

HISTORY: CL 1948, 409.1.

CITED IN OTHER SECTIONS: Sections 409.1 to 409.30 are cited in § 340.732.

409.2 Minors under 18; employment prohibited; high school graduates.

Sec. 2. No minor under 18 years of age shall be employed, permitted or suffered to work in, about, or in connection with any gainful occupation, if such occupation is injurious to health or morals or is unduly hazardous, subject however to the provisions of this act as hereinafter set forth. This act shall not apply to or prohibit the employment of any minor 17 years of age or over who has completed the requirements and received a valid high school diploma.

HISTORY: CL 1948, 409.2;—Am. 1969, p. 519, Act 279, Imd. Eff. Aug. 11.

409.3 Work permits; issuance; golf caddies.

Sec. 3. No minor under 18 years of age who does not have a valid high school diploma shall be employed, permitted or suffered to work in, about, or in connection with any gainful occupation, not excepted by this act, unless and until the person employing such minor shall procure from the minor and keep on file a work permit for each minor so employed, issued by the superintendent of schools of any school district in which such minor resides, or any intermediate district in which such minor resides, or by some person duly authorized in writing by such superintendent, any of whom shall have power to administer oaths in relation thereto. Such superintendent may authorize an issuing officer in the school district in which the place of employment is located to issue any such work permit. Work permits other than limited permits, for the employment of any minor of the age of either 16 or 17 years in a school district, which maintains a part-time continuation school pursuant to the provisions of chapter 21 of part 2 of Act No. 269 of the Public Acts of 1955, being sections 340.821 to 340.828 of the Compiled Laws of 1948, may, irrespective of the legal residence of such minor, be issued by the superintendent of such school, or, if issued by another school official, copy thereof shall be furnished to such superintendent immediately following the issuance thereof. No work permit shall be issued to any minor under the age of 14 years, except as golf caddies on public or private golf courses.

HISTORY: CL 1948, 409.3;—Am. 1968, p. 97, Act 59, Imd. Eff. May 28;—Am. 1969, p. 519, Act 279, Imd. Eff. Aug. 11.

409.4 Minors under 18; work permits, prerequisites.

Sec. 4. The official authorized to issue work permits shall issue them only upon application in person by the minor desiring employment and after having examined, approved and filed the following papers:

Employer's statement; contents.

(1) A statement of intention to employ, signed by the prospective employer or by someone authorized by him, setting forth the general nature of the occupation in which he intends to employ the minor, the hours during which the minor shall be employed, the employer's occupational approval number, and such other information as the state superintendent of public instruction or the commissioner of labor may require.

Evidence of age; approval by parent or guardian.

(2) Evidence of age, showing that the minor is of the age required by this act, which evidence shall consist of 1 of the following proofs of age:

- (a) A certified copy of the birth record.
- (b) A baptismal certificate, showing the place and date of birth and the place and date of baptism of the minor.
- (c) A bona fide contemporary record of the date and place of the minor's birth, kept in the Bible in which the record of the births of the family of the minor are preserved.
- (d) The school record or the school census record of the age of the minor.
- (e) A certified copy of a valid operator's license issued by this state, with picture of the licensee thereon, clearly showing date of birth.

(f) In case none of the aforesaid proofs are obtainable, and only in such case, the issuing officer may in his discretion accept other documentary evidence of age, such as a passport showing the age of the minor, a certificate of arrival in the United States, issued by the United States immigration office showing his age, or a life insurance policy showing his age, as shall be satisfactory to the issuing officer.

(g) In case no such documentary proof is obtainable, the issuing officer may in his discretion accept the sworn statement of the minor's parent or guardian as to his age, together with a corroborating statement of a physician.

The official may in his discretion also require the written approval of employment, signed by the parent or guardian of the minor or, if there be none, the person or agency to whom custody of the child has been granted by a court of competent jurisdiction or an adult person with whom the child is living.

HISTORY: CL 1948, 409.4;—Am. 1967, p. 41, Act 30, Imd. EF. Jun. 2.

409.5 Work permits; form, full time or limited, contents; fee; discretionary power of issuing officer, determining powers; prohibition.

Sec. 5. Work permits shall be issued in such form as the state superintendent of public instruction may require and in accordance with instructions prescribed by him. For work during periods or days during which the school of which such minor is a pupil is not in session, or for hours outside of school hours, limited permits shall be issued. Full time permits shall be issued to a minor under the age of 18 years for full time employment. Limited permits shall be on a form of a special color, distinct from that of the regular full time permits. All permits shall state the name and address of the minor, the date and place of his birth, the occupation and industry in which he is to be employed, the employer's name and address and such other information as the state superintendent of public instruction may require. No fee shall be charged to any minor, his parent, guardian [guardian] or other person for any such permit, certificate of age or other record required by this act by any official by whom the same shall be issued. The issuance of a work permit to an individual minor for employment so authorized shall be within the discretion of the local issuing officer, who, in deciding whether or not the same shall be issued, shall give due consideration to the following factors:

- (a) Age and physical condition of such minor to establish evidence of age.
- (b) Attendance and standing in school work.
- (c) Need for income from such employment for the support of either such minor or members of his immediate family.
- (d) Standards of employment as established by the commissioner of labor, as hereinafter provided.

No such work permit shall be issued to permit any minor to engage in an occupation which is injurious to the health or morals of such minor or is unduly hazardous.

HISTORY: CL 1948, 409.5.

409.6 Work permits; refusal to grant or revocation; record, grounds.

Sec. 6. The issuing officer may refuse to grant a work permit or revoke a permit already issued if in his opinion the best interests of the minor would be served by such refusal or revocation. He shall keep a record of each such refusal and revocation and the reason therefor. He may revoke any work permit or age certificate which in his opinion was improperly issued, or, in case of a minor who remains in school and is employed part time under such work permit, if it is apparent that such employment is resulting in inability on the part of such minor to properly perform his school work, after notice to the parent or guardian of such child and failure to correct such deficiency. Such permit shall likewise be revoked in case the issuing officer is officially informed by the office of commissioner of labor that such employment is unduly hazardous or

injurious to the health or morals of the individual minor or is in violation of any federal act or of any rule or regulation promulgated thereunder.

HISTORY: CL 1948, 409.6.

409.7 Work permits; failure or refusal to grant; appeal by minor's parent or guardian, procedure.

Sec. 7. In case of the failure or refusal of the issuing officer to issue such work permit based upon an offer of employment for which an occupational approval number has been duly issued by the commissioner of labor, appeal may be taken by the parent or guardian of the minor applying therefor or by the person or agency to whom the custody of such minor has been awarded. Appeal may be taken in the same manner from the revocation of any such permit. Such appeal shall be taken by the filing with the probate court of a written statement setting forth the action complained of and the basis and objection thereto, copy of which shall be served upon the issuing officer by the person taking such appeal or his agent, either by delivering the same to him personally or by leaving the same during business hours at his office with the person in charge thereof. Proof of such service shall be filed with the probate court prior to the hearing thereon. Such issuing officer shall, within 5 days following the date of such service upon him, make his return to the probate court, in which he shall set forth such information as will advise the probate court of the facts involved insofar as they are within his knowledge. No bond shall be required nor shall any fee be charged by the probate court in connection with such appeal. The matter shall be forthwith brought on for hearing in the probate court, upon giving of such notice thereof to the interested parties as the court may in its discretion require. The court shall hear the matter de novo and shall thereupon enter its order, either affirming the action of the issuing officer appealed from or, in the event of the reversal, requiring such officer to issue or reinstate, as the case may be, such permit. No appeal shall lie from the order of the probate court.

HISTORY: CL 1948, 409.7.

409.8 Work permits; authorization to employ minors in special circumstances; refusal of application, appeal, procedure; inaction deemed approval.

Sec. 8. In the event that such issuing officer is of the opinion that a given minor is capable of performing employment which is not authorized under the standards established by the commissioner of labor and that such employment would aid in the development of such minor, he may apply to the commissioner of labor for authority to issue such work permit as a deviation for that particular case only from such standards. In the event such authority is granted, the commissioner of labor shall so advise both the issuing officer and the employer offering employment. In the event of refusal, the commissioner shall specify in writing the reasons or grounds upon which the same was based, and, in the event that such employment would violate any federal act or regulation promulgated pursuant thereto, shall so state and make specific reference thereto. Unless such employment would violate any such federal act or regulation, appeal may be taken from the refusal of the commissioner to authorize the issuance of such work permit by the parent or guardian of such minor or the person or agency to whom his custody has been awarded. Such appeal shall be taken, heard and determined in a manner specified in section 7 hereof, except that copy of the written statement, filed as to the taking of such appeal, shall be served upon the commissioner of labor, either by registered mail or personal service, not less than 10 days prior to the hearing thereon. The commissioner shall act upon any such application within 5 days, Saturdays, Sundays and holidays excepted, after receipt of such application and shall immediately notify such issuing officer of such action. In the event of failure of the commis-

sioner to act within such period, he shall be deemed to have approved such deviation and authorized the issuance of such permit.

HISTORY: CL 1948, 409.8.

409.9 Certificate of age; requests, proof of age required; issuance when over 18 and under 21.

Sec. 9. Upon request and presentation of the same proof of age as is required for the issuance of work permits under this act, it shall be the duty of the person authorized to issue a work permit to issue a certificate of age to any person who is more than 18 but less than 21 years of age and who desires to enter employment.

HISTORY: CL 1948, 409.9.

409.10 Work permit or certificate of age as proof of age.

Sec. 10. A work permit or certificate of age issued in accordance with this act shall be conclusive evidence of the age of the minor for whom issued in any proceedings involving the employment of the minor under this act or the workmen's compensation act.

HISTORY: CL 1948, 409.10.

409.11 Work permit for minor under 18 years of age; return of permit after employment termination; inspection.

Sec. 11. Every employer receiving a work permit for a minor under 18 years of age shall immediately after the termination of the minor's employment return the permit to the issuing officer. A minor shall be deemed to have terminated his employment when he or she shall have absented himself from work for 5 consecutive working days without explanation. Said employer shall, during the period of the minor's employment, keep the permit on file in the place of employment and accessible for examination upon demand of a representative of the commissioner of labor, or other person authorized to enforce this act.

HISTORY: CL 1948, 409.11.

409.12 Working conditions for minors under 18; standards, establishment; consultation, hearing; appeals; deviation.

Sec. 12. The commissioner of labor shall have authority to establish standards not inconsistent with the provisions of this act as to the working conditions of minors under 18 years of age in various types of employment and as to safety, health and morals. Such standards and any changes therein shall be established only after the commissioner has consulted with employers, employees, school officials and such other persons as may in his opinion be in position to furnish pertinent information in regard thereto and after public hearing at which any person interested therein shall have the right to be heard. Appeals from such standards may be taken to appeal panels, to be appointed by the commissioner of labor. Such appeal panel shall be acceptable to the appellant: Provided, That the panel is composed of local representatives, or agents, of those affected by the standards.

Deviations from the established standards or from maximum hours of employment specified herein shall be granted by the commissioner of labor whenever necessary in the interests of the general public or the individual minor.

HISTORY: CL 1948, 409.12.

409.13 Occupational approval number for employment of minors under 18; issuance requirement, form.

Sec. 13. The commissioner of labor shall issue occupational approval numbers to employers authorizing employment of minors under 18 years of age in gainful occupations not injurious to health or morals or unduly hazardous, subject however to the provisions of this act: Provided, That such employment is not in violation of any fed-

eral act or rule or regulation promulgated pursuant thereto. Except as otherwise provided in this act, no work permit shall be issued for the employment of any minor under 18 years of age until the employer has been issued an occupational approval number. The form of occupational approval numbers and the procedure of applying therefor shall be prescribed by the commissioner of labor.

HISTORY: CL 1948, 409.13.

409.14 Employment exempt from act.

Sec. 14. Nothing in this act shall apply to or prohibit any minor from engaging in:

- (a) Street trades, except as prohibited under section 23.
- (b) Domestic work or chores in connection with private residences.
- (c) Farm work.

(d) Employment in a trade in which the parent or duly appointed guardian of such minor is self-employed.

(e) Employment in a business owned and operated by such parent or guardian. For the purposes of this provision, a business shall be deemed to be owned by such parent or guardian if he is either the sole owner, partner or stockholder therein and shall be deemed to be operated by him if he devotes substantially all of his normal working hours to the operation of such business.

In the event that such minor is required by law to attend school, then such work may only be performed outside of school hours.

(f) Employment on a camp site of a nonprofit corporation engaged in citizenship training and character building during periods of school vacations.

HISTORY: CL 1948, 409.14;—Am. 1969, p. 520, Act 279, Imd. Eff. Aug. 11.

409.15 Employment by educational institution of student minor older than 14; inapplicability of act.

Sec. 15. This act shall not be deemed to apply to or prohibit the employment of any student minor over the age of 14 years by any academy or college, when such minor student is employed therein, or when such employment is required as a part of the educational program, or the employment of any minor in a gainful occupation in accordance with and pursuant to a plan, agreement or contract entered into between the employer and the school board or board of education of the school district in which is situated the school of which such minor is a pupil or any school of which said minor is a pupil: Provided, That such employment is not in violation of any federal act, or rule or regulation promulgated pursuant thereto.

HISTORY: CL 1948, 409.15.

409.16 Unadjustable minors; requisite for employment; work permit.

Sec. 16. This act shall not be deemed to prohibit the employment of any minor in an approved gainful occupation in case such minor is determined by the official in charge of his local school to be unadjustable and in case such employment is approved by such local school official, the probate judge in the county of his residence and a representative of the commissioner of labor: Provided, That such minor has in the discretion of such officials attained sufficient physical development to enable him to perform such employment without undue hazard to himself and without injury to his health or morals: Provided further, That such employment is not in violation of any federal act, or rule or regulation promulgated pursuant thereto. Such approval shall be evidenced by a work permit issued pursuant to the written approval of the majority of said officials.

HISTORY: CL 1948, 409.16.

409.17 Work hours when under 16; student minor combined school and work week.

Sec. 17. No minor of the age of less than 16 years shall be employed, permitted or suffered to work in, about, or in connection with any gainful occupation not excepted by this act for more than 6 days in any 1 week, nor for a period longer than a weekly average of 8 hours per day or 48 hours in any week, or more than 10 hours in any 1 day, nor shall such minor be employed, permitted, or suffered to work between the hours of 9:00 p.m. and 7:00 a.m. No minor who is then a student in school shall be permitted during the period when school is in session to work in a gainful occupation more than a combined school and work week of 48 hours.

HISTORY: CL 1948, 409.17.

409.18 Work hours when between 16 and 18; female less than 18, restriction; student minor.

Sec. 18. No minor of the age of less than 18 but not less than 16 years shall be employed, permitted or suffered to work in, about, or in connection with any gainful occupation for more than 6 days in any 1 week, nor for a period longer than a weekly average of 8 hours per day or 48 hours in any week, or more than 10 hours in any 1 day, nor between the hours of 10:30 p.m. and 6:00 a.m. If a minor is over 16 years and under 18 years of age and not regularly attending school, then any such minor may be employed until 11:30 p.m. Minors legally appearing in a theatrical performance that continues from an earlier hour until after 10:00 p.m. may complete such performance. No female of less than 18 years of age shall be employed, permitted or suffered to work in a manufacturing establishment during the hours from 6:00 p.m. to 6:00 a.m. No minor of the age of less than 18 but not less than 16 years who is then a student in school shall be permitted during the period that such school is in session to work more than a combined school and work week of 48 hours.

HISTORY: CL 1948, 409.18;—Am. 1968, p. 575, Act 323, Imd. Eff. Jul. 3.

409.19 Continuous work hours when under 18; meal; rest period.

Sec. 19. No minor under 18 shall be employed, permitted or suffered to work for more than 5 hours continuously without an interval of at least 30 minutes for a meal and rest period. No such interval of less than 30 minutes shall be deemed to interrupt a continuous period of work.

HISTORY: CL 1948, 409.19.

409.20 Inapplicability to minors employed in canning establishments or as nurses; approval.

Sec. 20. The provisions of sections 17 and 18 shall not apply to nor affect any person, corporation or association engaged in preserving and shipping perishable goods, or in fruit or vegetable canning or fruit packing establishments, or student and graduate nurses in hospitals, or nurses in fraternal or charitable homes. Such employment shall be approved by the commissioner of labor or his duly authorized representative as not being injurious to the health of such employee.

HISTORY: CL 1948, 409.20.

409.21 Work hours for minors; posting copy of provisions; time record, contents, period kept; falsification, penalty.

Sec. 21. Every employer shall keep conspicuously posted in or about the premises wherein any person under 18 years of age is employed, permitted or suffered to work a printed copy of sections 17 and 18 of this act, to be furnished by the commissioner of labor.

Every employer shall keep in or about the premises wherein a minor under 18 is employed, permitted or suffered to work an adequate time record, which shall state the

number of hours worked by said minor each day of the week, together with such other information as the commissioner of labor may require. The employer shall keep such record on file for at least 1 year after the entry of such record. Any employer who knowingly makes a false statement in such record shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than \$100.00, or imprisonment for not more than 90 days, or both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1948, 409.21.

409.22 Theatrical or musical production employing minor; commissioner's approval, restrictions.

Sec. 22. Nothing in this act shall be construed so as to prevent a minor from being employed as an entertainer by a theatrical company, or from taking part in a stage play or musical production in a theatre, if an approval of occupation is obtained from the commissioner of labor by the representative of the theatrical company. Such approval shall be issued only if the commissioner or his authorized agent is of the opinion that such employment is not detrimental to the health or morals of the minor, that the minor is adequately supervised, and that his education is not neglected.

HISTORY: CL 1948, 409.22.

409.22a Theater, show, dance hall or pool room employing minor under 16.

Sec. 22a. Except as provided in section 22, no child under the age of 16 years shall be employed in or about any theater, variety show, moving picture show, burlesque show, or other kind of play house, music or dance hall, pool room or billiard room.

HISTORY: CL 1948, 409.22a.

409.23 Employment in liquor establishment or female as messenger prohibited when under 18.

Sec. 23. No work permit shall be issued authorizing the employment of any minor under 18 years of age in, about, or in connection with that part of any establishment where alcoholic liquors are distilled, rectified, compounded, brewed, manufactured, bottled, consumed, distributed or sold for consumption on the premises. No female under 18 years of age shall be employed, permitted or suffered to work in the public streets as a messenger in the distribution or delivery of goods or messages for any person, firm or corporation engaged in the business of transmitting or delivery of goods or messages.

HISTORY: CL 1948, 409.23.

409.24 Legal employment of minor.

Sec. 24. Any minor engaged in an occupation specified in a work permit issued for the employment of such minor therein in accordance with provisions of this act shall be considered to be legally employed: Provided, That the employer has on file such work permit and the same has not expired or been revoked.

HISTORY: CL 1948, 409.24.

409.25 Enforcement of act; complaints; commissioner's inspection of places of employment, work permits, age certificates, employer's records.

Sec. 25. It shall be the duty of the commissioner of labor and his authorized representatives to enforce the provisions of this act, to make complaints against persons violating these provisions and to assist in the prosecution of violations of this act. The commissioner of labor and any authorized representative of the commissioner shall

have authority to enter and inspect any place or establishment where any such minor is employed and to have access to work permits, age certificates and time records of the employer and such other records as may aid in the enforcement of this act.

HISTORY: CL 1948, 409.25.

409.26 Unlawful employment of minor; obstruction of inspection, penalty.

Sec. 26. Any person who knowingly employs, permits or suffers any minor to be employed, or to work in violation of this act, or obstructs the commissioner of labor, his representatives or agents, or person authorized to inspect places of employment under this act in the enforcement of the provisions of this act, shall upon conviction be punished by a fine of not more than \$100.00 for each offense, or imprisonment in the county jail for not more than 90 days, or both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1948, 409.26.

409.27 Federal act violations; duty of attorney general.

Sec. 27. It shall be the duty of the attorney general to defend any person charged with the violation of any federal act, or any rule or regulation promulgated pursuant thereto, by reason of the employment of a minor, which employment is authorized by a work permit issued in accordance with the provisions of this act.

HISTORY: CL 1948, 409.27.

409.28 Street trade; definition.

Sec. 28. The term "street trade" shall be deemed to refer to any 1 or more of the following occupations:

- (a) Soliciting subscriptions for newspapers, magazines or other periodicals;
- (b) Distributing, selling or offering for sale newspapers, magazines, periodicals, advertising matter;
- (c) Boot blacking;
- (d) Selling or offering for sale of popcorn, peanuts, candy, fruit and soft drinks in concessions owned and operated by a boy scout troop, girl scout troop, or any other youth organization.

Provided, That the same is conducted in a public place.

HISTORY: CL 1948, 409.28.

409.29 Little juvenile employment act; definitions.

Sec. 29. The term "employer" or "person" or other term referring to any employer shall be deemed to refer to and include both the masculine and feminine as well as any partnership or corporation, as the case may be. The term "commissioner" shall be deemed to refer to the commissioner of labor of the state of Michigan.

HISTORY: CL 1948, 409.29.

409.30 Work permits; validation by commissioner.

Sec. 30. All work permits heretofore issued by the commissioner of labor shall be deemed valid and shall remain in full force and effect until new work permits are issued pursuant to the provisions of this act.

HISTORY: CL 1948, 409.30.

CHAPTERS 411-417. LABOR—WORKMEN'S COMPENSATION

Workmen's Compensation Law
Act 10 of 1912 (1st Ex. Ses.)

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PART I.—MODIFICATION OF REMEDIES.

411.1-411.11 Repealed.

411.1-411.11 Repealed. 1969, p. 669, Act 317, Eff. Dec. 31.

Sections related to workmen's compensation; modification of remedies.

PART II.—COMPENSATION.

412.1-412.23 Repealed.

412.1-412.23 Repealed. 1969, p. 669, Act 317, Eff. Dec. 31.

Sections related to workmen's compensation; kind of compensation; computation.

PART III.—PROCEDURE.

413.1-413.20 Repealed.

413.1-413.20 Repealed. 1969, p. 669, Act 317, Eff. Dec. 31.

Sections related to workmen's compensation procedures.

PART IV.—METHOD OF PAYMENT.

414.1-414.11 Repealed.

414.1-414.11 Repealed. 1969, p. 669, Act 317, Eff. Dec. 31.

Sections related to workmen's compensation; method of payment.

PART V.—ADMINISTRATION BY COMMISSIONER OF INSURANCE.

415.1-415.13 Repealed.

415.1-415.13 Repealed. 1969, p. 669, Act 317, Eff. Dec. 31.

Sections related to workmen's compensation; administration by commissioner of insurance.

PART VI.—MISCELLANEOUS PROVISIONS.

416.1-416.8 Repealed.

416.1-416.8 Repealed. 1969, p. 669, Act 317, Eff. Dec. 31.

Sections related to workmen's compensation; miscellaneous provisions.

PART VII.—DISEASES AND DISABLEMENT.

417.1-417.14a Repealed.

417.1-417.14a Repealed. 1969, p. 669, Act 317, Eff. Dec. 31.

Sections related to workmen's compensation; diseases and disablements.

PART VIII.—FUNDS.

417.51-417.61 Repealed.

417.51-417.61 Repealed. 1969, p. 669, Act 317, Eff. Dec. 31.

Sections related to workmen's compensation; funds.

CHAPTER 418. LABOR—WORKMEN'S COMPENSATION

Act 317 of 1969

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- 418.858 Hearings; costs and fees; disagreement; attorney fees.
- 418.859 Review procedure; appeal.
- 418.861 Findings of fact conclusive; questions of law.
- 418.863 Order of hearing referee; judgment; notice; record.
- 418.865 Examination by physicians; fee.
- 418.867 Investigation commission; report, expenses.
- 418.891 Application of prior law; new benefit rates; saving clause.
- 418.898 Repeal.
- 418.899 Effective date.

Act 317, 1969, p. 640; Eff. Dec. 31.

AN ACT to revise and consolidate the laws relating to workmen's compensation; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

CHAPTER 1

COVERAGE AND LIABILITY

418.101 Workmen's compensation act of 1969; short title.

Sec. 101. This act shall be known and may be cited as the "workmen's compensation act of 1969".

HISTORY: New 1969, p. 640, Act 317, Eff. Dec. 31.

418.111 Persons subject to act.

Sec. 111. Every employer, public and private, and every employee, unless herein otherwise specifically provided, shall be subject to the provisions of this act and shall be bound thereby.

HISTORY: New 1969, p. 640, Act 317, Eff. Dec. 31.

418.115 Employers covered; private employers, agricultural employers; medical and hospital coverage.

Sec. 115. This act shall apply to:

(a) All private employers, other than agricultural employers, who regularly employ 3 or more employees at 1 time.

(b) All private employers, other than agricultural employers, who regularly employ less than 3 employees if at least 1 of them has been regularly employed by that same employer for 35 or more hours per week for 13 weeks or longer during the preceding 52 weeks.

(c) All public employers, irrespective of the number of persons employed.

(d) All agricultural employers of 3 or more regular employees paid hourly wages or salaries, and not paid on a piecework basis, who are employed 35 or more hours per week by that same employer for 13 or more consecutive weeks during the preceding 52 weeks. Coverage shall apply only to such regularly employed employees. The average weekly wage for such an employee shall be deemed to be the weeks worked in agricultural employment divided into the total wages which the employee has earned from all agricultural occupations during the 12 calendar months immediately preceding the injury, and no other definition pertaining to average weekly wage shall be applicable.

(e) All agricultural employers of 1 or more employees who are employed 35 or more hours per week by that same employer for 5 or more consecutive weeks shall provide for such employees, in accordance with rules established by the director, medical and hospital coverage as set forth in section 315 for all personal injuries arising out of and in the course of employment suffered by such employees not otherwise covered by this act. The provision of such medical and hospital coverage shall not affect any rights of recovery that an employee would otherwise have against an agricultural employer and such right of recovery shall be subject to any defense the agricultural employer might otherwise have. Section 141 shall not apply to cases, other than medical and hospital coverages provided herein, arising under this subdivision nor shall it apply to actions brought against an agricultural employer who is not voluntarily or otherwise subject to this act. No person shall be considered an employee of an agricultural employer if the person is a spouse, child or other member of the employer's family, as defined in sub-

division (b) of section 353 residing in the home or on the premises of the agricultural employer.

All other agricultural employers not included in subdivisions (d) and (e) shall be exempt from the provisions of this act.

HISTORY: New 1909, p. 640, Act 317, Eff. Dec. 31.

418.118 Domestic servants.

Sec. 118. (1) No household domestic servant shall be considered an employee if the person is a wife, child or other member of the employer's family residing in the home, and no householder shall be deemed a statutory principal within the meaning of section 171 for the purposes of this section.

(2) No private employer shall be liable under this act to any person who is employed by him as a household domestic servant for less than 35 hours per week for 13 weeks or longer during the preceding 52 weeks, notwithstanding the provisions of section 611 or any other provision of this act, unless such person assume liability under section 121.

(3) A household domestic servant or domestic as used in this act means a person who engages in work or activity relating to the operation of a household and its surroundings whether or not he resides therein.

HISTORY: New 1909, p. 641, Act 317, Eff. Dec. 31.

418.121 Private employers; voluntary assumption of coverage.

Sec. 121. Any private employer not otherwise included by sections 115 and 118 may assume the liability for compensation and benefits imposed by this act upon employers. The purchase and acceptance by an employer of a valid compensation insurance policy, except in the case of domestics and agricultural employees, constitutes an assumption by him of such liability without any further act on his part, which assumption of liability shall take effect from the effective date of the policy and continue only as long as the policy remains in force, in which case the employer shall be subject to no liability other than workmen's compensation as provided for in this act. Agricultural and domestic employees may be voluntarily included by specific indorsement to a workmen's compensation policy in those cases where such coverage is not required.

HISTORY: New 1909, p. 641, Act 317, Eff. Dec. 31.

418.125 Consistent discharges to evade act; presumption, penalty.

Sec. 125. Any employer otherwise subject to the provisions of this act who consistently discharges employees within the minimum time specified in this chapter and replaces such discharged employees without a work stoppage will be presumed to have discharged them to evade the provisions of this act and is guilty of a misdemeanor.

HISTORY: New 1909, p. 641, Act 317, Eff. Dec. 31.

418.131 Exclusive remedy; recovery of compensation benefits.

Sec. 131. Where the conditions of liability under this act exist, the right to the recovery of compensation benefits as provided in this act shall be the exclusive remedy against the employer.

HISTORY: New 1909, p. 641, Act 317, Eff. Dec. 31.

418.141 Employee; action for personal injury or death, defenses abolished.

Sec. 141. In an action to recover damages for personal injury sustained by an employee in the course of his employment or for death resulting from personal injuries so sustained it shall not be a defense:

(a) That the employee was negligent, unless it shall appear that such negligence was wilful.

(b) That the injury was caused by the negligence of a fellow employee.

(c) That the employee had assumed the risks inherent in or incidental to, or arising out of his employment, or arising from the failure of the employer to provide and maintain safe premises and suitable appliances.

HISTORY: New 1969, p. 641, Act 317, Eff. Dec. 31.

418.151 Employers subject to act.

Sec. 151. (1) The following shall constitute employers subject to the provisions of this act:

(a) The state and each county, city, township, incorporated village and school district therein and each incorporated public board or public commission in this state authorized by law to hold property and to sue or be sued generally.

(b) Every person, firm and private corporation, including any public service corporation, who has any person in service under any contract of hire, express or implied, oral or written.

HISTORY: New 1969, p. 641, Act 317, Eff. Dec. 31.

418.155 Agricultural employer; definition.

Sec. 155. (1) An agricultural employer means one who hires a person performing services:

(a) On a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife.

(b) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(c) In connection with the production or harvesting of maple syrup or maple sugar or any commodity defined as an agricultural commodity or in connection with the raising or harvesting of mushrooms or in connection with the hatching of poultry or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for supplying and storing water for farming purposes.

(d) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity but only if such service is performed as an incident to ordinary farming operations or in the case of fruits and vegetables as an incident to the preparation of such fruits or vegetables for market. The provisions of this subdivision shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(2) As used in this section, farm includes stock, dairy, poultry, fruit, fur-bearing animals and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

HISTORY: New 1969, p. 642, Act 317, Eff. Dec. 31.

418.161 Employee; definition.

Sec. 161. (1) An employee as used in this act shall mean:

Public employees.

(a) Every person in the service of the state or of any county, city, township, village or school district, under any appointment, or contract of hire, express or implied, oral

or written. A person employed by a contractor who has contracted with a county, city, township, village, school district or the state, through its representatives, shall not be considered an employee of the state, county, city, township, village or school district which made the contract, when such contractor is subject to this act. Policemen or firemen or employees of the police or fire departments, or their dependents, in municipalities or villages of this state having charter provisions prescribing like benefits, may waive the provisions of this act and accept in lieu thereof such like benefits as are prescribed in the charter but shall not be entitled to like benefits from both. Nothing contained in this act shall be construed as limiting, changing or repealing any of the provisions of any charter of any municipality or village of this state relating to any benefits, compensation, pensions or retirement, independent of this act, provided for employees. Members of a volunteer fire department of any city, village or township shall be deemed to be employees of the city, village or township and entitled to all the benefits of this act when injured in the performance of their duties as members of the volunteer fire department and shall be deemed to be receiving such salary or wages from the village, city or township as would secure for the member of any volunteer fire department the maximum benefit provided under this act. The benefits of this act shall be available to any safety patrol officer who is engaged in traffic regulation and management for and by authority of any county, city, village or township, whether such officer is paid or unpaid, in the same manner as benefits are available to volunteer firemen, upon the adoption by the legislative body of the county, city, village or township of a resolution to that effect. A safety patrol officer or safety patrol force whenever used in this act shall be deemed to include all persons who volunteer and are registered with a school and assigned to patrol any public thoroughfare used by students of any school. A volunteer civil defense worker who is a member of the civil defense forces as provided by law and is registered on the permanent roster of the civil defense organization of the state or any political subdivision thereof shall be deemed to be an employee of the political subdivision on whose permanent roster he is enrolled when engaged in the performance of duty and shall be deemed to be receiving such salary or wages as would secure to him the maximum benefit provided under this act. No political subdivision of this state shall be required to provide compensation insurance for any peace officer of such political subdivision with respect to the protection and compensation provided by Act No. 329 of the Public Acts of 1937, as amended, being sections 419.101 to 419.104 of the Compiled Laws of 1948.

Private employees; spouses, partners, minors.

(b) Every person in the service of another, under any contract of hire, express or implied, including aliens, any person regularly employed on a full-time basis by his spouse having specified hours of employment at a specified rate of pay, working members of partnerships receiving therefrom wages irrespective of profits, any person insured for whom and to the extent premiums are paid based on wages, earnings or profits, and minors, who shall be considered the same as and have the same power to contract as adult employees. Any minor under 18 years of age whose employment at the time of injury shall be shown to be illegal, in the absence of fraudulent use of permits or certificates of age in which case only single compensation shall be paid, shall receive compensation double that provided in this act.

Exclusion of coverage of partner or spouse.

(2) Any policy or contract of workmen's compensation insurance, by indorsement, may exclude coverage as to any one or more named partners or the spouse of an employer who is an individual. No such spouse or partner so excluded shall be subject to the provisions of this act.

HISTORY: New 1969, p. 642, Act 317, Eff. Dec. 31.

418.171 Employer contracting with person not subject to act; liability.

Sec. 171. (1) If any employer subject to the provisions of this act, in this section referred to as the principal, contracts with any other person, in this section referred to as the contractor, who is not subject to this act or who has not complied with the provisions of section 611, and who does not become subject to this act or comply with the provisions of section 611 prior to the date of the injury or death for which claim is made for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation under this act which he would have been liable to pay if that workman had been immediately employed by him; and if compensation is claimed from or proceedings are taken against the principal, then, in the application of this act, reference to the principal shall be substituted for reference to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the workman under the employer by whom he is immediately employed. A contractor shall be deemed to include subcontractors in all cases where the principal gives permission that the work or any part thereof be performed under subcontract.

(2) If the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor or subcontractor. The employee shall not be entitled to recover at common law against the contractor for any damages arising from such injury if he takes compensation from such principal. The principal, in case he pays compensation to the employee of such contractor, may recover the amount so paid in an action against such contractor.

HISTORY: New 1969, p. 643, Act 317, Eff. Dec. 31.

CHAPTER 2

ADMINISTRATION

418.201 Bureau of workmen's compensation; creation, director.

Sec. 201. The bureau of workmen's compensation, herein referred to as the bureau, is created within the department of labor. The position of director of the bureau is created; he shall possess the powers and perform the duties granted and imposed by this act. As used in this act, "director" means the director of the bureau or his duly authorized representative.

HISTORY: New 1969, p. 644, Act 317, Eff. Dec. 31.

418.203 Director; appointment, term, salary, removal, vacancy, expenses.

Sec. 203. The director shall be appointed by the governor, with the advice and consent of the senate, for a term of 3 years, beginning on February 1, 1967 and each 3 years thereafter. The director shall hold office until his successor is appointed and qualified. The director shall receive an annual salary as appropriated by the legislature. He shall be subject to removal by the governor for cause after due notice and hearing. A vacancy shall be filled for an unexpired term in the same manner as the original appointment. The director shall be entitled to necessary traveling expenses incurred in the performance of official duties subject to the standardized travel regulations of the state.

HISTORY: New 1969, p. 644, Act 317, Eff. Dec. 31.

418.205 Director; duties, rules, assistants, administrative functions.

Sec. 205. The director shall devote his entire time to and personally perform the duties of his office and shall engage in no other business or professional activity. He may make rules not inconsistent with this act for carrying out the provisions of the act in accordance with Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public

Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948. He shall appoint such assistants and employees as may be necessary, who shall be entitled to necessary travel expenses incurred in the performance of official duties subject to the standardized travel regulations of the state, and such compensation as shall be determined in accordance with civil service rules where applicable. He shall appoint an assistant who shall have charge of the Detroit office of the bureau. He shall have general supervisory control of the bureau and all officers and employees thereunder. He shall have charge of the assignment of the work of the bureau to the assistants, hearing referees and employees. He shall have charge of the docketing and progress of contested cases including the power to order a hearing referee to dismiss without prejudice for lack of progress in the absence of good cause shown, in accordance with rules and procedures established for effecting these purposes. He shall have general charge of all administrative functions of the bureau and may delegate such duties, the performance of such administrative functions and the authority incident thereto.

HISTORY: New 1969, p. 644, Act 317, Eff. Dec. 31.

418.211 Hearing referees; appointment, qualifications.

Sec. 211. Hearing referees shall be appointed by the director, shall devote their entire time to the duties of their office and shall engage in no other business or professional activity. They shall be attorneys at law licensed to practice in the courts of this state, except for hearing referees who immediately prior to the effective date of this act were acting as such.

HISTORY: New 1969, p. 644, Act 317, Eff. Dec. 31.

418.215 Bureau of workmen's compensation; offices, location.

Sec. 215. The department of administration shall provide suitable space for the bureau in Lansing, Detroit, the Upper Peninsula and such other places in the state as, in the discretion of the director, are necessary. The principal office of the bureau shall be in Lansing.

HISTORY: New 1969, p. 644, Act 317, Eff. Dec. 31.

418.221 Blank forms; printing, cost.

Sec. 221. The bureau shall print and furnish free of charge to any employer or employee such blank forms as the director deems requisite to facilitate or promote the efficient administration of this act.

HISTORY: New 1969, p. 645, Act 317, Eff. Dec. 31.

418.225 Statistics; compiling, annual report.

Sec. 225. The director shall cause such statistics incident to the functions of the bureau to be compiled as may be in his discretion advisable. On or before April 1 of each year the director shall make and file a report covering the year prior to the preceding January 1.

HISTORY: New 1969, p. 645, Act 317, Eff. Dec. 31.

418.231 Obsolete records; destruction.

Sec. 231. At the discretion of the director, the bureau may destroy any record, file or paper pertaining to workmen's compensation 20 years after the date of injury to which the record, file or paper refers.

HISTORY: New 1969, p. 645, Act 317, Eff. Dec. 31.

418.251 Workmen's compensation appeal board; creation; members, qualifications, appointment, terms; chairman.

Sec. 251. A workmen's compensation appeal board is created, herein referred to as the board. It shall consist of 7 members, a majority of whom shall be attorneys at law licensed to practice in the courts of this state. Each member of the board shall devote

his entire time to and personally perform the duties of his office and shall engage in no other business or professional activity. The governor, with the advice and consent of the senate, shall appoint the members for terms of 4 years, and until their successors are appointed and qualified. Any vacancy shall be filled for an unexpired term in the same manner as the original appointment. The governor shall designate the chairman of the board.

HISTORY: New 1909, p. 645, Act 317, Eff. Dec. 31.

418.255 Appeal board; powers and duties; employees.

Sec. 255. (1) The board is an independent body with power and authority to hear and decide all appeals from the orders of the hearing referees and director.

(2) The board shall have the independent right to organize and manage its own work and authority over the selection, assignment, classification and tenure of its own employees and supervision over its own office space.

HISTORY: New 1909, p. 645, Act 317, Eff. Dec. 31.

418.261 Appeal board; chairman, duties; rules; hearing panels; review.

Sec. 261. (1) The chairman of the board shall have general supervisory control of and be in charge of the assignment of the work of the board and its employees. The board may make rules on appellate procedure.

(2) Any matter pending on review may be assigned to 4 members of the board for disposition. The composition of panels shall be alternated so that each member of the board serves on panels with other members of the board with a frequency which is as substantially equal as possible. If the 4 members concur in the result it shall be final. If there is disagreement, the matter shall be reviewed by the full board and its order shall be final.

HISTORY: New 1909, p. 645, Act 317, Eff. Dec. 31.

418.265 Appeal board; compensation, expenses; offices.

Sec. 265. (1) Each member of the board shall receive an annual salary as appropriated by the legislature and shall be entitled to necessary traveling expenses incurred in the performance of official duties subject to the standardized travel regulations of the state.

(2) The department of administration shall provide suitable office space for the board in Lansing and such other places in the state as, in the discretion of the chairman, is necessary.

HISTORY: New 1909, p. 645, Act 317, Eff. Dec. 31.

CHAPTER 3

COMPENSATION

418.301 Workmen's compensation; payment; time or date of injury; injury enroute to or from work.

Sec. 301. (1) An employee, who receives a personal injury arising out of and in the course of his employment by an employer who is subject to the provisions of this act, at the time of such injury, shall be paid compensation in the manner and to the extent provided in this act, or in case of his death resulting from such injuries the compensation shall be paid to his dependents as defined in this act. Time of injury or date of injury as used in this act in the case of a disease or in the case of an injury not attributable to a *single event* shall be the last day of work in the employment in which the *employee was last* subjected to the conditions resulting in disability or death.

(2) Every employee going to or from his work while on the premises where his work is to be performed, and within a reasonable time before and after his working hours, shall be presumed to be in the course of his employment.

HISTORY: New 1909, p. 646, Act 317, Eff. Dec. 31.

418.305 Wilful misconduct of employee.

Sec. 305. If the employee is injured by reason of his intentional and wilful misconduct, he shall not receive compensation under the provisions of this act.

HISTORY: New 1909, p. 646, Act 317, Eff. Dec. 31.

418.311 Compensation payments; computations.

Sec. 311. No compensation shall be paid under this act for any injury which does not incapacitate the employee from earning full wages, for a period of at least 1 week, but if incapacity extends beyond the period of 1 week, compensation shall begin on the eighth day after the injury. If incapacity continues for 2 weeks or longer or if death results from the injury, compensation shall be computed from the date of the injury.

HISTORY: New 1909, p. 646, Act 317, Eff. Dec. 31.

418.315 Services or treatments furnished; employee choice of physician; prosthetics; payment; attorney fees.

Sec. 315. The employer shall furnish, or cause to be furnished, to an employee who receives a personal injury arising out of and in the course of his employment, reasonable medical, surgical and hospital services and medicines or other attendance or treatment recognized by the laws of this state as legal, when they are needed. After 60 days from the inception of medical care as herein provided, the employee may treat with a physician of his own choice by giving to the employer the name of the physician and his intention to treat with such physician. The employer or his carrier may file a petition objecting to the named physician selected by the employee and setting forth reasons for the objection. If the employer or carrier can show cause why the employee should not continue treatment with the named physician of the employee's choice, after notice to all parties and a prompt hearing by a hearing referee, he may order that the employee discontinue treatment with the named physician or pay for the treatment received from the physician from the date the order is mailed. The employer shall also supply to the injured employee dental service, crutches, artificial limbs, eyes, teeth, eyeglasses, hearing apparatus and such other appliances as may be necessary to cure, so far as reasonably possible, and relieve from the effects of the injury. If the employer fails, neglects or refuses so to do, the employee shall be reimbursed for the reasonable expense paid by him, or payment may be made in behalf of the employee to persons to whom the unpaid expenses may be owing, by order of the hearing referee. The hearing referee may prorate attorney fees in such cases at the contingent fee rate paid by the employee and may also prorate such payments in the event of redemptions.

HISTORY: New 1909, p. 646, Act 317, Eff. Dec. 31.

418.319 Rehabilitation services; application for service; expenses; duration; refusal, hearings.

Sec. 319. (1) An employee who has suffered an injury covered by this act shall be entitled to prompt medical rehabilitation services. When as a result of the injury he is unable to perform work for which he has previous training or experience, he shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him to useful employment. If such services are not voluntarily offered and accepted the director on his own motion or upon application of the employee or carrier or employer, after affording the parties an opportunity to be heard, may refer the employee to a bureau-approved facility for evaluation of the need for, and kind of service, treatment or training necessary and ap-

propriate to render him fit for a remunerative occupation. Upon receipt of such report, the director may order that the services and treatment recommended in the report be provided at the expense of the employer. The director may order that any employee participating in vocational rehabilitation shall receive additional payments for transportation or any extra and necessary expenses during the period and arising out of his program of vocational rehabilitation. Vocational rehabilitation training, treatment or service shall not extend for a period of more than 52 weeks except in cases when, by special order of the director after review, the period may be extended for an additional 52 weeks or portion thereof. If there is an unjustifiable refusal to accept rehabilitation pursuant to a decision of the director, the director shall order a loss or reduction of compensation in an amount determined by the director for each week of the period of refusal, except for specific compensation payable under the provisions of subsections (1) and (2) of section 361.

(2) If a dispute arises between the parties concerning application of the above provisions, any of the parties may apply for a hearing before a hearing referee.

HISTORY: New 1980, p. 646, Act 317, Eff. Dec. 31.

418.321 Death benefits; amount, duration; partial dependents.

Sec. 321. If death results from the injury, the employer shall pay, or cause to be paid, subject, however, to the provisions of section 375, in 1 of the methods hereinafter provided, to the dependents of the employee, wholly dependent upon his earnings for support at the time of the injury, a weekly payment equal to 2/3 of his average weekly wages for a period of 500 weeks from the date of death, but not more than \$64.00 for 1 dependent; \$69.00 for 2 dependents; \$75.00 for 3 dependents; \$81.00 for 4 dependents; and \$87.00 for 5 or more dependents, except as provided in section 355 but such weekly payments in no event shall be less than \$27.00 for 1 dependent; \$30.00 for 2 dependents; \$33.00 for 3 dependents; \$36.00 for 4 dependents; and \$39.00 for 5 dependents. If at the expiration of the 500-week period any such wholly or partially dependent person is less than 21 years of age, a hearing referee may order the employer to continue to pay the weekly compensation or some portion thereof until such wholly or partially dependent person reaches the age of 21. If the employee leaves dependents only partially dependent upon his earnings for support at the time of his injury, the weekly compensation to be paid shall be equal to the same proportion of the weekly payments for the benefit of persons wholly dependent as the amount contributed by the employee to such partial dependents bears to the annual earnings of the deceased at the time of his injury.

HISTORY: New 1980, p. 647, Act 317, Eff. Dec. 31.

418.331 Dependents; conclusive presumption.

Sec. 331. (1) The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

Wife.

(a) A wife upon a husband with whom she lives at the time of his death, or from whom, at the time of his death a hearing referee shall find the wife was living apart for justifiable cause or because he had deserted her.

Children; apportionment; guardians, appointment; partial dependents.

(b) A child under the age of 16 years, or over if physically or mentally incapacitated from earning upon the parent with whom he is living at the time of the death of such parent. In the event of the death of an employee who has at the time of such death a living child by a former spouse or a child who has been deserted by such deceased employee under the age of 16 years, or over if physically or mentally incapacitated from earning, such child shall be conclusively presumed to be wholly dependent for support upon such deceased employee, even though not living with the deceased employee at

the time of such death and in all cases the death benefit shall be divided between or among the surviving spouse and all the children of the deceased employee, and all other persons, if any, who are wholly dependent upon the deceased employee, in equal shares, the surviving spouse taking the same share as a child. In all cases mentioned in this section the total sum due the surviving spouse and his own children shall be paid directly to the surviving spouse for his own use, and for the use and benefit of his own children; but if during the time compensation payments shall continue, a hearing referee shall find that the surviving spouse is not properly caring for such children, he shall order the shares of such children to be thereafter paid to their guardian or legal representative for their use and benefit, instead of to their father or mother; and in all cases the sums due to the children by the former spouse of the deceased employee shall be paid to their guardians or legal representatives for the use and benefit of such children. In all other cases questions of dependency, in whole or in part, shall be determined in accordance with the fact, as the fact may be at the time of the injury. Where a deceased employee leaves a person wholly dependent upon him for support, such person shall be entitled to the whole death benefit and persons partially dependent, if any, shall receive no part thereof, while the person wholly dependent is living. All persons wholly dependent upon a deceased employee, whether by conclusive presumption or as a matter of fact, shall be entitled to share equally in the death benefit in accordance with the provisions of this section. If there is no one wholly dependent or if the death of all persons wholly dependent shall occur before all compensation is paid, and there is but 1 person partially dependent, such person shall be entitled to compensation according to the extent of his dependency; and if there is more than 1 person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency. No person shall be considered a dependent unless he is a member of the family of the deceased employee, or unless such person bears to the deceased employee the relation of husband or widow, or lineal descendant, or ancestor, or brother or sister.

HISTORY: New 1969, p. 647, Act 317, Eff. Dec. 31.

418.335 Dependency termination; remarriage of wife; age limitation.

Sec. 335. Upon the remarriage of a dependent wife receiving compensation, such payments shall cease upon the payment to her of the balance of the compensation to which she would otherwise have been entitled but in no event to exceed the sum of \$500.00, and further compensation, if any, shall be payable to the person either wholly or partially dependent upon deceased for support at his death as provided in subdivision (b) of section 331. A hearing referee shall determine the amount of compensation or portion thereof that shall be payable weekly to such wholly or partially dependent person for the remaining weeks of compensation. Where, at the expiration of the 500-week period, any such wholly or partially dependent person is less than 21 years of age, a hearing referee may order the employer to continue to pay the weekly compensation, or some portion thereof, until such wholly or partially dependent person reaches the age of 21. The payment of compensation to any dependent child shall cease when the child reaches the age of 21 years, if at the age of 21 years he is neither physically nor mentally incapacitated from earning, or when the child reaches the age of 16 years and thereafter is self-supporting for 6 months. If such status ceases, the dependency shall be reinstated. Such remaining compensation, if any, shall be payable to the person either wholly or partially dependent upon the deceased for support at the time of his death, as provided in the case of the remarriage of a dependent wife.

HISTORY: New 1969, p. 648, Act 317, Eff. Dec. 31.

418.341 Dependents; qualifications; party in interest.

Sec. 341. Questions as to who constitutes dependents and the extent of their dependency shall be determined as of the date of the injury to the employee, and their right to any death benefit shall become fixed as of such time, irrespective of any subsequent change in conditions except as otherwise specifically provided in sections 321, 331 and 335. The death benefit shall be directly recoverable by and payable to the dependents entitled thereto, or their legal guardians or trustees. In case of the death of a dependent, his proportion of the compensation shall be payable to the surviving dependents pro rata. Upon the death of all dependents compensation shall cease. No person shall be excluded as a dependent who is a nonresident alien. No dependent of an injured employee shall be deemed, during the life of such employee, a party in interest to any proceeding by him for the enforcement of collection of any claim for compensation, nor as respects the compromise thereof by such employee.

HISTORY: New 1989, p. 648, Act 317, Eff. Dec. 31.

418.345 Death resulting from injury; expenses paid by employer, maximum.

Sec. 345. If death results from the injury, the employer shall pay, or cause to be paid, the reasonable expense of the employee's last sickness and burial. The cost of burial shall not exceed \$750.00. Any person who performed such service or incurred such liability is authorized to file an application with the bureau. A hearing referee may order the employer to pay such sums.

HISTORY: New 1989, p. 649, Act 317, Eff. Dec. 31.

418.351 Total disability; amount of compensation, duration.

Sec. 351. (1) While the incapacity for work resulting the injury is total, the employer shall pay, or cause to be paid as hereinafter provided, to the injured employee, a weekly compensation of 2/3 of his average weekly wages, but not more than \$64.00, if such injured employee has no dependents; \$69.00 if 1 dependent; \$75.00 if 2 dependents; \$81.00 if 3 dependents; \$87.00 if 4 dependents; and \$93.00 if 5 or more dependents; except as provided in section 355. Compensation shall be paid for the duration of the disability. Weekly payments shall not be less than \$27.00 if there are no dependents; \$30.00 if 1 dependent; \$33.00 if 2 dependents; \$36.00 if 3 dependents; \$39.00 if 4 dependents; and \$42.00 if 5 or more dependents; except as provided in section 355. Compensation shall be paid for the duration of the disability. The conclusive presumption of total and permanent disability shall not extend beyond 800 weeks from the date of injury and thereafter the question of permanent and total disability shall be determined in accordance with the fact, as the fact may be at that time.

HISTORY: New 1989, p. 649, Act 317, Eff. Dec. 31.

418.353 Dependency; determination.

Sec. 353. (1) For the purposes of sections 351 to 361, dependency shall be determined as follows:

Wife and child, conclusive presumption.

(a) The following shall be conclusively presumed to be dependent for support upon an injured employee:

(i) The wife of an injured employee living with such employee as such wife at the time of the injury.

(ii) A child under the age of 16 years, or over said age, if physically or mentally incapacitated from earning, living with his parent at the time of the injury of such parent.

Other persons, question of fact; restrictions.

(b) In all other cases questions of dependency shall be determined in accordance with the fact, as the fact may be at the time of the injury. No person shall be consid-

ered a dependent unless he is a member of the family of the injured employee, or unless such person bears to such injured employee the relation of husband or wife, or lineal descendant, or ancestor or brother or sister. Except as to those conclusively presumed to be dependents, no person shall be deemed a dependent who receives less than 1/2 of his support from an injured employee.

Reduction of payments.

(2) Weekly payments to an injured employee shall be reduced by the additional amount provided for any dependent child or spouse or other dependent when such child either reaches the age of 21 years or after becoming 16 ceases for a period of 6 months to receive more than 1/2 of his support from such injured employee, if at such time he is neither physically nor mentally incapacitated from earning, or when such spouse shall be divorced by final decree from his injured spouse, or when such child, spouse or other dependent shall be deceased.

Increased dependents.

(3) No increase in payments shall be made for increased numbers of dependents not so dependent at the time of the injury of an employee.

HISTORY: New 1969, p. 649, Act 317, Eff. Dec. 31.

418.355 Compensation; maximum weekly rates, adjustments.

Sec. 355. (1) The maximum weekly rate in each dependency classification in this act shall be adjusted once each year in accordance with the increase or decrease in the average weekly wage in covered employment, as determined by the employment security commission. The average weekly wage in covered employment determined by the employment security commission for the year ending June 30, 1967, shall be the base on which such adjustments are made.

(2) A second adjustment, if any, shall be made on January 1, 1970 and shall reflect the change, if any, between the average weekly wage for June 30, 1969 and the average weekly wage for June 30, 1968 and the adjustment shall be made in like manner on each January 1 thereafter, utilizing the average weekly wage for the preceding June 30.

(3) Adjustment for the statutory maximum rate shall be made only if there has been an increase or decrease in the average weekly wage of at least \$1.50 during the preceding year, applied to the June 30, 1967, base and the director shall announce the adjustment each December 1, to become effective the following January 1. If in any year the change is less than \$1.50, the director shall announce no change for the following year but the amount of change in such year shall be carried forward and added to or subtracted from subsequent annual determinations until the total change shall be at least \$1.50, in which year an adjustment shall be made. There shall be an adjustment made of \$1.00 in the maximum rates for each \$1.50 increase or decrease in the average weekly wage. The maximum weekly rate as so determined for the year in which the date of injury occurred shall remain fixed without further change as to the personal injury occurring within such year.

HISTORY: New 1969, p. 650, Act 317, Eff. Dec. 31.

418.357 Employees 65 or over; reduction of payments.

Sec. 357. When an employee who is receiving weekly payments or is entitled to weekly payments reaches or has reached or passed the age of 65, the weekly payments for each year following his sixty-fifth birthday shall be reduced by 5% of the weekly payment paid or payable at age 65, but not to less than 50% of the weekly benefit paid

or payable at age 65, so that on his seventy-fifth birthday the weekly payments shall have been reduced by 50%; after which there shall be no further reduction for the duration of the employee's life. In no case shall weekly payments be reduced below the minimum weekly benefit as provided in this act.

HISTORY: New 1969, p. 650, Act 317, I.H. Dec. 31.

418.359 Employees under 25; total disability; payments.

Sec. 359. Whenever an employee who has not attained his twenty-fifth birthday is injured so that he is entitled to compensation as permanently and totally disabled as defined in this act, if it is established that the injured employee was of such age and experience when injured that, under natural conditions, his wages or position would be expected to increase, that fact, subject to the statutory minimum and maximum weekly payments, may be considered by a hearing referee in determining his weekly payments.

HISTORY: New 1969, p. 650, Act 317, I.H. Dec. 31.

418.361 Partial disability; compensation schedule; duration.

Sec. 361. (1) While the incapacity for work resulting from the injury is partial, the employer shall pay, or cause to be paid to the injured employee a weekly compensation equal to 2/3 of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, but not more than \$64.00 if such injured employee has no dependents; \$69.00 if 1 dependent; \$75.00 if 2 dependents; \$81.00 if 3 dependents; \$87.00 if 4 dependents; and \$93.00 if 5 or more dependents; except as provided in section 355. Compensation shall be paid for the duration of the disability. In cases included by the following schedule, the disability in each such case shall be deemed to continue for the period specified, and the compensation so paid for such injury shall be 2/3 of the average weekly wages for the loss of the following:

- (a) Thumb, 65 weeks.
- (b) First finger, 38 weeks.
- (c) Second finger, 33 weeks.
- (d) Third finger, 22 weeks.
- (e) Fourth finger, 16 weeks.

The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of 1/2 of such thumb or finger, and compensation shall be 1/2 of the amounts above specified.

The loss of more than 1 phalange shall be considered as the loss of the entire finger or thumb. In no case shall the amount received for more than 1 finger exceed the amount provided in this schedule for the loss of a hand.

- (f) Great toe, 33 weeks.
- (g) A toe other than the great toe, 11 weeks.

The loss of the first phalange of any toe shall be considered to be equal to the loss of 1/2 of such toe, and compensation shall be 1/2 of the amount above specified.

The loss of more than 1 phalange shall be considered as the loss of the entire toe.

- (h) Hand, 215 weeks.
- (i) Arm, 269 weeks.

An amputation between the elbow and wrist 6 or more inches below the elbow shall be considered a hand, above this point an arm.

- (j) Foot, 162 weeks.
- (k) Leg, 215 weeks.

An amputation between the knee and foot 7 or more inches below the tibial table (plateau) shall be considered a foot, above that point a leg.

(1) Eye, 162 weeks.

Eighty percent loss of vision of 1 eye shall constitute the total loss of that eye.

Total and permanent disability, defined.

(2) Total and permanent disability, compensation for which is provided in section 351 means:

(a) Total and permanent loss of sight of both eyes.

(b) Loss of both legs or both feet at or above the ankle.

(c) Loss of both arms or both hands at or above the wrist.

(d) Loss of any 2 of the members or faculties enumerated in (a), (b) or (c).

(e) Permanent and complete paralysis of both legs or both arms or of 1 leg and 1 arm.

(f) Incurable insanity or imbecility.

(g) Permanent and total loss of industrial use of both legs or both hands or both arms or 1 leg and 1 arm; for the purpose of this subdivision such permanency shall be determined not less than 30 days before the expiration of 500 weeks from the date of injury.

Limitations on amounts; subsequent losses.

(3) The amounts specified in this clause are all subject to the same limitations as to maximum and minimum as above stated. In case of the loss of 1 member while compensation is being paid for the loss of another member, compensation shall be paid for the loss of the second member for the period herein provided, payments to begin at the conclusion of the payments for the first member.

HISTORY: New 1969, p. 650, Act 317, Eff. Dec. 31.

418.371 Wage loss; average weekly wage, computation, definition.

Sec. 371. (1) The weekly loss in wages referred to in this act shall consist of such percentage of the average weekly earnings of the injured employee computed according to the provisions of this section as shall fairly represent the proportionate extent of the impairment of his earning capacity in the employment in which he was working at the time of the injury, the same to be fixed as of the time of the injury, but to be determined in view of the nature and extent of the injury. The compensation payable, when added to his wage earning capacity after the injury in the same or another employment, shall not exceed his average weekly earnings at the time of such injury.

(2) Average weekly wage means the weekly wage earned by the employee at the time of his injury, inclusive of overtime, premium pay, and cost of living adjustment, and exclusive of any fringe or other benefits which continue during disability, but in no case less than 40 times his hourly rate of wage or earning. When it is found that the established normal work week for the employee's classification of employment in the establishment of the employer where the employee suffered a personal injury is less than 40 hours, then the average weekly wage shall be established by multiplying the employee's hourly rate or earning by the number of hours customarily worked in the employee's classification or employment in that place of employment or his actual earned wages, whichever is greater.

(3) When a hearing referee finds that the employee was employed specifically and not temporarily on a part-time basis, the average weekly wage shall be determined by multiplying the hourly rate or earning by the average number of hours worked in the part-time employment. When it is found that the employee has worked an average of 25 hours or more per week in all of his current employments, he shall not be considered a part-time employee.

(4) If the hourly earning of the employee cannot be ascertained, or if no pay has been designated for the work required, the wage, for the purpose of calculating com-

pensation, shall be taken to be the usual wage for similar services where such services are rendered by paid employees.

(5) Where there are special circumstances under which the weekly wage cannot justly be determined by applying the above provisions, an average weekly wage may be computed by dividing the aggregate earnings during the year prior to the injury by the number of days when work was performed and multiplying such daily wage by the number of working days customary in the employment, but not less than 5.

HISTORY: New 1969, p. 651, Act 317, Eff. Dec. 31.

418.375 Death of injured employee; nonabatement of benefits.

Sec. 375. (1) The death of the injured employee prior to the expiration of the period within which he would receive such weekly payments shall be deemed to end the disability and all liability for the remainder of such payments which he would have received in case he had lived shall be terminated, but the employer shall thereupon be liable for the following death benefits in lieu of any further disability indemnity.

(2) If the injury received by such employee was the proximate cause of his death, and the deceased employee leaves dependents, as hereinbefore specified, wholly or partially dependent on him for support, the death benefit shall be a sum sufficient, when added to the indemnity which at the time of death has been paid or becomes payable under the provisions of this act to the deceased employee, to make the total compensation for the injury and death exclusive of medical, surgical and hospital services, medicines and rehabilitation services furnished as provided in sections 315 and 319, equal to the full amount which such dependents would have been entitled to receive under the provisions of section 321, in case the injury had resulted in immediate death, and such benefits shall be payable in the same manner as they would be payable under the provisions of section 321 had the injury resulted in immediate death.

(3) If an application for benefits has been filed but has not been decided by a referee or on appeal and the claimant dies from a cause unrelated to his injury, the proceedings shall not abate but may be continued in the name of his personal representative. In such case, the benefits payable up to time of death shall be paid to the same beneficiaries and in the same amounts as would have been payable if the employee had suffered a compensable injury resulting in death.

HISTORY: New 1969, p. 652, Act 317, Eff. Dec. 31.

418.381 Notice of injury or death; claim for compensation, time limit.

Sec. 381. (1) No proceedings for compensation for an injury under this act shall be maintained, unless a notice of the injury has been given to the employer within 3 months after the happening thereof and unless the claim for compensation with respect to the injury, which claim may be either oral or in writing, has been made within 6 months after the occurrence of the same; or in case of the death of the employee, within 12 months after death; or in the event of his physical or mental incapacity, within the first 6 months during which the injured employee is not physically or mentally incapacitated from making a claim. In a case in which the employer has been given notice of the injury, or has notice or knowledge of the same within 3 months after the happening thereof, but the actual injury, disability or incapacity does not develop or make itself apparent within 6 months after the happening of the injury, but does develop and make itself apparent at some date subsequent to 6 months after the happening of the same, claim for compensation may be made within 3 months after the actual injury, disability or incapacity develops or makes itself apparent to the injured employee, but no such claim shall be valid or effectual for any purpose unless made within 3 years from the date the personal injury was sustained. Any time during which an injured employee shall be prevented by reason of his physical or mental incapacity from making a claim shall not be construed to be any part of the 6 months'

limitation mentioned in this section. In a case in which the employer has been given notice of the happening of the injury or has notice or knowledge of the happening of the accident within 3 months after the happening of the same, and fails, neglects or refuses to report the injury to the bureau as required by the provisions of this act, the statute of limitations shall not run against the claim of the injured employee or his dependents, or in favor of the employer or his insurer, until a report of the injury has been filed with the bureau.

Period which payments may cover.

(2) Whenever weekly payments are due an injured employee under this act, such payments shall not be made for any period of time earlier than 2 years immediately preceding the date on which the employee filed application for hearing with the bureau.

HISTORY: New 1969, p. 653, Act 317, Eff. Dec. 31.

418.383 Notice of injury; unintentional errors; actual knowledge.

Sec. 383. A notice of injury or a claim for compensation made under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the time, place or cause of the injury, unless it is shown that it was the intention to mislead, and the employer or the carrier, was in fact misled. Want of written notice shall not be a bar to proceedings under this act if it be shown that the employer had notice or knowledge of the injury.

HISTORY: New 1969, p. 653, Act 317, Eff. Dec. 31.

418.385 Physical examination of employee; report, copy; refusal; evidence.

Sec. 385. After the employee has given notice of injury and from time to time thereafter during the continuance of his disability, if so requested by the employer or the carrier, he shall submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of the state, furnished and paid for by the employer or the carrier. If an examination relative to the injury is made, the employee or his attorney shall be furnished, within 15 days of a request, a complete and correct copy of the report of every such physical examination relative to the injury performed by the physician making the examination on behalf of the employer or the carrier. The employee shall have the right to have a physician provided and paid for by himself present at the examination. If he refuses to submit himself for the examination, or in any way obstructs the same, his right to compensation shall be suspended and his compensation during the period of suspension may be forfeited. Any physician who makes or is present at any such examination may be required to testify under oath as to the results thereof. If the employee has had other physical examinations relative to the injury but not at the request of the employer or the carrier, he shall furnish to the employer or the carrier a complete and correct copy of the report of each such physical examination, if so requested, within 15 days of the request. If such a request is made, the employee may not subsequently introduce into evidence a report of any physical examination not furnished to the employer or the carrier.

HISTORY: New 1969, p. 653, Act 317, Eff. Dec. 31.

CHAPTER 4

OCCUPATIONAL DISEASES AND DISABLEMENTS

418.401 Occupational diseases and disablements; definitions.

Sec. 401. Whenever used in this act:

(a) "Disability" means the state of being disabled from earning full wages at the work in which the employee was last subject to the conditions resulting in disability.

(b) "Disablement" means the event of becoming so disabled.

(c) "Personal injury" shall include a disease or disability which is due to causes and conditions which are characteristic of and peculiar to the business of the employer and which arises out of and in the course of the employment. Ordinary diseases of life to which the public is generally exposed outside of the employment shall not be compensable. A hernia to be compensable must be clearly recent in origin and result from a strain arising out of and in the course of the employment and promptly reported to the employer.

HISTORY: New 1909, p. 654, Act 317, Eff. Dec. 31.

418.405 Police and firemen; respiratory and heart disease; application for benefits.

Sec. 405. (1) In the case of a member of a full paid fire or police department of a city, township or incorporated village employed and compensated upon a full-time basis, a county sheriff and his deputies and members of the state police, "personal injury" shall be construed to include respiratory and heart diseases or illnesses resulting therefrom which develop or manifest themselves during a period while the member of the department is in the active service of the department and result from the performance of duties as a fire fighter or policeman.

(2) Such respiratory and heart diseases or illnesses resulting therefrom are deemed to arise out of and in the course of employment in the absence of evidence to the contrary.

(3) As a condition precedent to filing an application for benefits, the claimant, if he is one of those enumerated in subsection (1), shall first make application for, and do all things necessary to qualify for any pension benefits which he, or his decedent, may be entitled to. If a final determination is made that pension benefits shall not be awarded, then the presumption of "personal injury" as provided in this section shall apply. The employer or employee may request 2 copies of the determination denying pension benefits, 1 copy of which may be filed with the bureau.

HISTORY: New 1909, p. 654, Act 317, Eff. Dec. 31.

418.411 Disablement treated as personal injury.

Sec. 411. The disablement of an employee resulting from such disease or disability shall be treated as the happening of a personal injury within the meaning of this act and the procedure and practice provided in this act shall apply to all proceedings under this chapter, except where specifically otherwise provided herein.

HISTORY: New 1909, p. 654, Act 317, Eff. Dec. 31.

418.415 Death or disablement compensation.

Sec. 415. If an employee is disabled or dies and his disability or death is caused by a disease and the disease is due to the nature of the employment in which such employee was engaged and was contracted therein, he or his dependents shall be entitled to compensation and other benefits for his death or for his disablement, all as provided in this act.

HISTORY: New 1909, p. 654, Act 317, Eff. Dec. 31.

418.425 Date of disablement.

Sec. 425. For the purposes of this chapter the date of disablement shall be such date as the hearing referee may determine on the hearing of the claim.

HISTORY: New 1909, p. 654, Act 317, Eff. Dec. 31.

418.431 Employer's liability; conditions exempting and limiting.

Sec. 431. No compensation shall be payable for an occupational disease if the employee at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, or thereafter, wilfully and falsely repre-

sents in writing that he has not previously suffered from the disease which is the cause of the disability or death. Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated or in any way contributed to by an occupational disease, the compensation payable shall be a proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease, as a causative factor, bearing to all the causes of such disability or death, such reduction in compensation to be effected by reducing the number of weekly payments or the amounts of such payments, as under the circumstances of the particular case may be for the best interest of the claimant or claimants.

HISTORY: New 1909, p. 655, Act 317, Eff. Dec. 31.

418.435 Employer's liability; apportionment; procedure; definitions.

Sec. 435. The total compensation due shall be recoverable from the employer who last employed the employee in the employment to the nature of which the disease was due and in which it was contracted. If any dispute or controversy arises as to the payment of compensation or as to liability therefor, the employee shall give notice to and make claim upon the last employer only and apply for a hearing against the last employer only. If the employee was employed by prior employers in an employment to the nature of which the disease was due and in which it was contracted, the hearing referee to whom the case is assigned or the director on motion made in writing by the last employer shall join any or all prior employers, mentioned in the motion, as parties-defendant. A "prior employer", for purposes of this section, means an employer who has employed the employee for 6 months or longer during the 10 years preceding the date upon which the employee was last subjected to the conditions resulting in disability. Any prior employer so joined as a party-defendant may move, in writing, to join other employers as parties-defendant, and such hearing referee or the director shall join the employers as parties-defendant. The bureau, within 5 days of the entry of an order joining any prior employer as a party-defendant, shall give such party written notice thereof by first class mail, which notice shall be mailed not less than 30 days before the date of hearing and shall include the name of the employee, the name of the last employer, the name of the moving party and the names of all other employers joined as parties-defendant. The bureau shall give not less than 30 days notice in writing by first class mail to all parties of the time and place of the hearing between the employee and the last employer at which liability shall be determined. Any prior employer named as a defendant pursuant to motion shall have 10 days from the date of the mailing of notice of joinder to file objections to his being named as a party-defendant. On the date of the hearing at which the liability of the parties shall be determined, the hearing referee first shall hear arguments and take evidence concerning the joinder as parties-defendant of employers who have filed timely objections and if the arguments and evidence warrant, the hearing referee shall grant a motion to dismiss any prior employer as a party-defendant. At such hearing all employers named as defendants may appear, cross-examine witnesses, give evidence and defend both on the issue of the liability of the last employer to the employee and on the issue of their liability to the last employer. The hearing referee shall enter an order determining liability for compensation as between the employee and the last employer. The hearing referee shall apportion liability for compensation among the several employers in proportion to the time that the employee was employed in the service of each employer in the employment to the nature of which the disease was due and in which it was contracted and shall enter a separate order in favor of the last employer and against prior employers for their proportionate share of liability, which order may be enforced in the same manner as an award for compensation. Any order so entered may be ap-

pealed by any party and shall be reviewed in accordance with the procedure provided in this act. Any employer made a party under this section, prior to hearing, may inquire in writing of the employee claiming compensation, or of his attorney, the names and addresses of all employers and the approximate dates of employment, and the employee or his attorney shall answer to the best of his ability.

HISTORY: New 1980, p. 655, Act 317, Eff. Dec. 31.

418.441 Notice; requirements.

Sec. 441. The requirements of notice of occupational disease and death resulting therefrom and the requirements as to the bringing of proceedings for compensation for disability or death resulting from such occupational disease shall be the same as required in chapter 3, except that the notice shall be given to the employer within 120 days after the disablement.

HISTORY: New 1980, p. 656, Act 317, Eff. Dec. 31.

CHAPTER 5

FUNDS

418.501 Second injury fund and silicosis and dust disease fund; creation.

Sec. 501. A second injury fund and a silicosis and dust disease fund are created.

HISTORY: New 1980, p. 656, Act 317, Eff. Dec. 31.

418.511 Board of trustees; appointment, term, expenses.

Sec. 511. The funds shall be managed by a board of 3 trustees, 1 of whom shall be the director, the remaining 2 of whom shall be appointed by the governor with the advice and consent of the senate and so selected by the governor that 1 trustee will represent the insurance industry and the remaining trustee shall represent those employers who have been authorized to act as self-insurers. The director shall be a permanent trustee but the other 2 trustees shall be appointed for terms of 4 years and shall serve until their successors are appointed and qualified. The present trustees of the silicosis and dust disease fund shall continue to serve for the balance of their terms and shall exercise the powers granted by this chapter. The trustees shall receive no compensation for their services, but shall be reimbursed for their actual and necessary expenses during the performance of their duties.

HISTORY: New 1980, p. 656, Act 317, Eff. Dec. 31.

418.515 Board of trustees; duties; funds administrator; office; personnel; expenses.

Sec. 515. (1) The trustees shall have general authority to carry out the purposes of this chapter, shall make such rules as they deem necessary, shall maintain records and institute systems and procedures or take any other administrative action as they deem necessary to carry out the purposes of this chapter.

(2) The trustees may appoint an administrative officer to be referred to as the funds administrator who shall perform duties as shall be designated or delegated by the trustees.

(3) The bureau shall provide the trustees of the funds with suitable office space and clerical assistance. All other expenses authorized by the trustees for the proper administration of the funds, including but not limited to, the salary and expenses of the funds administrator and the investigation, determination and defense of claims against the funds shall be borne ratably by and paid from the assets of the funds. The trustees may secure legal advice and be represented by the attorney general or any assistant desig-

nated by him in any matter involving the affairs of the funds. The cost of such services and expenses in connection therewith shall be borne ratably by and paid from the funds. All expenses so incurred and charged to the funds shall be accounted for on a fiscal year basis.

HISTORY: New 1969, p. 656, Act 317, Eff. Dec. 31.

418.521 Second injury fund; payments reimbursable.

Sec. 521. (1) If an employee has a permanent disability in the form of the loss of a hand, arm, foot, leg or eye and subsequently has an injury arising out of and in the course of his employment which results in another permanent disability in the form of the loss of a hand, arm, foot, leg or eye, at the conclusion of payments made for the second permanent disability he shall be conclusively presumed to be totally and permanently disabled and paid compensation for total and permanent disability after subtracting the number of weeks of compensation received by the employee for both such losses. The payment of compensation under this section shall be made by the second injury fund, and shall begin at the conclusion of the payments for the second permanent disability.

(2) Any permanently and totally disabled person as defined in this act, if such total and permanent disability arose out of and in the course of his employment, who, on and after June 25, 1955, is entitled to receive payments of workmen's compensation in amounts per week of less than is presently provided in the workmen's compensation schedule of benefits for permanent and total disability, and for a lesser number of weeks than the duration of such permanent and total disability, after the effective date of any amendatory act by which his disability is defined as permanent and total disability, or by which the weekly benefits for permanent and total disability are increased, shall receive weekly from the carrier on behalf of the second injury fund differential benefits equal to the difference between what he is now or shall hereafter be entitled to receive from his employer under the provisions of this act as the same was in effect at the time of his injury, and the amounts now provided for his permanent and total disability by this or any other amendatory act, with appropriate application of the provisions of sections 351 to 359. Such payments shall continue after the period for which the person is otherwise entitled to compensation under this act for the duration of the permanent and total disability. Any payments so made by a carrier pursuant to this section shall be reimbursed to the carrier by the second injury fund as provided in this chapter.

(3) Any person who prior to July 1, 1968, has been receiving or is entitled to receive benefits from the second injury fund pursuant to any prior provisions of the workmen's compensation law shall continue to receive or be entitled to receive such benefits from such fund which shall be paid directly to him from such fund unless such payments are paid in accordance with an agreement made pursuant to section 541.

(4) If any carrier is unable to make the payments on behalf of the fund as provided for herein, the trustees of the second injury fund may make the payments directly to the permanently and totally disabled employee.

(5) The obligation imposed by this section on a carrier to make payments on behalf of the second injury fund shall not impose an independent liability on the carrier nor obligate the carrier to make payments on behalf of the fund if the carrier does not have a separate obligation to make payments of compensation simultaneously to the permanently and totally disabled employee.

HISTORY: New 1969, p. 656, Act 317, Eff. Dec. 31.

418.531 Silicosis and dust disease fund; payments reimbursable.

Sec. 531. In all cases in which any carrier shall have paid, or cause to be paid, compensation for disability or death from silicosis or other dust disease either to the em-

ployee, or to another employer under the provisions of section 435, the carrier shall be reimbursed from the silicosis and dust disease fund for all sums so paid in excess of \$12,500.00, excluding payments made pursuant to sections 315, 319 and 345 which have been paid by the carrier as a portion of its liability.

HISTORY: New 1969, p. 657, Act 317, Eff. Dec. 31.

418.535 Disability from multiple causes; apportionment; reimbursement.

Sec. 535. If an employee's disability is caused by a combination of silicosis or other dust disease and other compensable causes, a hearing referee shall apportion the amount of disability between that due to silicosis or other dust disease and other compensable causes. The trustees of the silicosis and dust disease fund shall reimburse the employer liable for compensation for that portion of compensation paid in excess of \$12,500.00 that the silicosis or other dust disease disability bears to the total disability.

HISTORY: New 1969, p. 657, Act 317, Eff. Dec. 31.

418.541 Payments from funds; notice of claim for reimbursement; agreements.

Sec. 541. (1) All payments from the funds shall be determined by the trustees and made upon an order signed by a trustee. If a dispute arises between the trustees and a carrier as to any determination by the trustees or the obligation of any carrier to make payments on behalf of the second injury fund, the dispute shall be deemed to be a controversy concerning compensation and shall be determined in accordance with this act.

(2) In all cases in which the carrier shall be entitled to be reimbursed, notice of claim for reimbursement shall be filed with the trustees within 1 year from the date on which the right to reimbursement first accrues. After the carrier has established a right to reimbursement, payment shall be made promptly on a proper showing periodically every 6 months.

(3) The trustees may enter into agreements with carriers whereby the payment of benefits to persons permanently and totally disabled from the second injury fund which heretofore have been made directly from the fund may be made by carriers who are paying workmen's compensation benefits to such persons and the carriers shall be reimbursed periodically at 6-month intervals from the fund for such payments.

HISTORY: New 1969, p. 657, Act 317, Eff. Dec. 31.

418.545 Silicosis and dust disease claims; redemption of liability.

Sec. 545. After a carrier has paid an employee \$12,500.00 for disability or death due to silicosis or other dust disease, the trustees may compromise the liability of the silicosis and dust disease fund by entering into a redemption of liability directly with the employee if in the judgment of the trustees it is in the employee's best interest to do so. Redemption of liability shall terminate all liability of the fund. A redemption of liability by a carrier for compensation paid for disability or death from silicosis or other dust disease made with the employee prior to the actual payment by the carrier of \$12,500.00 in compensation benefits shall eliminate all liability of the silicosis and dust disease fund.

HISTORY: New 1969, p. 658, Act 317, Eff. Dec. 31.

418.551 Assessment on disbursed funds; notice; payment; liability; delinquencies; investments; reports.

Sec. 551. (1) As soon as practicable after January 1 each year, the director shall assess upon and collect from each carrier a sum equal to that proportion of 175% of the total disbursements made from the second injury fund during the preceding calendar year, less the amount of net assets in excess of \$200,000.00 in that fund as of December 31 of the preceding calendar year, which the total compensation benefits, exclu-

sive of payments made pursuant to sections 315, 319 and 345, paid by each such carrier in the state bears to the total of such compensation benefits paid by all carriers in the state.

(2) As soon as practicable after January 1, 1969, each year the director shall assess upon and collect from each carrier a sum equal to that proportion of 175% of the total disbursements made from the silicosis and dust disease fund during the preceding calendar year, less the amount of net assets in excess of \$200,000.00 in that fund as of December 31 of the preceding calendar year, which the total compensation benefits, exclusive of payments made pursuant to sections 315, 319 and 345, paid by each carrier in the state bears to the total of compensation benefits paid by all carriers in the state.

(3) Notice of the assessments shall be sent by the director by certified mail to each carrier. Payment of assessments shall be made so as to be received in the Lansing office of the bureau on or before a date specified uniformly in the notice but not less than 90 days from the date of mailing.

(4) All assessments constitute elements of loss for the purpose of establishing rates for workmen's compensation insurance.

(5) An employer who has ceased to be a self-insurer or an insurance company which has ceased to write workmen's compensation insurance in this state shall continue to be liable for any second injury fund or silicosis or dust disease fund assessment on account of any compensation benefits, exclusive of payments made pursuant to sections 315, 319 and 345 paid by it during the previous calendar year.

(6) The director shall certify to the trustees the collection and receipt of all moneys from assessments, noting any delinquencies. The trustees shall take such action as in their judgment is proper to effect collection of any delinquent assessment. All moneys received from assessments pursuant to this section shall be turned over to the state treasurer who shall be the custodian of the second injury fund and the silicosis and dust disease fund. The treasurer may make such investments as in his judgment are in the best interest of the funds and earnings from the investment of such moneys shall be credited to the funds. The state treasurer, at the end of each fiscal year, shall determine what amount represents a pro rata earnings share due to each fund, shall credit it to them and shall notify the trustee of the amounts credited and the balances of the respective funds as of June 30. The trustees shall make separate annual reports and accountings, which reports shall be included in the annual report of the bureau.

HISTORY: New 1969, p. 658, Act 317, Eff. Dec. 31.

418.552 Workmen's compensation; funds; borrowing between, procedure.

Sec. 552. (1) If, prior to the end of any calendar year, the annual assessments, after having been substantially collected, have not provided funds sufficient to either the second injury fund or the silicosis and dust disease fund to meet the known obligations of those funds as they mature prior to the next available assessment date, the trustees, if they find it to be reasonably required, may borrow on behalf of 1 fund from the other such sum or sums as may be required.

(2) Any sum or sums so borrowed shall be included in the next assessment of the borrowing fund and shall be repaid after the assessment has been substantially collected and the fund from which the sum or sums was borrowed during the period prior to repayment shall record the sum or sums as an asset.

(3) The trustees shall not borrow in the manner described in this section if it shall impair the ability of either fund to meet its known obligations as they mature prior to the next available assessment date.

(4) If the trustees find that it is reasonably required that they borrow on behalf of 1 fund from the other but that such borrowing will impair the ability of such fund to meet its known obligations as they mature prior to the next assessment date, then, and

in that event only, the trustees may order the director to levy a special assessment on each carrier in a sum sufficient to permit the fund making the assessment to meet its known obligations as they mature prior to the next available assessment date. Such assessment shall be levied on each carrier in the same proportion as used in the preceding annual assessment. Payment of such special assessment shall be paid by each carrier within 45 days after the date of the mailing of the notice of special assessment.

HISTORY: Add. 1970, p. 13, Act 3, Imd. Eff. Feb. 19.

418.555 Reimbursement provisions; delinquent self-insurers.

Sec. 555. The reimbursement provisions of the chapter shall not be available to any self-insurer who is delinquent in the payment of any assessment authorized in this chapter.

HISTORY: New 1969, p. 659, Act 317, Eff. Dec. 31.

CHAPTER 6

SECURITY FOR COMPENSATION

418.601 Security for compensation; definitions.

Sec. 601. Whenever used in this act:

(a) "Insurer" means an organization which transacts the business of workmen's compensation insurance within this state.

(b) "Self-insurer" means an employer authorized to carry its own risk.

(c) "Carrier" means a self-insurer, an insurer and the accident fund.

HISTORY: New 1969, p. 659, Act 317, Eff. Dec. 31.

418.611 Compensation payment; methods, approval.

Sec. 611. (1) Every employer subject to the provisions of this act, subject to the approval of the director, shall secure the payment of compensation under this act by 1 of the following methods:

(a) By receiving authorization from the director to be a self-insurer. The director may grant such authorization upon a reasonable showing by the employer of his solvency and financial ability to pay the compensation and benefits provided for in this act and to make such payments directly to his employees as they may become entitled to receive the same under the terms and conditions of this act. If the director determines it to be necessary, he may require the furnishing of a bond or other security in such form and amount as may be reasonable.

(b) By insuring against such liability with an insurer authorized to transact the business of workmen's compensation insurance within this state.

(c) By insuring against such liability with the accident fund.

(2) The director, from time to time, may review and alter his decision in approving the election of an employer to adopt any one of the foregoing methods if, in his judgment, such action is necessary or desirable for any reason.

HISTORY: New 1969, p. 659, Act 317, Eff. Dec. 31.

418.615 Report by employer not self-insurer; failure to file.

Sec. 615. Upon written request of the director, every employer who has not been exempted by the director from insuring his compensation risk shall report to him in writing the number of employees, the nature of their work, the name of the insurer with whom he has insured his liability under this act and the number and date of expiration of such policy. Failure to furnish the report within 10 days from the making of a request by registered mail constitutes presumptive evidence that the delinquent employer is violating the provisions of section 611.

HISTORY: New 1969, p. 659, Act 317, Eff. Dec. 31.

418.621 Insurance contract; consistency with act.

Sec. 621. (1) Every contract for the insurance of the compensation provided in this act for or against liability therefore, shall be deemed to be made subject to the provisions of this act and provisions inconsistent with this act are void.

Mandatory provisions.

(2) The accident fund and every insurer issuing an insurance policy to cover any employer not permitted to be a self-insurer under section 611 shall insure, cover and protect in one and the same insurance policy, all the businesses, employees, enterprises and activities of the employer. Each policy of insurance covering workmen's compensation in this state shall contain the following provisions:

"Notwithstanding any language elsewhere contained in this contract or policy of insurance, the accident fund or the insurer issuing this policy hereby contracts and agrees with the insured employer:

Compensation. (a) That it will pay to the persons that may become entitled thereto all workmen's compensation for which the insured employer may become liable under the provisions of the Michigan workmen's compensation act for all compensable injuries or compensable occupational diseases happening to his employees during the life of this contract or policy;

Medical services. (b) That it will furnish or cause to be furnished to all employees of the employer, all reasonable medical, surgical and hospital services and medicines when they are needed which the employer may be obligated to furnish or cause to be furnished to his employees under the provisions of the Michigan workmen's compensation act and that it will pay to the persons entitled thereto for all such services and medicines when they are needed for all compensable injuries or compensable occupational diseases happening to his employees during the life of this contract or policy;

Rehabilitation services. (c) That it will furnish or cause to be furnished such rehabilitation services for which the insured employer may become liable to furnish or cause to be furnished under the provisions of the Michigan workmen's compensation act for all compensable injuries or compensable occupational diseases happening to his employees during the life of this contract or policy;

Funeral expenses. (d) That it will pay or cause to be paid the reasonable expense of the last sickness and burial of all employees whose deaths are caused by compensable injuries or compensable occupational diseases happening during the life of this contract or policy and arising out of and in the course of their employment with the employer, which the employer may be obligated to pay under the provisions of the Michigan workmen's compensation act;

Scope of contract. (e) That this insurance contract or policy shall for all purposes be held and deemed to cover all the businesses the said employer is engaged in at the time of the issuance of this contract or policy and all other businesses, if any, the employer may engage in during the life thereof, and all employees the employer may employ in any of his businesses during the period covered by this policy;

Obligations assumed. (f) That it hereby assumes all obligations imposed upon the employer by his acceptance of the Michigan workmen's compensation act, as far as the payment of compensation, death benefits, medical surgical, hospital care or medicine and rehabilitation services is concerned;

Termination notice. (g) That it will file with the bureau of workmen's compensation at Lansing, Michigan, at least 20 days before the taking effect of any termination or cancellation of this contract or policy, a notice giving the date at which it is proposed to terminate or cancel this contract or policy; and that any termination of this policy shall not be effective as far as the employees of the insured employer are concerned

until 20 days after notice of proposed termination or cancellation is received by the bureau of workmen's compensation;

Conflicting provisions. (h) That all the provisions of this contract, if any, which are not in harmony with this paragraph are to be construed as modified hereby, and all conditions and limitations in the policy, if any conflicting herewith are hereby made null and void."

Type size.

(3) Such provisions shall be printed upon or conspicuously attached to every insurance contract or policy issued by the accident fund or insurer in type size not smaller than 10-point and shall constitute a separate paragraph of the policy and any provision of the policy inconsistent with the said undertakings and agreements of the accident fund or insurer contained in such provisions shall be null and void.

HISTORY: New 1909, p. 659, Act 317, Eff. Dec. 31.

418.625 Insurance policy's notice of issuance; contents; refusal to accept coverage.

Sec. 625. The accident fund and every insurer mentioned in section 611 issuing an insurance policy covering workmen's compensation in this state shall file with the director, within 10 days after the effective date thereof, a notice of the issuance of such policy and its effective date. If the policy covers persons who would otherwise be exempted from the provisions of this act by section 115, the notice shall contain a specific statement to that effect. A notice shall not be required of the accident fund or any insurer where the policy issued is a renewal of the preceding policy. The accident fund or insurer, if it refuses to accept any coverage under this act, shall do so in writing.

HISTORY: New 1909, p. 661, Act 317, Eff. Dec. 31.

418.631 Claim payments; filing reports.

Sec. 631. (1) If any insurer licensed to transact the business of workmen's compensation insurance within this state repeatedly or unreasonably fails to pay promptly claims for compensation for which it shall become liable or if it repeatedly fails to make reports to the director as provided in this act, the director may recommend to the commissioner of insurance that the license of the company be revoked, setting forth in detail the reasons for his recommendation. The commissioner shall thereupon furnish a copy of the report to the insurer and shall set a date for a hearing, at which both the insurer and the director shall be afforded an opportunity to present evidence. If after the hearing the commissioner is satisfied that the insurer has failed to live up to all of its obligations under this act, he shall promptly revoke its license otherwise he shall dismiss the complaint.

(2) If any employer who is subject to this act as an approved self-insurer repeatedly or unreasonably fails to pay promptly claims for compensation for which it shall become liable or if it repeatedly fails to make reports to the director as provided in this act, the director may revoke the privilege granted to the employer to carry its own risk and require it to insure its liability. Such action shall not be taken by the director against any employer until the employer has been notified in writing of the charges made against it by the director and has been given an opportunity to be heard before the director in answer to the charges.

HISTORY: New 1909, p. 661, Act 317, Eff. Dec. 31.

418.641 Noncompliance; penalty.

Sec. 641. An employer who fails to comply with the provisions of section 611 is guilty of a misdemeanor and shall be fined not less than \$10.00 nor more than \$100.00, or imprisoned in the county jail for not less than 30 days nor more than 6 months, or

both. Each day's failure is a separate offense. Upon complaint of the director, the fines specified in this section may be collected by the state in a civil action.

HISTORY: New 1969, p. 661, Act 317, Eff. Dec. 31.

418.645 Noncompliance; order to show cause; injunction.

Sec. 645. If it appears by a complaint filed by the director in the circuit court of the circuit in which the employer is located or in the circuit court for Ingham county that the employer's liability is uninsured, there shall forthwith be served on the employer an order to show cause why he should not be restrained from employing any person in his business pending the proceedings or until he shall have satisfied the court that he has complied with the provisions of section 611. The order to show cause shall be returnable before the court at a time to be fixed in the order not less than 24 hours nor more than 3 days after its issuance. If the employer proves that he is not subject to the provisions of this act or furnishes a surety company bond in an amount to protect all of his liability under this act, then an injunction shall not issue. Every final decree against an employer under this section shall perpetually enjoin him from employing any person in his business at any time when he is not complying with section 611.

HISTORY: New 1969, p. 661, Act 317, Eff. Dec. 31.

418.647 Exemption of employer; corporations.

Sec. 647. If compensation is awarded under the provisions of this act against any employer who at the time of the injury has not complied with the provisions of section 611, the employer shall not be entitled as to any judgment entered upon the award, to any of the exemptions of property from seizure and sale on execution allowed by statute. If the employer is a corporation, the officers and directors thereof shall be individually and jointly and severally liable for any portion of any such judgment as is returned unsatisfied after execution against the corporation.

HISTORY: New 1969, p. 661, Act 317, Eff. Dec. 31.

418.651 Existing contracts unaffected; rights and liabilities.

Sec. 651. Nothing in this act shall affect any existing contract for employers' liability insurance or affect the organization of any mutual or other insurance company or any arrangement now existing between employers and employees, providing for the payment to the employees, their families, dependents or representatives, sick, accident or death benefits, in addition to the compensation provided for by this act. Liability for compensation under this act shall not be reduced or affected by any insurance, contribution or other benefit whatsoever, due to or received by the person entitled to such compensation and the person so entitled, irrespective of any insurance or other contract, shall have the right to recover the same directly from the employer; and in addition thereto the right to enforce in his own name in the manner provided in this act the liability of any insurance company, or the accident fund, who may have insured, in whole or in part, the liability for such compensation. Payment in whole or in part of such compensation by either the employer, the insurance company carrying such risk or the accident fund, shall be a bar, to the extent thereof, to recovery against the other of the amount so paid.

HISTORY: New 1969, p. 662, Act 317, Eff. Dec. 31.

418.655 Relief from liability.

Sec. 655. Any employer against whom liability may exist for compensation under this act, with the approval of the director, may be relieved therefrom by:

(a) Depositing the present value of the total unpaid compensation for which such liability exists, assuming interest at 3% per annum, with a trust company of this state designated by the employee, or by his dependents, in case of his death and such liability exists in their favor, or in default of such designation, after 10 days notice in writing from the employer, with a trust company of this state designated by the director.

(b) Purchasing an annuity, within the limitations provided by law, in any insurance company granting annuities and licensed in this state, which may be designated by the employee, his dependents or the director, as provided in subdivision (a).

HISTORY: New 1969, p. 662, Act 317, Eff. Dec. 31.

418.657 Public employers; operating expense; tax levy.

Sec. 657. Incorporated public boards and commissions shall treat the cost of benefits payable pursuant to the provisions of this act or the cost of insuring their liability for such benefits as part of their necessary operating expense and such sums shall be separately budgeted in any requisition authorized by law to be made on any other public corporation, body or officer. If the incorporated public board or commission is authorized by law to require the levying of taxes through any other public corporation or officer for its use, the expense, separately itemized, may be made a part of the tax levy.

HISTORY: New 1969, p. 662, Act 317, Eff. Dec. 31.

CHAPTER 7

ACCIDENT FUND

418.701 Accident fund; creation; administration; liability of state.

Sec. 701. An accident fund is created to provide workmen's compensation insurance for employers under the supervision of the commissioner of insurance, herein referred to as the commissioner. Upon compliance with the rules concerning insurance adopted by the commissioner, membership in and coverage by the fund shall be provided to employers subject to this act who shall request such membership and coverage of the fund in writing. Thereupon the accident fund shall assume charge of levying and collecting from the employers such premiums or assessments as may be necessary from time to time to pay the sums which become due under the provisions of this act and also the expense of administration; and shall disburse such sums in accordance with the provisions of this act. Neither the commissioner nor the state shall be liable or responsible for the payment of claims for compensation under the provisions of this act beyond the extent of the sums so collected and received.

HISTORY: New 1969, p. 662, Act 317, Eff. Dec. 31.

418.705 Investment funds; commissioner's bond.

Sec. 705. There shall be maintained in the accident fund a sufficient amount of cash to pay current losses and expenses and the balance may be invested by the commissioner and the state treasurer acting together, in such securities as are specified by law for investment by casualty insurance companies. All securities shall be purchased and may be sold at such time, in such manner and in accordance with such rules and conditions as may be prescribed by the joint action of the commissioner and the state treasurer. The commissioner shall give a good and sufficient bond in the sum of \$25,000.00 executed by a surety company authorized to do business in the state, covering the collection and disbursement of all moneys that may come into his hands under the provisions of this act. The premium on the bond shall be paid out of the general funds of the state.

HISTORY: New 1969, p. 663, Act 317, Eff. Dec. 31.

418.711 Fund self-supporting; assessments, adjustment.

Sec. 711. The accident fund shall be neither more nor less than self-supporting and the premiums or assessments levied for such purpose shall be subject to readjustment by the commissioner as may become necessary.

HISTORY: New 1969, p. 663, Act 317, Eff. Dec. 31.

418.715 Classification of employers; assessments.

Sec. 715. The commissioner may classify the establishments or works of such employers in groups in accordance with the nature of the business in which they are engaged and the probable risk of injury to their employees under existing conditions. He shall determine the amount of the premiums or assessments which employers shall pay the accident fund, may prescribe when and in what manner the premiums and assessments shall be paid, may change the amount thereof in respect to any or all of such employers as circumstances may require and the condition of the respective plants, establishments or places of work in respect to the safety of their employees may justify, but all such premiums or assessments shall be levied on a basis that shall be fair, equitable and just as among such employers.

HISTORY: New 1909, p. 663, Act 317, Eff. Dec. 31.

418.721 Assessments; due dates; default; collection.

Sec. 721. All premiums or assessments shall be due and payable within 45 days from the date on which the insurance became effective and formal demand for the payment of such premium shall be made within 30 days from that date. If any employer defaults in the payment of any premium or assessment required by the commissioner, the insurance of such employer shall become void and the sum due for the period insured shall be collected by an action at law in the name of the state as plaintiff which right of action is in addition to any other right of action or remedy.

HISTORY: New 1909, p. 663, Act 317, Eff. Dec. 31.

418.725 Certificate issuance; effective period, renewal.

Sec. 725. Every employer requesting insurance in the accident fund, upon complying with the rules concerning the insurance adopted by the commissioner, shall be furnished with a certificate showing the date on which the insurance becomes effective. The insurance shall be in force for a period of 1 year and may be renewed for subsequent periods of 1 year.

HISTORY: New 1909, p. 663, Act 317, Eff. Dec. 31.

418.731 Controversies; procedure.

Sec. 731. Any controversy between the commissioner and an employer insured in the accident fund shall be subject to the review provided by law for controversies arising between insurance companies and insured employers. Any controversy between the accident fund and a claimant for benefits from the accident fund under the provisions of this act shall be determined in accordance with the provisions of this act in respect to controversies concerning compensation.

HISTORY: New 1909, p. 663, Act 317, Eff. Dec. 31.

418.735 Employers records; inspection; refusal, penalty; falsification of payroll.

Sec. 735. The books, records and payrolls of each employer insured by the accident fund shall always be open to inspection by the commissioner or his duly authorized agent or representative for the purpose of ascertaining the correctness of the amount of the payroll reported, the number of men employed and such other information as the commissioner may require in the administration of the accident fund. Refusal on the part of any employer to submit books, records and payrolls for inspection shall subject the offending employer to a penalty of \$50.00 for each offense, to be collected by civil action in the name of the state and paid into the accident fund, and the individual who personally gives the refusal is guilty of a misdemeanor. Any employer who

knowingly submits to the commissioner a false statement of payroll for the purpose of securing a lower premium charge is guilty of a misdemeanor and shall be fined not less than \$100.00 or imprisoned for not more than 30 days in the county jail, or both.

HISTORY: New 1989, p. 664, Act 317, Eff. Dec. 31.

418.741 Fund records; employees; compensation and expenses.

Sec. 741. The commissioner shall keep complete records of all business transacted by him in the administration of the accident fund. He may employ such deputies and assistants and clerical help as may be necessary and as the advisory board may authorize, for the proper administration of the accident fund and the performance of the duties imposed upon him by the provisions of this act, at such compensation as may be fixed by the advisory board and may also remove them. The commissioner and the deputies and assistants shall be entitled to receive their actual and necessary expenses while traveling upon the business of the accident fund. All salaries and expenses shall be charged to and paid out of the accident fund. The commissioner shall include in his annual report a full and correct statement of the administration of the accident fund, showing its financial status and outstanding obligations, the claims contested and why and general statistics in respect to it.

HISTORY: New 1989, p. 664, Act 317, Eff. Dec. 31.

418.745 Payments from fund.

Sec. 745. All payments on account of injuries to employees from the accident fund shall be made in accordance with the provisions of this act and the rules of the bureau governing payment of compensation by carriers.

HISTORY: New 1989, p. 664, Act 317, Eff. Dec. 31.

418.751 Dissolution of fund; disposition of fund.

Sec. 751. If this chapter is repealed, or if in the judgment of the commissioner it becomes necessary to dissolve the accident fund, all moneys which are in the accident fund at such time shall be subject to disposition under the direction of the circuit court for the county of Ingham, with due regard to the obligation incurred and existing to pay compensation under the provisions of this act.

HISTORY: New 1989, p. 664, Act 317, Eff. Dec. 31.

418.755 Annual meeting; notice; advisory board nomination; board duties.

Sec. 755. An annual meeting of the employer-members of the accident fund shall be called by the commissioner in Lansing in October, which may be attended by the members in person or by a representative. Notice of the annual meeting shall be made by mail at least 10 days prior to the date of the meeting. At the annual meeting there shall be nominated by the members present 15 employer-members to constitute an advisory board, who, when certified to the governor, shall receive an appointment to serve for the term of 1 year. In case of vacancy in the advisory board, a nomination may be made by the remaining members to the governor for the purpose of filling the vacancy. The advisory board shall elect 1 of its members chairman and 4 other members who, together with the chairman, shall constitute an executive committee, which shall meet quarterly on the call of the chairman in Lansing. The advisory board shall advise the commissioner regarding the means and methods of administering the affairs of the accident fund.

HISTORY: New 1989, p. 664, Act 317, Eff. Dec. 31.

CHAPTER 8
PROCEDURE**418.801 Compensation; payment, time, manner, records.**

Sec. 801. Compensation shall be paid promptly and directly to the person entitled thereto and shall become payable on the fourteenth day after the employer has notice or knowledge of the disability or death, on which date all compensation then accrued shall be paid. Thereafter compensation shall be paid in weekly installments. Every carrier shall keep a record of all payments made under the provisions of this act and of the time and manner of making such payments and shall furnish reports, based upon these records, to the bureau as the director may reasonably require.

HISTORY: New 1909, p. 665, Act 317, Eff. Dec. 31.

418.805 Record of injuries; contents; reports to bureau.

Sec. 805. Every employer who is subject to this act shall keep a record of all injuries causing death or disability of any employee arising out of and in the course of the employment, which record shall give the name, address, age, wages of the deceased or disabled employee, the time and cause of the accident, the nature and extent of the injury and disability and such other information as the director may reasonably require. Reports based upon such record shall be furnished to the bureau at such times and in such manner as the director may reasonably require.

HISTORY: New 1909, p. 665, Act 317, Eff. Dec. 31.

418.811 Compensation; effects of savings, insurance, or benefits.

Sec. 811. No savings or insurance of the injured employee, nor any contribution made by him to any benefit fund or protective association independent of this act, shall be taken into consideration in determining the compensation to be paid hereunder nor shall benefits derived from any other source than those paid or caused to be paid by the employer as provided in this act, be considered in fixing the compensation under this act, except as provided in section 161 and section 359.

HISTORY: New 1909, p. 665, Act 317, Eff. Dec. 31.

418.815 Compensation; waiver of right, validity.

Sec. 815. No agreement by an employee to waive his rights to compensation under this act shall be valid except that employees or their dependents as defined in section 161, after injury only, may elect as provided in section 161.

HISTORY: New 1909, p. 665, Act 317, Eff. Dec. 31.

418.821 Payments unassignable for debts; judgment proof; lien.

Sec. 821. (1) No payment under this act shall be assignable or subject to attachment or garnishment or be held liable in any way for any debts. In case of insolvency every liability for compensation under this act shall constitute a first lien upon all the property of the employer liable therefor, paramount to all other claims or liens except for wages and taxes which lien shall be enforced by order of the court.

Assignment to insurer; attorney fees.

(2) This section shall not apply to or affect the validity of any assignment made to an insurance company making an advance or payment to an employee under any group disability or group hospitalization insurance policy which provides that no benefits shall be payable thereunder for any period of disability or hospitalization resulting from accidental bodily injury or sickness arising out of or in the course of employment. Whenever a group disability or hospitalization insurance company enforces an assignment given to it as provided in this section, it shall pay, pursuant to rules established by the director, a portion of the attorney fees of the attorney who secured the workmen's compensation recovery. For purposes of this section a self-insured employer shall be deemed to be an insurance company. Where an insurance company insures

both workmen's compensation and group disability or group hospitalization, it shall be permitted the adjustment provided in this section.

HISTORY: New 1989, p. 665, Act 317, Eff. Dec. 31.

418.823 Mental incompetents or minors.

Sec. 823. If an injured employee is mentally incompetent or is a minor at the time when any right or privilege accrues to him under this act, his guardian or next friend may claim and exercise in his behalf such right or privilege.

HISTORY: New 1989, p. 665, Act 317, Eff. Dec. 31.

418.827 Dual liability; action, settlement, recovery, expenses, benefits.

Sec. 827. (1) Where the injury for which compensation is payable under this act was caused under circumstances creating a legal liability in some person other than a natural person in the same employ or the employer to pay damages in respect thereof, the acceptance of compensation benefits or the taking of proceedings to enforce compensation payments shall not act as an election of remedies but the injured employee or his dependents or personal representative may also proceed to enforce the liability of the third party for damages in accordance with the provisions of this section. If the injured employee or his dependents or personal representative does not commence the action within 1 year after the occurrence of the personal injury, then the employer or carrier, within the period of time for the commencement of actions prescribed by statute, may enforce the liability of such other person in the name of that person. Not less than 30 days before the commencement of action by any party under this section, the parties shall notify, by certified mail at their last known address, the bureau, the injured employee, or in the event of his death, his known dependents or personal representative or his known next of kin, his employer and the carrier. Any party in interest shall have a right to join in the action.

(2) Prior to the entry of judgment, either the employer or carrier or the employee or his personal representative may settle their claims as their interest shall appear and may execute releases therefor.

(3) Settlement and release by the employee is not a bar to action by the employer or carrier to proceed against the third party for any interest or claim it might have.

(4) If the injured employee or his dependents or personal representative settle their claim for injury or death or commence proceedings thereon against the third party before the payment of workmen's compensation, such recovery or commencement of proceedings shall not act as an election of remedies and any moneys so recovered shall be applied as herein provided.

(5) In an action to enforce the liability of a third party, the plaintiff may recover any amount which the employee or his dependents or personal representative would be entitled to recover in an action in tort. Any recovery against the third party for damages resulting from personal injuries or death only, after deducting expenses of recovery, shall first reimburse the employer or carrier for any amounts paid or payable under this act to date of recovery and the balance shall forthwith be paid to the employee or his dependents or personal representative and shall be treated as an advance payment by the employer on account of any future payments of compensation benefits.

(6) Expenses of recovery shall be the reasonable expenditures, including attorney fees, incurred in effecting recovery. Attorney fees, unless otherwise agreed upon, shall be divided among the attorneys for the plaintiff as directed by the court. Expenses of recovery shall be apportioned by the court between the parties as their interests appear at the time of the recovery.

(7) Compensation benefits referred to in this section shall in each instance include but not be limited to all expenses incurred under sections 315 and 345.

HISTORY: New 1909, p. 666, Act 317, Eff. Dec. 31.

418.831 Compensation; acceptance, effect.

Sec. 831. Neither the payment of compensation or the accepting of the same by the employee or his dependents shall be considered as a determination of the rights of the parties under this act.

HISTORY: New 1909, p. 666, Act 317, Eff. Dec. 31.

418.833 Application for further compensation; overpayment, recoupment.

Sec. 833. (1) If payment of compensation is made, other than medical expenses, and an application for further compensation is later filed with the bureau, no compensation shall be ordered for any period which is more than 1 year prior to the date of filing of such application.

(2) When an employer or carrier takes action to recover overpayment of benefits, no recoupment of money shall be allowed for a period which is more than 1 year prior to the date of taking such action.

HISTORY: New 1909, p. 666, Act 317, Eff. Dec. 31.

418.835 Payment by lump sum; redemption agreement.

Sec. 835. After 6 months time has elapsed from the date of injury, any liability resulting therefrom may be redeemed by the payment of a lump sum by agreement of the parties, subject to the approval of a hearing referee. If special circumstances are found which in his judgment require the same, he may direct at any time in any case that the deferred payments due under this act be commuted on the present worth at 5% per annum to 1 or more lump sum payments and that such payments shall be made by the employer or carrier. When a redemption agreement is filed, it may be treated as a lump sum application, within the discretion of a hearing referee. The filing of a redemption agreement or lump sum application shall not be considered an admission of liability and where the hearing referee treats a redemption agreement as a lump sum application under this section, the employer shall be entitled to a hearing on the question of liability.

HISTORY: New 1909, p. 667, Act 317, Eff. Dec. 31.

418.837 Redemption agreements; review; processing; appeal.

Sec. 837. (1) The director shall direct the processing for approval or rejection by the hearing referees of all redemption agreements and lump sum applications filed under the provisions of section 835.

(2) The director may, or upon the request of any of the parties to the action shall, review the order of the hearing referee entered under this section. Unless review is ordered or requested within 15 days of the date the order of the hearing referee is mailed to the parties, the order shall be final. In the event of review and in accordance with such rules as the director may prescribe and after hearing, the director shall enter such order as he deems just and proper. Any such order of the director may be appealed to the board within 15 days after the order is mailed to the parties.

HISTORY: New 1909, p. 667, Act 317, Eff. Dec. 31.

418.841 Compensation; submission; determination; party.

Sec. 841. Any controversy concerning compensation shall be submitted to the bureau and all questions arising under this act shall be determined by the bureau. The director shall be deemed to be an interested party in all workmen's compensation cases in questions of law.

HISTORY: New 1909, p. 667, Act 317, Eff. Dec. 31.

418.845 Out of state injuries; jurisdiction, benefits.

Sec. 845. The bureau shall have jurisdiction over all controversies arising out of injuries suffered outside this state where the injured employee is a resident of this state at the time of injury and the contract of hire was made in this state. Such employee or his dependents shall be entitled to the compensation and other benefits provided by this act.

HISTORY: New 1969, p. 667, Act 317, Eff. Dec. 31.

418.847 Claims; hearing.

Sec. 847. Upon the filing with the bureau by any party in interest of an application in writing stating the general nature of any claim as to which any dispute or controversy may have arisen, the director shall set the case for hearing and shall designate a hearing referee to hear the case.

HISTORY: New 1969, p. 667, Act 317, Eff. Dec. 31.

418.851 Inquiries and investigations; order of hearing; review.

Sec. 851. The hearing referee assigned to any hearing in accordance with the provisions of section 847 shall make such inquiries and investigations as he shall deem necessary. The hearing shall be held at the locality where the injury occurred and the order of the hearing referee shall be filed with the bureau. Unless a claim for review is filed by a party within 15 days, the order shall stand as the order of the bureau. For sufficient cause shown, the board may grant further time in which to claim such review.

HISTORY: New 1969, p. 667, Act 317, Eff. Dec. 31.

418.853 Procedure; oaths, subpoenas; contempt.

Sec. 853. Process and procedure under this act shall be as summary as reasonably may be. The director, hearing referees and board shall have the power to administer oaths, subpoena witnesses and to examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. Any witness who refuses to obey a subpoena, who refuses to be sworn or testify or who fails to produce any papers, books or documents touching any matter under investigation or any witness, party or attorney who is guilty of any contempt while in attendance at any hearing held under this act may be punished as for contempt of court; for this purpose an application may be made to any circuit court within whose jurisdiction the offense is committed and for which purpose the court is given jurisdiction.

HISTORY: New 1969, p. 668, Act 317, Eff. Dec. 31.

418.855 Statement of injured employee; copy; admissibility as evidence.

Sec. 855. If the employer, carrier or any agent of either takes a statement from an injured employee, the statement cannot be used as evidence against the employee unless a copy thereof is given to him at the time it is taken.

HISTORY: New 1969, p. 668, Act 317, Eff. Dec. 31.

418.858 Hearings; costs and fees; disagreement; attorney fees.

Sec. 858. The cost of such hearing, including the cost of taking stenographic notes of the testimony presented at such hearing, not exceeding the taxable costs allowed in actions at law in the circuit courts of this state, shall be fixed by the director and paid by the state as other expenses of the state are paid. The fees and payment thereof of all attorneys and physicians for services under this act shall be subject to the approval of a hearing referee. In the event of disagreement as to such fees, an interested party may apply to the bureau for a hearing. After an order by the referee, review may be had by the director if a request is filed within 15 days. Thereafter the director's order may be reviewed by the appeal board on request of an interested party if a request is filed within 15 days. The director, by rule, may prescribe maximum attorney fees and the

manner in which the amount may be determined or paid by the employee. When fees are requested in excess of that provided by rule, the director may award such fee by special order.

HISTORY: New 1909, p. 668, Act 317, Eff. Dec. 31.

418.859 Review procedure; appeal.

Sec. 859. If a claim for review is filed, the board shall promptly review the order, together with the records of the hearing; it may hear the parties, together with such additional evidence as it in its discretion may allow them to submit and shall file its order with the records of the proceedings. The review and hearing may be held at its offices in Lansing, or elsewhere, as the board deems advisable. Where the employer or carrier files a claim for review to the board or appeals to the court of appeals or supreme court, a copy of the testimony, depositions and other documents necessary for the appeal shall be furnished by the employer or carrier to the employee or his attorney.

HISTORY: New 1909, p. 668, Act 317, Eff. Dec. 31.

418.861 Findings of fact conclusive; questions of law.

Sec. 861. The findings of fact made by the board acting within its powers, in the absence of fraud, shall be conclusive. The court of appeals and the supreme court shall have power to review questions of law involved in any final order of the board, if application is made by the aggrieved party within 30 days after such order by any method permissible under the rules of the courts of the laws of this state.

HISTORY: New 1909, p. 668, Act 317, Eff. Dec. 31.

418.863 Order of hearing referee; judgment; notice; record.

Sec. 863. Any party may present a certified copy of an order of a hearing referee, the director or the board in any compensation proceeding to the circuit court of the circuit in which the injury occurred, or to the circuit court of the county of Ingham if the injury was sustained outside this state. The court, after 7 days' notice to the opposite party or parties, shall render judgment in accordance therewith unless proof of payment is made. The judgment shall have the same effect as though rendered in an action tried and determined in the court and shall be entered and docketed with like effect.

HISTORY: New 1909, p. 668, Act 317, Eff. Dec. 31.

418.865 Examination by physicians; fee.

Sec. 865. The bureau may appoint a duly qualified impartial physician to examine the injured employee and to report. The fee for this service shall be \$5.00 and traveling expenses, but the bureau may allow additional reasonable amounts in extraordinary cases.

HISTORY: New 1909, p. 669, Act 317, Eff. Dec. 31.

418.867 Investigation commission; report, expenses.

Sec. 867. Whenever in the opinion of the governor the provisions of this act shall be unfair to either employees or employers, he may appoint a commission to investigate thoroughly the workings of the act and report thereon to the governor. The report shall be submitted by him to the legislature at its first regular or special session held after the receipt of the report. The report, in addition to the recommendations thereof, shall contain the text of needed changes or amendments to place this act upon a perfectly fair basis. The members of the commission shall have power to summon witnesses, administer oaths and compel the production of books and papers. They shall each receive compensation at the rate of \$10.00 per day, together with actual and necessary expenses incurred in the performance of official duties, such compensation and expenses to be audited and allowed by the department of administration and

paid out of the general fund. Such compensation and expenses shall not exceed the sum of \$3,000.00.

HISTORY: New 1969, p. 669, Act 317, Eff. Dec. 31.

418.891 Application of prior law; new benefit rates; saving clause.

Sec. 891. (1) To the extent that they are reenacted herein, all the provisions of former Act No. 44 of the Public Acts of 1965 shall apply only to personal injuries the date of which occurs on or after September 1, 1965, except as otherwise provided in such act and except for the amendment to part 2, section 4 of that act, concerning selection of physicians as provided in that act.

(2) In all cases where the date of injury is on or after September 1, 1965, and the employee or his dependents would be entitled to the new maximum weekly benefit rates, such employee or his dependents shall receive, without application to the bureau, an adjustment to the increased maximum rate as it becomes effective September 1, 1966, or September 1, 1967, for any compensable weeks subsequent to the above dates.

(3) This act shall not affect or impair any right accruing, accrued or acquired or any liability developing or imposed prior to the time this act takes effect, and all such rights and liabilities shall be governed by the provisions of Act No. 10 of the Public Acts of the First Extra Session of 1912, as amended, being sections 411.1 to 417.61 of the Compiled Laws of 1948. The first adjustment to the maximum rates of weekly compensation provided previously in subsection (f) of section 9 of part 2 of Act No. 10 of the Public Acts of the First Extra Session of 1912, as amended, shall remain in effect to the extent provided in such section and the amount of change in the average weekly wage not incorporated in the first adjustment made January 1, 1969 shall be carried forward as provided in such section.

HISTORY: New 1969, p. 669, Act 317, Eff. Dec. 31.

418.898 Repeal.

Sec. 898. Act No. 357 of the Public Acts of 1947, as amended, being sections 408.1 to 408.33 of the Compiled Laws of 1948 and Act No. 10 of the Public Acts of the First Extra Session of 1912, as amended, being sections 411.1 to 417.61 of the Compiled Laws of 1948, are repealed.

HISTORY: New 1969, p. 669, Act 317, Eff. Dec. 31.

418.899 Effective date.

Sec. 899. This act shall take effect December 31, 1969.

HISTORY: New 1969, p. 669, Act 317, Eff. Dec. 31.

CHAPTER 419. LABOR—WORKMEN'S COMPENSATION— SUPPLEMENTAL CHAPTER

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419.101	Peace officers; disability, total, partial;	

Act 119, 1911, p. 179; Eff. Aug. 1.

AN ACT to protect the public health; to require the reporting of occupational diseases to the state department of health; to prescribe the duties and powers of the state department of health with reference thereto; and to prescribe penalties for the violation of the provisions of this act. Am. 1937, p. 335, Act 210, Eff. Oct. 29.

The People of the State of Michigan enact:

419.1 Occupational diseases; reports, contents; public records.

Sec. 1. On and after the effective date of this enactment every physician, hospital superintendent, or clinic registrar having knowledge of a case of occupational disease shall within 10 days report the same to the state department of health on a form provided by the state department of health, giving the name and address of the patient, the name and business address of the employer or employers, the business of the employer, the place of the patient's employment, the length of time of his employment in the place where he became ill, the nature of the disease, and any other information required by the state department of health. All such reports and all records and data of the state department of health pertaining to such diseases are hereby declared not to be public records. The department of labor and industry shall have access to any such record in any case where any complaint or suit shall have been brought before it.

HISTORY: CL 1915, 5166;—CL 1929, 8613;—Am. 1937, p. 335, Act 210, Eff. Oct. 29;—CL 1948, 419.1.

NOTE. Functions of department of labor and industry under this act now vested in workmen's compensation commission, see Compilers' repealed § 408.1 et seq.

419.1a Occupational diseases; definition.

Sec. 1a. An occupational disease, for the purpose of this statute, is an illness of the body which has the following characteristics:

1. It arises out of and in the course of the patient's occupation.
2. It is caused by a frequently repeated or a continuous exposure to a substance or to a specific industrial practice which is hazardous and which has continued over an extended period of time.
3. It presents symptoms characteristic of an occupational disease which is known to have resulted in other cases from the same type of specific exposure.
4. It is not the result of ordinary wear and tear of industrial occupation or the general effect of employment or the kind of illness that results from contacts or activities in life outside of the patient's occupational pursuits.

HISTORY: Add. 1937, p. 335, Act 210, Eff. Oct. 29;—CL 1948, 419.1a.

419.1b Report blanks; distribution.

Sec. 1b. The state commissioner of health is hereby authorized and directed to design and provide suitable blanks for reporting occupational diseases, and appropriate instructions for their use, and to furnish them freely to registered physicians, to medical clinics, hospitals, and industrial plants.

HISTORY: Add. 1937, p. 335, Act 210, Eff. Oct. 29;—CL 1948, 419.1b.

419.1c Reports; investigation.

Sec. 1c. Whenever the state commissioner of health receives a report as provided by section 1 or has reliable notice that there is within the state a case of occupational disease, he may cause an investigation to be made to determine the authenticity of the report and the cause of the disease.

HISTORY: Add. 1937, p. 335, Act 210, Eff. Oct. 29;—CL 1948, 419.1c.

419.1d Statistical summaries; dissemination to employers.

Sec. 1d. Once each year and at such other times as is deemed appropriate, the state department of health shall compile statistical summaries of all occupational diseases reported and accepted as covering true occupational diseases, together with the type of employment leading to the occurrence of such diseases. The state department of health shall disseminate to all employers of this state instruction and information deemed proper and expedient to prevent the occurrence of occupational diseases.

HISTORY: Add. 1937, p. 335, Act 210, Eff. Oct. 29;—CL 1948, 419.1d.

419.2 Reports; failure to make, falsification; penalty.

Sec. 2. Any physician, hospital superintendent, or registrar in charge of hospital or clinic records who shall fail to make any report required by the preceding section, or who shall wilfully make any false statement in such report, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than 50 dollars.

HISTORY: CL 1915, 5167;—CL 1929, 8614;—Am. 1937, p. 336, Act 210, Eff. Oct. 29;—CL 1948, 419.2.

419.3 Violation of act; prosecution.

Sec. 3. It shall be the duty of the state department of health and of the prosecuting attorney of the county where any one violating the provisions of this act may reside, to prosecute all violations of the provisions of this act which shall come to their knowledge.

HISTORY: CL 1915, 5168;—CL 1929, 8615;—Am. 1937, p. 336, Act 210, Eff. Oct. 29;—CL 1948, 419.3.

Act 104, 1909, p. 210; Eff. Sep. 1.

AN ACT to prescribe the liability of common carrier railroad companies to their employees.

The People of the State of Michigan enact:

419.51 Railroads; liability for negligence.

Sec. 1. Every common carrier railroad company in this state shall be liable to any of its employees, or, in case of his death, to his personal representative for the benefit of his widow and children, if any; if none, then for his parents; if none, then for his next of kin, for all damages which may result from the negligence of any such railroad company or from the negligence of any of its officers, agents or employees, or by reason of any defect or insufficiency due to the negligence of any such common carrier railroad company in its cars, engines, appliances, machinery, track, road bed, works, boats, wharves, coal docks or other equipment.

HISTORY: CL 1915, 5496;—CL 1929, 8629;—CL 1948, 419.51.

DEATH ACT: See Act 236 of 1961, being Compilers' § 600.2922.

WORKMEN'S COMPENSATION: See Compilers' § 418.141 et seq. and particularly Compilers' 418.131 and 418.831.

419.52 Contributory negligence; degree, effect; assumption of risk.

Sec. 2. In all actions hereafter brought against any such common carrier railroad company under or by virtue of any of the provisions of this act to recover damages for personal injury to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery: Provided, That the negligence of such employee was of a lesser degree than the negligence of such company, its officers, agents or employees: Provided further, That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier railroad company of any statute enacted for the safety of employees contributed to the injury of such employee, and such employee shall not be held to have assumed the risk of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

HISTORY: CL 1915, 5497;—CL 1929, 8630;—CL 1948, 419.52.

419.53 Railroad company; definition.

Sec. 3. The words "railroad company," as used in this act, shall be taken to embrace any company, association, corporation, or person managing, maintaining, operating, or in possession of a common carrier railroad in whole or in part within this state, whether as owner, contractor, lessee, mortgagee, trustee, assignee or receiver.

HISTORY: CL 1915, 5498;—CL 1929, 8631;—CL 1948, 419.53.

419.54 Agreements not to bar action; provision, set off sum contribution.

Sec. 4. No contract of employment, insurance, relief benefit, or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages for personal injuries to, or death of such employee: Provided, however, That upon the trial of such action, the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit or indemnity that may have been paid to the injured employee, or, in case of his death, to his personal representative.

HISTORY: CL 1915, 5499;—CL 1929, 8632;—CL 1948, 419.54.

WORKMEN'S COMPENSATION: Effect of relief under act on right of action, see Compilers' §§ 418.131 and 418.141.

Sec. 5.

HISTORY: Rep. 1915, p. 481, Act 314, Eff. Jan. 1, 1916.

419.56 Construction of act as to duties and rights.

Sec. 6. Nothing in this act shall be held to limit the duty of common carrier railroad companies, or impair the rights of their employes under existing laws of the state.

HISTORY: CL 1915, 5500;—CL 1929, 8633;—CL 1948, 419.56.

419.57 Scope of act.

Sec. 7. The provisions of this act shall not apply to employes working in shops or offices.

HISTORY: CL 1915, 5501;—CL 1929, 8634;—CL 1948, 419.57.

Act 329, 1937, p. 664; Imd. Eff. Jul. 24.

AN ACT providing for compensation to certain peace officers injured in active duty, and payment to dependents in case of death arising from active duty; and to make an appropriation therefor. Am. 1939, p. 321, Act 164, Imd. Eff. Jun. 6;—Am. 1941, p. 32, Act 34, Eff. Jan. 10, 1942.

The People of the State of Michigan enact:

419.101 Peace officers; disability, total, partial; compensation, maximum; medical care.

Sec. 1. Any peace officer, either elective or appointive, of the state of Michigan, or of any political subdivision thereof, who shall suffer disability as a result of active duty in enforcing the laws of the state of Michigan, or of an adjoining state, shall, in addition to the compensation hereinafter provided be furnished reasonable medical, surgical and hospital services during the period or periods of such disability.

(a) During the period or periods such officer, by reason of such disability, is unable to earn any income, he shall be deemed to be totally disabled and shall receive the sum of \$18.00 per week: Provided, however, That in cases where such peace officer shall be inducted into service temporarily and shall be disabled as a result of such temporary service, he shall be deemed to be totally disabled for such period of time as he shall be unable to earn wages or income from his regular employment or occupation.

(b) During the period or periods such officer, by reason of such disability, is able to earn less than his regular income, he shall be deemed to be partially disabled and shall receive as weekly compensation the difference between his average weekly wages or income before such disability starts, and the average weekly wages or income which he receives thereafter, not exceeding \$18.00 per week: Provided, however, That in cases where such peace officer shall be inducted into service temporarily and shall be disabled as a result of such temporary service, he shall be deemed to be partially disabled for such period of time as he shall be unable to earn his regular wages or income from his regular employment or occupation.

Provided, That the total compensation to any such peace officer shall not exceed the total sum of \$5,000.00.

HISTORY: Am. 1939, p. 321, Act 164, Imd. Eff. June 6;—Am. 1941, p. 32, Act 34, Eff. Jan. 10, 1942;—CL 1948, 419.101.

CITED IN OTHER SECTIONS: Sections 419.101 to 419.104 are cited in §§ 418.161, 800.1077, and 613.33a.

419.102 Peace officers; dependents, compensation; medical and burial expense.

Sec. 2. The dependents of any such peace officer of the state of Michigan, or of any political subdivision thereof, who shall be killed as the result of active duty in enforcing the laws of the state of Michigan, or of an adjoining state, shall receive the sum of \$1,000.00 for defraying the expense of last sickness and burial, and \$18.00 a week until a total sum of \$5,000.00 shall be paid. The term "dependent" as used in this section

shall be construed to mean the widow of any such peace officer, if living, and until re-marriage, the children of any such peace officer, if dependent, the mother and/or father of any peace officer, if dependent, and the brothers and sisters of any such peace officer, if dependent, in the order named. In case such peace officer shall leave surviving him no dependents as hereinbefore defined, the estate of such peace officer shall receive the sum of \$1,000.00 for the expense of last sickness and burial.

HISTORY: Am. 1939, p. 322, Act 164, Imd. Eff. June 6;—CL 1948, 419.102.

419.103 Payment; appropriated funds; review of claims.

Sec. 3. Said sums hereinbefore provided for shall be paid from the general fund of the state treasury, from moneys not otherwise appropriated, on vouchers signed and approved by the attorney general, and there is hereby appropriated from said general fund for the fiscal year ending June 30, 1938, and every fiscal year thereafter, a sufficient sum to carry out the provisions of this act. It shall be the duty of the attorney general to review all claims under the provisions of this act and satisfy himself of the merits thereof before presenting any voucher to the auditor general therefor.

HISTORY: Am. 1939, p. 322, Act 164, Imd. Eff. June 6;—CL 1948, 419.103.

419.104 Disability as result of active duty; application of act; definition.

Sec. 4. The provisions of this act shall apply only to peace officers (and their dependents), elective or appointive, of the state of Michigan, or of any political subdivision thereof, who shall suffer disability as the result of active duty in the enforcement of the laws of the state of Michigan, or of an adjoining state.

Any such peace officer, or the dependent or dependents of such peace officer, who shall receive any insurance or benefit maintained for such peace officer, or his dependents, by any political subdivision of the state of Michigan shall not be eligible to come under the provisions of this act: Provided, That the amount received by such peace officer, dependent or dependents, is equivalent to the amount provided for by this act. If the amount shall be less than provided by this act, then the difference shall be paid from the appropriation provided therefor.

The term "peace officer" as used in this section shall be construed to mean and include the estate of the peace officer.

The provisions of this act shall not apply to the Michigan state police or their dependents.

HISTORY: Am. 1939, p. 322, Act 164, Imd. Eff. Jun. 6;—Am. 1943, p. 166, Act 130, Imd. Eff. Apr. 13;—CL 1948, 419.104;—Am. 1955, p. 407, Act 248, Eff. Oct. 14.

Act 9, 1942 (1st Ex. Ses.), p. 17; Imd. Eff. Jan. 28.

AN ACT providing for compensation to certain firemen injured in the safeguarding of life and property, and payment to dependents in case of death; and to make an appropriation therefor.

The People of the State of Michigan enact:

419.201 Application of act; jurisdiction of fire department in emergency; fire department, definition.

Sec. 1. The provisions of this act shall apply, in the safeguarding of life and property from damage due to explosion, fire or other disaster however caused, in such cases as the commissioner of the Michigan state police, as state fire marshal, or his representative, shall determine to be of such an emergency character as to affect the welfare and safety of the people of the state of Michigan. Any organized city, village or township fire department shall cooperate with the state fire marshal in any such emergency, and shall have, in any such emergency, the same authority and powers outside its own city,

village or township as if the fire department were in its own city, village or township. The term "fire department" as used in this act shall mean lawfully organized fire fighting forces, however constituted, including personnel.

HISTORY: CL 1948, 419.201.

419.202 Firemen; disability incurred outside locality of jurisdiction; compensation, amount, time limitation.

Sec. 2. Any fireman, either volunteer, part-paid or full-paid, who shall suffer disability as a result of safeguarding life or property outside his jurisdiction from damage due to explosion, fire or other disaster however caused, or in the transportation to or from a fire, explosion or other disaster however caused, outside his jurisdiction shall receive compensation equivalent to the amount provided for such injury and incapacity by the workmen's compensation laws of this state at the time of such injury.

HISTORY: CL 1948, 419.202;—Am. 1957, p. 140, Act 122, Eff. Sep. 27.

419.203 Firemen; death caused outside locality of jurisdiction; compensation of dependents.

Sec. 3. The dependents of any such fireman, who shall be killed in safeguarding life or property outside his jurisdiction from damage due to explosion, fire or other disaster however caused, or in transportation to or from a fire, explosion or other disaster however caused, outside his jurisdiction, shall receive the sum of \$500.00 for defraying the expense of burial and compensation equivalent to the amount provided by the workmen's compensation laws of this state at the time of death of such fireman. The widow of any fireman, until she remarries, shall be considered a dependent for the purpose of this section. After the death or remarriage of such widow, such compensation shall be payable to the children of any such fireman, while dependent, the mother and/or father of any fireman, while dependent, and the brothers and sisters of any such fireman, while dependent, in the order named. In case such fireman shall leave surviving him no dependents as hereinbefore defined, the estate of such fireman shall receive the sum of \$500.00 for the expense of burial.

HISTORY: CL 1948, 419.203;—Am. 1957, p. 140, Act 122, Eff. Sep. 27.

419.204 Compensation payments from general fund; appropriation.

Sec. 4. Said sums hereinbefore provided for shall be paid from the general fund of the state treasury, from moneys not otherwise appropriated, on vouchers signed and approved by the department of labor and industry, and there is hereby appropriated from said general fund for the fiscal year ending June 30, 1942, and every fiscal year thereafter, a sufficient sum to carry out the provisions of this act.

HISTORY: CL 1948, 419.204.

419.205 Application of act; provisions of local charter.

Sec. 5. The provisions of this act shall apply to firemen (and their dependents) who suffer disability as the result of safeguarding life and property outside his jurisdiction from damage due to explosion, fire or other disaster however caused, or in transportation to or from a fire, explosion or other disaster however caused, outside his jurisdiction, during the emergency defined by section 1 of this act: Provided, however, That firemen or employees of fire departments, or their dependents, in municipalities or villages of this state having charter provisions prescribing like benefits as those provided under Act No. 10, Public Acts of 1912, Extra Session, shall receive from the state the benefits provided by this act. The village or municipality may, in accordance with its charter provisions, pay to said employee, his dependent or dependents, the difference between the benefits provided by this act and the benefits provided for by the municipalities or villages, but shall pay no more than said difference. Any contributions made by said employee to any benefit fund or protective association independent of the

charter of the municipality shall be taken into consideration in determining the compensation to be paid hereunder.

HISTORY: CL 1948, 419.305.

Sec. 6.

HISTORY: Rep. 1945, p. 79, Act 79, Eff. Sept. 6.

This was a war termination section.

Act 19, 1927, p. 23; Eff. Sep. 5.

AN ACT to provide for the protection and legal employment of minors between the ages of 16 and 18 years.

The People of the State of Michigan enact:

419.301 Minors between 16 and 18; legal employment; permit or certificate.

Sec. 1. Any minor over 16 and under 18 years of age engaged in an occupation approved by the department of labor and industry as required by section 11 of Act No. 285 of the Public Acts of 1909, as amended, shall, within the meaning of said act, be considered to be legally employed, and shall in all cases be subject to Act No. 10 of the Public Acts of 1912 (extra session), as amended, known as the workmen's compensation law, provided that the employer has filed the required permit or certificate for said minor.

HISTORY: CL 1929, 8356;—CL 1948, 419.301.

NOTE: Sec. 11 of Act 285 of 1909 as amended, above referred to, is Compilers' repealed § 408.61. Act 10 of 1912, 1st Ex. Ses., as amended, is Compilers' repealed §§ 411.1 to 416.8.

MINORS UNDER 18: Employment permit, see Compilers' § 409.3.

CHAPTER 421. LABOR—UNEMPLOYMENT COMPENSATION

UNEMPLOYMENT COMPENSATION ACT

Act 1 of 1936 (Ex. Ses.)

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Act 1, 1936 (Ex. Ses.), p. 3; Imd. Eff. Dec. 24.

AN ACT to protect the welfare of the people of this state through the establishment of an unemployment compensation fund, and to provide for the disbursement thereof; to create the Michigan employment security commission, and to prescribe its powers and duties; to provide for the protection of the people of this state from the hazards of unemployment; to levy and provide for contributions from employers; to provide for the collection of such contributions; to enter into reciprocal agreements and to cooperate with agencies of the United States and of other states charged with the administration of any unemployment insurance law; to provide for the payment of benefits; to provide for appeals from redeterminations, decisions and notices of assessment; and for referees and an appeal board to hear and decide any and all issues arising from redeterminations, decisions and notices of assessment; to provide for the cooperation of this state and compliance with the provisions of the social security act and the Wagner-Peyser act passed by the Congress of the United States of America; to provide for the establishment and maintenance of free public employment offices; to provide for the transfer of funds; to make an appropriation for carrying out the provisions of this act; to prescribe penalties for the violation of the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act. Am. 1937, p. 844, Act 347, Imd. Eff. Aug. 5;—Am. 1954, p. 472, Act 197, Imd. Eff. May 7.

The People of the State of Michigan enact:

421.1 Michigan employment security act; short title.

Sec. 1. This act shall be known and may be cited as the "Michigan employment security act." Wherever in this act reference is made to the "Michigan unemployment compensation act" or to the "unemployment compensation act" such reference shall mean the "Michigan employment security act."

HISTORY: CL 1948, 421.1;—Am. 1951, p. 378, Act 251, Imd. Eff. Jun. 17.

CITED IN OTHER SECTIONS: Sections 421.1 to 421.62 are cited in § 421.501.

421.2 Declaration of public policy.

Sec. 2. Declaration of policy. The legislature acting in the exercise of the police power of the state declares that the public policy of the state is as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is a subject of general interest and concern which requires action by the legislature to prevent its spread and to lighten its burden which so often falls with crushing force upon the unemployed worker and his family, to the detriment of the welfare of the people of this state. Social security requires protection against this hazard of our economic life. Employers should be encouraged to provide stable employment. The systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment by the setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, thus maintaining purchasing power and limiting the serious social consequences of relief assistance, is for the public good, and the general welfare of the people of this state.

HISTORY: CL 1948, 421.2

421.3 Employment security commission; members; director of labor.

Sec. 3. (a) The Michigan employment security commission, hereinafter referred to as the commission, shall be composed of 5 members. The director of labor shall serve ex officio as a member without vote and without additional compensation. The provisions of this section relating to appointment, term of office, compensation, restrictions as to political affiliation, representation of employer and employee interests, holding

office or committee membership in political party organizations, and employment by any other commission, board, department or institution of this state are not applicable to such ex officio member. The members of the commission as now constituted shall continue to serve in accordance with their present terms of office.

Appointment; term; vacancies; chairman; qualifications; removal; seal.

(b) A member shall be appointed by the governor each year by and with the advice and consent of the senate for a term of 4 years and until the appointment and qualification of his successor. Vacancies due to any reason other than expiration of term shall be filled in the same manner as is provided for appointment in the first instance for the unexpired term. If a vacancy shall occur, by virtue of the expiration of the term of a member, such member shall continue in office until his successor is appointed by the governor and confirmed by the senate. The commission shall annually elect a chairman from among its members. Not more than 2 members of the commission shall be of the same political party. Two members of the commission shall represent employer interests and 2 shall represent employee interests. During his term, no member shall serve as an officer or committee member of any political party organization or be employed by any other commission, board, department or institution of this state. The governor may remove any member for misfeasance, malfeasance or nonfeasance in office, after hearing. The commission shall adopt a suitable seal of which all courts of the state shall take judicial notice.

Compensation; quorum; procedure.

(c) Each voting member of the commission shall receive as compensation for his services \$50.00 per day for the time actually spent, and his necessary traveling and other expenses incurred, in the performance of his official duties, payable from the administration fund, but no member shall receive as compensation in excess of \$5,000.00 in any fiscal year. Three voting members of the commission shall constitute a quorum for the transaction of business. The commission shall prescribe its organization and methods of procedure.

Policies.

(d) The commission shall establish policies in conformity with this act to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; to carry on and publish the results of investigations and research studies; and shall investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment.

HISTORY: Am. 1937, p. 844, Act 347, Imd. Eff. Aug. 5;—Am. 1941, p. 652, Act 364, Imd. Eff. Jul. 1;—Am. 1947, p. 664, Act 360, Imd. Eff. Jul. 8;—CL 1948, 421.3;—Am. 1951, p. 378, Act 251, Imd. Eff. Jun. 17;—Am. 1965, p. 478, Act 261, Eff. Sept. 5;—Am. 1968, p. 619, Act 338, Imd. Eff. Jul. 19.

CITED IN OTHER SECTIONS: The above section is cited in § 16.479.

421.3a Employment security commission; advisory council; members, appointment, terms, duties, assistance.

Sec. 3a. There is hereby created an advisory council which shall be known as the Michigan employment security advisory council, consisting of 8 members to be appointed by the governor for terms of 6 years: Provided, That of the members first appointed, 4 shall be appointed for a term of 3 years and 4 for a term of 6 years. Upon expiration of such terms successors shall be appointed for the term of 6 years. Vacancies shall be filled in the same manner as appointments in the first instance. Four of the members of the council shall be representative of employer interests and 4 members of employee interests. The members of the advisory council shall serve without

compensation, but shall be reimbursed from the administration fund for all necessary expenses in connection with the discharge of their official duties.

It shall be the responsibility of the advisory council to make recommendations, (1) to the commission, on policy, and (2) to the governor, the legislature and the commission, on proposed amendments to this act, deemed advisable to carry out the purposes of the act and to provide more effective administration thereof.

The commission shall furnish the advisory council clerical and other such assistance as it may require and may make such statistical and other studies as are requested by the advisory council in the performance of its duties. The cost of such assistance and of such studies shall be considered as proper administrative expenses.

HISTORY: Add. 1947, p. 695, Act 360, Imd. Eff. Jul. 8;—CL 1948, 421.3a;—Am. 1951, p. 379, Act 251, Imd. Eff. Jun. 17.

CITED IN OTHER SECTIONS: The above section is cited in § 16.479.

421.4 Employment security commission; rules and regulations; distribution; making or changing, notice, publication; copies furnished, effective date; notice to advisory council, time.

Sec. 4. The commission is hereby authorized and empowered to promulgate such rules and regulations, as it deems necessary, not inconsistent with the provisions of this act, to carry out the provisions of this act.

The commission shall cause to be printed for distribution to the public the text of this act, and all rules and regulations of the commission, and shall make available to the public upon request statements of any and all informal rules or criteria of decision, administrative policies or interpretations, and the like, which may be utilized by the commission or any of its agents or employees in any manner.

No rule or regulation shall be made or changed until after public hearing, notice of which shall first be given not less than 20 days before said hearing, by publication in a daily newspaper published in each congressional district of this state: Provided, That in any county having a population of 300,000 or over according to the latest or each succeeding federal decennial census, publication shall be required in a daily newspaper published in such county. Copies of such proposed rules or regulations shall be furnished by the commission upon application by any interested parties. Rules and regulations shall become effective in accordance with Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.82, inclusive, of the Compiled Laws of 1948. Notice of such hearing accompanied by copies of the proposed rule or regulation shall be given to members of the advisory council not less than 30 days before said hearing.

HISTORY: Am. 1943, p. 440, Act 246, Imd. Eff. Jun. 1;—Am. 1947, p. 695, Act 360, Imd. Eff. Jul. 8;—CL 1948, 421.4;—Am. 1951, p. 379, Act 251, Imd. Eff. Jun. 17.

421.4a Employment security commission; parking facility, approval.

Sec. 4a. The commission may acquire, purchase, erect or improve land or buildings, within funds available for that purpose, as it deems necessary for use as a parking facility in Detroit for the state administrative office. No land or buildings shall be acquired, purchased, erected or improved until the approval of the state administrative board is obtained. Title to the land or buildings shall be in the name of the state.

HISTORY: Add. 1969, p. 389, Act 211, Eff. Mar. 20, 1970.

Original section 4a of Act 1 of 1936 (Ex. Ses.), p. 3, (as added by Act 307 of 1945, p. 528), authorized commission to acquire necessary property and buildings and was repealed by Act 360 of 1947.

421.5 Employment security commission; director, appointment, compensation; employees; expenses; bond.

Sec. 5. The commission by affirmative vote of not less than 3 of its members shall appoint an administrative officer, hereinafter referred to as the director, who shall serve at the pleasure of the commission and shall act as secretary of the commission and shall perform such other duties as shall be delegated by the commission. The di-

rector shall receive an annual salary of \$30,000.00 and shall be entitled to his actual and necessary expenses incurred in the discharge of his official duties, to be paid from the administration fund. The director shall devote his entire time to the duties of his office. The director may appoint with the approval of the commission such employees and assistants as shall be necessary for the proper exercise of the powers hereby granted, and subject to the approval of the commission may delegate to any such employees or assistants such authority as he deems reasonable and necessary. Employees and assistants shall receive their actual and necessary expenses incurred in the discharge of their official duties. Compensation and expenses of the director and all assistants and employees shall be paid from the administration fund. The commission is authorized to incur such expenses as shall be required to carry out the provisions of this act.

The commission shall arrange for a suitable bond for any person holding moneys or signing checks or vouchers under this act. The cost of such a bond shall be paid from the administration fund under section 10.

HISTORY: Am. 1937, p. 845, Act 347, Imd. Eff. Aug. 5;—CL 1948, 421.5;—Am. 1951, p. 379, Act 251, Imd. Eff. Jun. 17;—Am. 1953, p. 117, Act 117, Eff. Oct. 2;—Am. 1955, p. 707, Act 281, Eff. Jul. 15;—Am. 1957, p. 401, Act 287, Imd. Eff. Jun. 13;—Am. 1959, p. 448, Act 270, Imd. Eff. Oct. 30;—Am. 1964, p. 308, Act 231, Eff. Aug. 28;—Am. 1968, p. 620, Act 338, Imd. Eff. Jul. 19;—Am. 1970, p. 426, Act 135, Imd. Eff. Jul. 29.

421.6 Repealed. 1951, p. 408, Act 251, Imd. Eff. Jun. 17.

Section provided for appointment and salary of director of employment security commission.

421.6a Employment security commission; records; destruction, admissibility as evidence.

Sec. 6a. The commission may by resolution adopted by a majority of its members destroy or dispose of any files, records or other papers at any time after they have been retained in the commission files 2 years, and which in its opinion are no longer of any value to the commission, and may authorize the director to make or cause to be made such summaries or compilations, photographs, duplications or reproductions as he may deem advisable to preserve the information contained therein. When originals shall have been destroyed at times and in the manner above specified, the summaries, compilations, photographs, duplications or reproductions referred to above shall be admissible in evidence the same as originals, when certified by the director to be true, accurate and official copies of the original, in any proceeding before the commission, referee, appeal board and in all courts, if the original would have been admissible therein. Information contained on printouts prepared by automatic data processing equipment shall also be admissible in evidence, if the original files, records or other papers from which such information was obtained would have been admissible therein.

HISTORY: Add. 1941, p. 652, Act 364, Imd. Eff. Jul. 1;—CL 1948, 421.6a;—Am. 1951, p. 380, Act 251, Imd. Eff. Jun. 17;—Am. 1967, p. 456, Act 254, Imd. Eff. Jul. 19.

421.7 Employment security commission; consolidation of divisions.

Sec. 7. Same; the commission may consolidate its employment service division and its unemployment compensation division.

HISTORY: Am. 1937, p. 845, Act 347, Imd. Eff. Aug. 5;—Am. 1941, p. 653, Act 364, Imd. Eff. July 1;—CL 1948, 421.7.

421.8 Employment security commission; annual report; contents.

Sec. 8. Not later than December 31 every year the commission shall submit to the governor a report covering the administration and operation of this act during the preceding fiscal year ending June 30, and may make such recommendations with respect to amendments to the act as the commission deems proper. The report to the governor shall be printed in such form as the commission shall prescribe, but it shall include an annual audit statement prepared under the supervision of the auditor general and statistical data on benefits, contributions, charges to employers' rating accounts, charges

to the administration fund, orders for restitution and recoveries, prosecutions, work registrations, placements and all other matters reflecting the operation of the commission under this act. The commission shall make such annual report available to the public.

HISTORY: Am. 1941, p. 653, Act 364, Imd. Eff. Jul. 1;—Am. 1947, p. 666, Act 360, Imd. Eff. Jul. 8;—CL 1948, 421.8;—Am. 1967, p. 457, Act 254, Imd. Eff. Jul. 10;—Am. 1968, p. 621, Act 338, Imd. Eff. Jul. 19;—Am. 1970, p. 35, Act 14, Imd. Eff. Apr. 14.

421.9 Employment security commission; subpoenas, issuance; enforcement; immunity.

Sec. 9. The commission may by itself, or by its duly appointed agents, examine or copy the books, records and papers of any employing unit relating to any requirement pertaining to this act. Any member of the commission or its duly authorized agents may issue a subpoena requiring any person to appear before the commission, or its duly authorized agent at any reasonable time and place, and be examined with reference to any matter within the scope of the inquiry or investigation being conducted by the commission and to produce any books, records or papers pertaining to the question involved. Any member of the commission or its duly authorized agents may administer an oath or affirmation to a witness in any matter before the commission, certify to official acts, and take depositions. In case of disobedience of a subpoena, the commission, or the party on whose behalf it was issued, may invoke the aid of any circuit court of the state in requiring the attendance and testimony of witnesses and the production of books, records and papers pertaining to the question involved. And any of the circuit courts of the state within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena, issue an order requiring such person to appear before said commission or its duly authorized agents and to produce books, records and papers if so ordered and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

No person shall be excused from testifying or from producing any books, records or papers in any investigation, or upon any hearing, when ordered to do so by the commission, or its duly authorized agents, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate him or subject him to a criminal penalty; but no person shall be prosecuted or subjected to any criminal penalty for, or on account of, any transaction made or thing concerning which he is compelled, upon the claiming of his privilege to testify. No person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

HISTORY: CL 1948, 421.9;—Am. 1951, p. 380, Act 251, Imd. Eff. Jun. 17;—Am. 1970, p. 35, Act 14, Imd. Eff. Apr. 14.

421.10 Administration fund; nonreversion to general fund; appropriation for commission use.

Sec. 10. There is hereby created in the state treasury a special fund to be known and designated as the administration fund (Michigan employment security act). Any balances in this fund at the end of any fiscal year of the state shall be carried over as a part of said fund and shall at no time revert to the general fund of the state. Except as otherwise provided in the third paragraph of this section, all moneys deposited into said fund under the provisions of this act are hereby appropriated to the commission to pay the expenses of the administration of this act.

Appropriations by state; receipts from United States; expenditure.

Said fund shall be credited with all moneys appropriated thereto by the legislature, all moneys received from the United States of America or any agency thereof for such purpose, and all moneys received by the state for said fund. All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this state for the purposes of this act, except moneys requisitioned

from the account of this state in the unemployment trust fund pursuant to a specific appropriation made by the legislature in accordance with section 903 (c) (2) of the federal social security act, as amended, and with section 17 (f) of this act, shall be expended solely for the purposes and in the amounts found necessary by the appropriate agency of the United States of America for the proper and efficient administration of this act.

Deposit in administration fund from unemployment trust fund; unexpended moneys redeposited in unemployment trust fund.

All moneys requisitioned from the account of this state in the unemployment trust fund pursuant to a specific appropriation made by the legislature in accordance with section 903 (c) (2) of the federal social security act, as amended, and with section 17 (f) of this act, shall be deposited in the administration fund. Any such moneys which remain unexpended at the close of the 2-year period beginning on the date of enactment of such specific appropriation shall be immediately redeposited with the secretary of the treasury of the United States of America to the credit of this state's account in the unemployment trust fund; or any such moneys which for any reason cannot be expended or are not to be expended for the purpose for which appropriated before the close of such 2-year period shall be so redeposited at the earliest practicable date.

Lost or improperly expended funds; replacement by state.

If any moneys received after June 30, 1941, from the appropriate agency of the United States of America under title 3 of the social security act, or any unencumbered balances in the administration fund (Michigan employment security act) as of that date, or any moneys granted after that date to this state pursuant to the provisions of the Wagner-Peyser act, or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser act, are found by the appropriate agency of the United States, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by such agency of the United States for the proper administration of this act, it is the policy of this state that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this state to the administration fund (Michigan employment security act) for expenditure as provided herein. Upon receipt of notice of such a finding by the appropriate agency of the United States, the commission shall promptly report the amount required for such replacement to the governor and the governor shall, at the earliest opportunity, submit to the legislature a request for the appropriation of such amount. This subsection shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of title 3 of the social security act.

Same; liability of commissioners for replacement, bond.

If any funds expended or disbursed by the commission are so found by the appropriate agency of the United States to have been lost or expended for purposes other than, or in amounts in excess of, those found necessary by such agency of the United States for the proper administration of this act, and if such funds are replaced as aforesaid by moneys appropriated for such purpose from the general funds of the state, then those members of the commission who voted for or otherwise approved the expenditure or disbursement of such funds for such purposes or in such amounts, shall be jointly and severally liable to the state in an amount equal to the sum of money appropriated as aforesaid to replace such funds; and the members of the commission shall be required by the governor to post a proper bond in a sum not less than \$25,000.00 to cover their liability as hereinabove prescribed, the cost thereof to be paid from the general fund of the state of Michigan.

Contingent fund; deposits; appropriation for administration purposes; expenditures; refunds of erroneously collected interest, damages and penalties.

There is hereby created in the state treasury a separate fund to be known as the contingent fund (Michigan employment security act) into which shall be deposited all interest on contributions, penalties and damages collected under the provisions of this act. All amounts in the contingent fund (Michigan employment security act) and all earnings thereon are hereby continuously appropriated without regard to fiscal years for the administration of the commission, to be expended only when authorized by the commission: Provided, (1) That no such authorization or expenditure shall be made as a substitution for a grant of federal funds or for any portion of such grant or grants, which, in the absence of said authorization, would be available to the commission, and (2) that immediately upon receipt of administrative grants from the appropriate agency of the United States of America to cover administrative costs for which the commission has authorized and made expenditures from the contingent fund, such grants shall be transferred to the contingent fund to the extent necessary to reimburse the contingent fund for the amount of such expenditures. Amounts needed to refund interest, damages and penalties erroneously collected shall be withdrawn and expended for such a purpose from such contingent fund upon order of the commission. Any amount authorized to be expended for administration pursuant hereto may be transferred to the administration fund: Provided, however, That any amount not needed for the purpose for which authorized shall, upon order of the commission, be returned to the said contingent fund.

HISTORY: Am. 1937, p. 846, Act 347, Imd. Eff. Aug. 5;—Am. 1939, p. 798, Act 324, Imd. Eff. June 22;—Am. 1941, p. 653, Act 364, Imd. Eff. July 1;—Am. 1942, 2nd Ex. Ses., p. 58, Act 18, Imd. Eff. Feb. 27;—Am. 1947, p. 696, Act 360, Imd. Eff. July 8;—CL 1948, 421.10;—Am. 1951, p. 380, Act 251, Imd. Eff. Jun. 17;—Am. 1955, p. 707, Act 281, Eff. Jul. 15;—Am. 1957, p. 572, Act 311, Imd. Eff. Jun. 21.

421.11 Employment security commission; cooperation with federal agency; reports; receipts, expenditures.

Sec. 11. (a) In the administration of this act, the commission shall cooperate with the appropriate agency of the United States of America, under the social security act, approved August 14, 1935, as amended. The commission shall make such reports, in such form and containing such information as the appropriate agency of the United States may from time to time require, and shall comply with such provisions as the appropriate agency of the United States may from time to time prescribe to assure the correctness and verification of such reports. The commission, subject to the provisions of this act, shall comply with the regulations prescribed by the appropriate agency of the United States relating to the receipt or expenditure of such sums as may be allotted and paid to this state for the purpose of assisting in the administration of this act.

Confidential information; privileged communications; use in court actions; availability to interested parties and public agencies; use in research programs; examination of national bank reports.

(b) Information obtained from any employing unit or individual pursuant to the administration of this act, and determinations as to the benefit rights of any individual shall be held confidential and shall not be disclosed or open to public inspection other than to public employees in the performance of their official duties pursuant to the provisions of this act in any manner revealing the individual's or the employing unit's identity, but any information in the commission's possession that may affect a claim for benefits or a charge to an employer's rating account shall be available to the interested parties. Except as hereinafter provided, such information and determinations shall not be used in any action or proceeding before any court or administrative tribunal unless the commission is a party or complainant therein. Any report or statement, written or verbal, made by any person to the commission, or any member thereof, or

to any person engaged in administering this law, shall be a privileged communication and no person, firm or corporation shall be held liable for slander or libel on account of any such report or statement. Such records and reports in the custody of the commission shall be available for examination by the employer or employee affected.

Subject to such restrictions as the commission may by regulation prescribe, such information may be made available to any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, or the bureau of internal revenue of the United States department of the treasury or the social security administration of the United States department of health, education and welfare, and information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Subject to such restrictions as the commission may by regulation prescribe, the commission may also make such information available to agencies of other states which are responsible for the administration of public assistance to unemployed workers, and to the departments of this state. Information so released shall be used only for purposes not inconsistent with the purposes of this act.

Upon request therefor the commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged the name, address, ordinary occupation and employment status of each recipient of benefits and such recipient's rights to further benefits under this act.

Ninety days after the effective date of this act and subject to such restrictions as the commission may prescribe, by regulation or otherwise, the commission may also make such information available to colleges, universities and public agencies of this state, for use in connection with research projects of a public service nature. No person associated with such institutions or agencies shall disclose said information in any manner which would reveal the identity of any individual or employing unit from or concerning whom such information was obtained by the commission.

The commission may request the comptroller of the currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this act, and may in connection with such request transmit any such report or return to the comptroller of the currency of the United States as provided in section 3305 (c) of the federal internal revenue code.

Reciprocity as to benefits.

(c) The commission is authorized to enter into agreements with the appropriate agencies of other states or the federal government whereby potential rights to benefits accumulated under the unemployment compensation laws of the several states or such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under plans which the commission finds will be fair and reasonable as to all affected interests and will not result in substantial loss to the unemployment compensation fund.

Reciprocity as to contributions.

(d) (1) The commission is authorized to enter into reciprocal agreements with the appropriate agencies of other states or of the federal government adjusting the collection and payment of contributions by employers with respect to employment not localized within this state.

(2) The commission is authorized to enter into reciprocal agreements with agencies of other states administering unemployment compensation, whereby contributions paid by an employer to any of such other states may be received by such other state as

an agent acting for and on behalf of this state to the same extent as if such contributions had been paid directly to this state: Provided, That such payment is remitted to this state; and such contributions so received by such other state shall be deemed contributions, required and paid under this act as of the date such contributions were received by such other state; and that the commission may collect contributions in a like manner for such agencies of other states administering unemployment compensation and remit such contributions to such agencies under the terms of such reciprocal agreements.

Records, furnishing to railroad retirement board or other state or federal agency.

(e) The commission may make the state's records relating to the administration of this act available and may furnish to the railroad retirement board or any other state or federal agency administering an unemployment compensation law, at the expense of such board, state or agency, such copies thereof as the railroad retirement board deems necessary for its purpose.

Cooperation with other states and United States; actions to enforce contributions, penalties and interest.

(f) The commission may cooperate with or enter into agreements with any agency of another state or of the United States charged with the administration of any unemployment insurance or public employment service law.

The commission is therefore authorized to make such investigations, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this act as it deems necessary or appropriate to facilitate the administration of any such unemployment compensation or public employment service law, and in like manner, to accept and utilize information, services and facilities made available to this state by the agency charged with the administration of any such other unemployment compensation or public employment service law.

On request of an agency which administers an employment security law of another state or foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law, the commission may collect the amount of such benefits from such claimant to be refunded to such agency.

In any case in which under this subsection a claimant is liable to repay any amount to the agency of another state or foreign government, such amounts may be collected by civil action in the name of the commission acting as agent for such agency: Provided, That the court costs shall be paid or guaranteed by such agency.

To the extent permissible under the laws and constitution of the United States, the commission is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this act and facilities and services provided under the unemployment compensation law of the Dominion of Canada, may be utilized for the taking of claims and the payment of benefits under the unemployment compensation law of this state or under a similar law of the Dominion of Canada.

Any employer who is not a resident of this state and who exercises the privilege of having one or more individuals perform service for him within this state, and any resident employer who exercises that privilege and thereafter removes from this state, shall be deemed thereby to appoint the secretary of state as his agent and attorney for the acceptance of process in any civil action under this act, and in instituting such an action against any such employer the commission shall cause such process or notice to be filed with the secretary of state and such service shall be sufficient service upon such employer, and shall be of the same force and validity as if served upon him per-

sonally within this state: Provided, That the commission shall forthwith send notice of the service of such process or notice, together with a copy thereof, by certified or registered mail, return receipt requested, to such employer at his last known address; and such return receipt, the commission's affidavit of compliance with the provisions of this section, and a copy of the notice of service shall be appended to the original of the process filed in the court in which such civil action is pending.

The courts of this state shall recognize and enforce liabilities, as hereinafter provided, for unemployment compensation contributions, penalties and interest imposed by other states which extend a like comity to this state.

The attorney general is empowered to commence action in the appropriate court of any other state or any other jurisdiction of the United States by and in the name of the commission to collect unemployment compensation contributions, penalties and interest finally determined, redetermined or decided under this act to be legally due this state. The officials of other states which extend a like comity to this state are empowered to sue in the courts of this state for the collection of unemployment compensation contributions, penalties and interest, the liability for which has been similarly established under the laws of such other state or jurisdiction. A certificate by the secretary of any such state under the great seal of such state attesting the authority of such official or officials to collect unemployment compensation contributions, penalties and interest shall be conclusive evidence of such authority.

The attorney general is authorized to commence action in this state as agent for or on behalf of any other state to enforce judgments and duly established liabilities for unemployment compensation taxes or contributions, penalties and interest due such other state if such other state extends a like comity to this state.

Reciprocal agreements as to employees serving in more than one state; wages and employment, defined; reimbursement.

(g) The commission is also authorized to enter into reciprocal agreements with the appropriate and duly authorized agencies of other states or of the federal government (1) whereby remuneration and services, upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal government, shall be deemed to be wages and employment for the purposes of sections 27 and 46 of this act, provided such other state agency or agency of the federal government has agreed to reimburse the fund for such portion of benefits paid under this act upon the basis of such remuneration and services as the commission finds will be fair and reasonable as to all affected interests, and wages and employment on the basis of which an individual may become entitled to benefits under this act shall be deemed to be wages or services on the basis of which unemployment compensation under such law of another state or of the federal government is payable, and (2) whereby services performed by an individual for a single employing unit for which services are customarily performed by such individual in more than one state shall be deemed to be services performed entirely within any one of the states (a) in which any part of such individual's service is performed or (b) in which such individual has his residence or (c) in which the employing unit maintains a place of business, provided there is in effect, as to such services, an election, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing unit are deemed to be performed entirely within such state, and (3) whereby the commission will reimburse other state or federal agencies charged with the administration of unemployment compensation laws with such reasonable portion of benefits, paid under the law of any such other states or of the federal government upon the basis of employment and wages, as the commission finds will be fair and reasonable as to all af-

affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of limiting duration of benefits and for the purposes of section 26 of this act, but no reimbursements so payable shall be charged against any employer's rating account for the purposes of sections 17, 18, 19 and 20 of this act. The commission is authorized to make to other state or federal agencies and receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements pursuant to this section.

Military service; benefits to discharged persons.

(h) The commission is authorized and directed to enter into any agreement necessary in order that it may cooperate with any agency of the United States charged with the administration of any program for the payment of primary or supplemental benefits to individuals recently discharged from the military services of the United States, and to assist in the establishing of eligibility and in the payments of benefits thereunder, and for such purposes may accept and administer funds made available by the federal government and may accept and exercise such delegated function as may be provided thereunder: Provided, That the commission shall not have power to enter into any agreement providing for, or exercise any function connected with, the disbursement of the state's unemployment trust fund for purposes not authorized by this act.

Agreements for manpower development, training programs; participation in joint financing programs; authorization.

(i) The commission may enter into agreements with the appropriate agency of the United States whereby, in accordance with the laws of the United States, the commission as agent of the United States or from funds provided by the United States shall provide for the payment of unemployment compensation or unemployment allowances of any kind, including the payment of such benefits and allowances as are made available for manpower development, training, retraining, readjustment and relocation. The commission may receive and disburse funds from the United States or any appropriate agency thereof in accordance with any such agreements.

If the federal enactment providing for unemployment compensation, training allowance or relocation payments requires joint federal-state financing of such payments, the commission may participate in such programs by using such funds as may be appropriated by the legislature and to the extent provided by the legislature for such programs.

Attorney general as legal counsel for commission.

(j) In a proceeding before any court the commission and the state shall be represented by the attorney general of this state or attorneys designated by him. Only the attorney general or other attorneys designated by him shall act as legal counsel for the commission.

HISTORY: Am. 1937, p. 846, Act 347, Imd. Eff. Aug. 5;—Am. 1939, p. 799, Act 324, Imd. Eff. June 22;—Am. 1941, p. 654, Act 364, Imd. Eff. July 1;—Am. 1943, p. 440, Act 246, Imd. Eff. June 1;—Am. 1947, p. 696, Act 360, Imd. Eff. July 8;—CL 1948, 421.11;—Am. 1951, p. 362, Act 251, Imd. Eff. Jun. 17;—Am. 1955, p. 708, Act 281, Eff. Jul. 15;—Am. 1957, p. 573, Act 311, Imd. Eff. Jun. 21;—Am. 1965, p. 478, Act 261, Eff. Sep. 5;—Am. 1965, p. 797, Act 398, Imd. Eff. Oct. 26;—Am. 1967, p. 457, Act 254, Imd. Eff. Jul. 19.

421.11a Repealed. 1965, p. 522, Act 281, Eff. Sep. 5.

Section related to agreements for benefits under federal temporary unemployment compensation act of 1958.

421.12 Wagner-Peyser act; acceptance.

Sec. 12. This state hereby accepts the provisions of the act of congress entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes," approved June 6, 1933, as amended, hereinafter referred to as the Wagner-Peyser act.

Free employment service.

The Michigan state employment service is hereby established in the Michigan employment security commission which shall be so administered as to cooperate with any federal agency charged with the administration of the Wagner-Peyser act and to conform with the requirements of the Wagner-Peyser act. Free public employment offices which shall be designated as the Michigan state employment service offices shall be established and maintained by the commission in such number and such places as may be necessary for the proper administration of this act and for the purpose of performing such functions as are within the purview of the Wagner-Peyser act. The commission is hereby designated and constituted the agency of this state for the purpose of the Wagner-Peyser act.

Employment service for persons over 45 years of age.

The commission is hereby authorized and empowered, subject to the approval of any federal agency charged with the administration of the Wagner-Peyser act, to establish and operate in each employment service office established in the state of Michigan, a department or division, the sole function and purpose of which shall be to secure and make available, insofar as is possible, suitable employment for persons over 45 years of age.

Administration fund, appropriation.

All moneys made available by, or received by this state under said act of congress, shall be paid into the administration fund created by this act, and said moneys are hereby appropriated and made available to the Michigan state employment service to be expended only for the uses and purposes for which same are received, as provided by this act and by said Wagner-Peyser act.

Agreements as to free public employment offices.

For the purpose of establishing and maintaining free public employment offices, the commission is authorized to enter into agreements with any political subdivision of this state, or with any private, nonprofit organization, and as a part of any such agreement the commission may accept moneys, services, or quarters as a contribution to the administration fund.

HISTORY: Am. 1939, p. 800, Act 324, Imd. Eff. June 22;—Am. 1941, p. 656, Act 364, Imd. Eff. July 1;—CL 1948, 421.12;—Am. 1951, p. 394, Act 251, Imd. Eff. Jan. 17;—Am. 1955, p. 268, Act 178, Eff. Oct. 14;—Am. 1963, p. 172, Act 124, Eff. Sep. 6.

421.12a Employment security; community work or training program; employee benefits.

Sec. 12a. Any person, whether paid a wage, allowance or stipend, or a combination thereof, engaged in a community work or training program or work experience program, whether private or public, and whether it is conducted by a profit or nonprofit organization, sponsored or conducted by the Michigan employment security commission, either on its own behalf or as agent on behalf of the federal government, shall be entitled to the benefits provided by Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.899 of the Compiled Laws of 1948, in the same manner as employees of the state.

HISTORY: Add. 1970, p. 527, Act 173, Imd. Eff. Aug. 3.

421.13 Employers' contributions; rates, computation and payments; reports and records.

Sec. 13. Each employer subject to this act shall pay to the commission contributions, equal to 2.7 per centum of wages for employment, subject to an adjustment in rate of contribution as provided in section 19 of this act. Such contributions shall become due and be paid to the commission, for the unemployment compensation fund, by each employer semi-annually or for such shorter periods of not less than 28 days, as the commission may by regulation prescribe. An employer's contribution shall not be de-

ducted directly or indirectly, in whole or in part, from the wages of individuals in his employ. In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to 1/2 cent or more, in which case it shall be increased to 1 cent. The commission may prescribe by regulations the details of the computation and payment of such contributions. Every employing unit shall file with the commission periodic reports on such forms and at such times as the commission shall prescribe to disclose his liability for contributions under the provisions of this act. Each employing unit shall keep such records, including wage and employment records, and shall, within prescribed time limits, submit or provide such reports, including wage and employment reports, to the commission or to the employing unit's employees or former employees as the commission may by regulation prescribe as necessary to carry out the provisions of this act.

HISTORY: Am. 1937, p. 846, Act 347, Imd. Eff. Aug. 5;—Am. 1943, p. 443, Act 246, Imd. Eff. June 1;—Am. 1947, p. 700, Act 360, Imd. Eff. July 8;—CL 1948, 421.13;—Am. 1951, p. 385, Act 251, Imd. Eff. Jun. 17;—Am. 1951, 1st Ex. Ses., p. 611, Act 1, Imd. Eff. Aug. 23;—Am. 1967, p. 461, Act 254, Imd. Eff. Jul. 19.

421.14 Determination of coverage; appeal; notice, service; limitation of action.

Sec. 14. The commission, after affording reasonable opportunity for the submission of relevant information in writing or in person, may make determinations with respect to whether an employing unit constitutes an employer and whether services performed for or in connection with the business of an employing unit constitute employment for such employing unit subject to the provisions of this act. The employing unit, or other interested parties, which may include an individual who is or was employed by such employing unit, on his request, shall be promptly notified of such determination and the reasons therefor. Such determination shall be final as to such parties unless the employing unit or other interested parties files an application for a review and redetermination in accordance with the provisions of section 32a or, within 15 days after the mailing or personal service of the notice of determination, pays under protest the amount charged or found to be due as contributions. If evidence is presented indicating that an employing unit which has been determined not to be an employer is or was actually an employer, or that services which have been held not to constitute employment are or were actually employment, such previous determination shall be reopened and reconsidered by the commission in accordance with section 32a and a redetermination made as the facts and law require; but in the absence of fraud, if such employing unit is finally found to constitute an employer or to be liable for contributions with respect to services previously held non-subject, no contributions with respect to such services shall be collectible for any period prior to the first day of the last completed calendar year preceding the reopening of such determination. In the absence of fraud, no individual, legal entity or employing unit shall be retroactively determined to be an employer for any period prior to the 3 calendar years preceding the issuance of the determination.

Final determination or redetermination, conclusiveness.

Any determination or redetermination of the commission, or any decision of a referee or the appeal board, or of the courts of this state, which has become final, together with the record thereof, may be introduced in any proceeding involving a claim for benefits and the facts therein found and the determination, redetermination or decision therein made shall be conclusive unless substantial evidence to the contrary is introduced by or on behalf of the claimant.

HISTORY: Am. 1937, p. 847, Act 347, Imd. Eff. Aug. 5;—Am. 1939, p. 801, Act 324, Imd. Eff. June 22;—Am. 1941, p. 657, Act 364, Imd. Eff. July 1;—CL 1948, 421.14;—Am. 1951, p. 385, Act 251, Imd. Eff. Jun. 17;—Am. 1955, p. 712, Act 281, Eff. Jul. 15;—Am. 1965, p. 482, Act 281, Eff. Sep. 5.

421.15 Contributions; delinquent, interest; cancellation of interest and penalties.

Sec. 15. (a) Contributions unpaid on the date on which they are due and payable, as prescribed by the commission, shall bear interest at the rate of $\frac{3}{4}$ of 1% per month, computed on a day to day basis for each day such delinquency is unpaid, from and after such date until payment plus accrued interest is received by the commission. Interest and penalties collected pursuant to this section shall be paid into the contingent fund: Provided, That the commission shall have the power and authority to cancel any interest and/or penalty when it is shown that the failure to pay on or before the last day on which the tax could have been paid without interest and/or penalty was not the result of negligence, intentional disregard of the regulations of the commission, or fraud.

Assessments, review, payment under protest; levy, warrant, sale.

(b) The commission shall have the right to make assessments against any employer who fails to pay contributions or interest as required by this act. The commission shall immediately notify the employer of the assessment in writing by certified or registered mail, return receipt demanded, and such assessment, which shall constitute a determination, shall be final unless the employer files with the commission an application for a redetermination of such assessment in accordance with the provisions of section 32a of this act: Provided, That a review by the commission or an appeal to a referee or the appeal board on such assessment shall not reopen any question concerning an employer's liability for contributions as determined under the provisions of section 14 unless the employer was not a party to the proceeding or decision wherein the basis for the assessment was determined: And provided further, That any employer may pay an assessment under protest and file suit to recover the amount so paid, as provided under section 15 (d) of this act. Unless an assessment is paid within 15 days after it becomes final the commission may issue a warrant under its official seal directed to the sheriff of any county of the state or to any state officer authorized to serve process commanding such sheriff or other officer to levy upon and sell the property of the employer used in connection with his business, found within his jurisdiction, for the payment of the amount of such contributions including penalties, interests and the cost of executing the warrant. No property of such employer used in connection with his business shall be exempt from levy under such warrant. Such warrant shall be returned to the commission together with the money collected by virtue thereof within the time therein specified which shall not be less than 20 nor more than 90 days from the date of such warrant. The sheriff or other officer to whom such warrants shall be directed shall proceed upon the same in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against property upon judgments by a court of record, and shall be entitled to the same fees for his services in executing the warrant to be collected in the same manner. The state of Michigan, through the commission or some other officer or agent designated by it, is hereby authorized to bid for and purchase any property sold under the provisions hereof.

Civil action to collect contribution, damages, costs.

(c) In addition to the mode of collection provided in subsection (b) above, if, after due notice, any employer defaults in any payment of contributions or interest thereon, the commission may bring an action at law in any court of competent jurisdiction to collect and recover the amount of any contribution, and any interest thereon, and in addition 10% of the amount of contributions found to be due, as damages. An employer adjudged in default shall pay costs of such action. Civil actions brought under this section shall be heard by the court at the earliest possible date.

Recovery of contribution paid under protest; jurisdiction of civil action; appeal; payment of judgment, interest.

(d) Any employer or employing unit improperly charged or assessed any contributions provided for under this act and who paid the same under protest within 15 days after the mailing of the notice of determination of assessment, may recover the amount improperly collected or paid, together with interest, in any proper action or suit against the commission; and the circuit court of the county in which such employer or employing unit resides, or in which is located the principal office or place of business of such employer or employing unit, shall have original jurisdiction of any action to recover any contributions improperly paid or collected whether or not such charge or assessment has been reviewed by the commission or heard or reviewed by a referee or the appeal board: Provided, however, That the court shall not have jurisdiction of such suit unless written notice of such claim has been given to the commission at least 30 days prior to the institution of such action. In any suit to recover contributions paid or collected, the court shall allow costs to such an extent and in such manner as it may deem proper. Either party to such suit shall have the right of appeal, as is now provided by law, in other civil actions. In the event a final judgment is rendered in favor of the plaintiff in a suit to recover the amount of contributions illegally collected or charged, then it shall be the duty of the treasurer of the commission, upon receipt of a certified copy of such final judgment, to pay the amount of contributions illegally collected or charged from the clearing account, and to pay any interest as may be allowed by the court (in an amount not to exceed the actual earnings of such contributions as may have been found to have been illegally collected or charged), from the contingent fund.

Lien for contributions, priority.

(e) Except for liens and encumbrances recorded prior to the filing of the notice herein provided for, and the enforcement of their collection, all contributions, interest and penalties required under the provisions of this act shall be a first and prior claim and lien against the property and assets of an employing unit. Such lien shall attach to the property from and after the date that any report upon which the specific tax is computed is required by this act to be filed. Notice of such lien shall be recorded in the office of the register of deeds of the county in which the property subject to the lien is situated, and said register of deeds shall receive such notices for recording.

In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due shall be paid in full prior to all other claims except for wages and compensation under the workmen's compensation act: Provided, That in the distribution of estates of decedents, claims for funeral expenses and expenses of last sickness shall also be entitled to priority. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal bankruptcy act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in that act for taxes due any state of the United States.

Injunction.

(f) No injunction shall issue to stay proceedings for assessment or collection of any contributions, or interest or penalty thereon, levied and required by the provisions of this act.

Liability for contributions and interest on sale of business.

(g) Any person, group of individuals, or employing unit, which acquires the organization, trade, business or 75% or more of the assets thereof from an employing unit, as

a successor as defined in section 41 (2), shall be liable for any contributions and interest due to the commission at the time of such acquisition in an amount not to exceed the reasonable value of the organization, trade, business or assets acquired; and the commission shall have the right to proceed for such debt against such purchaser either in personam, or in rem. Such seller or purchaser who has, not less than 10 days prior to such acquisition, requested from the commission in writing a statement certifying the status of contribution liability of the previous employing unit shall be provided with such statement and such purchaser shall not be liable for any amount due from the previous or former employing unit in excess of the amount of liability certified by the commission. The foregoing provisions are in addition to the remedies the commission has against the seller.

Deficiency due to negligence without fraud, penalty.

(h) If any part of any deficiency in payment of the employer's contribution to the fund is due to negligence or intentional disregard of the rules and regulations of the commission, but without intention to defraud, 5% of the total amount of the deficiency, in addition to such deficiency and in addition to all other interest charges and penalties provided herein, shall be assessed, collected and paid in the same manner as if it were a deficiency.

Deficiency due to fraud, penalty.

If any part of any deficiency is determined in an action at law therefor to be due to fraud with intent to avoid payment of contributions to the fund, then the judgment rendered shall include an amount equal to 50% of the total amount of the deficiency, in addition to such deficiency and in addition to all other interest charges and penalties provided herein.

Failure to file report, estimate of liability.

(i) If any employing unit shall fail to make any report as reasonably required by the rules and regulations of the commission pursuant to the provisions of this act, the commission may make an estimate of the liability of such employing unit from any information it may obtain and, according to such estimate so made, assess such employing unit for the contributions, penalties and interest due: Provided, however, That this commission shall have the said power only after such default has been continued for a period of 30 days and after the commission has determined that the default of such employing unit is wilful.

Limitation of assessment period.

(j) An assessment or penalty with respect to contributions unpaid shall not be effective for any period prior to the 3 calendar years preceding the date of the assessment.

Additional collection remedy.

(k) All rights respecting the collection of contributions and the levy of interest and penalties and damages made available to the commission by the provisions of this section shall be deemed as additional to all other powers and rights vested in the commission in pursuance of the other provisions of this act. The commission shall not be precluded from exercising any of the collection remedies provided for by this act even though an application for a redetermination or an appeal is pending final disposition.

Fees for registering or discharging liens.

(l) Any person recording any lien provided for in section 15 of this act shall pay the same fees for recording lien and discharge as are provided by law for the recording of a real estate mortgage.

HISTORY: Am. 1937, p. 847, Act 347, Imd. Eff. Aug. 5;—Am. 1941, p. 657, Act 364, Imd. Eff. July 1;—Am. 1943, p. 444, Act 246, Imd. Eff. June 1;—Am. 1947, p. 701, Act 360, Imd. Eff. July 8;—CL 1948, 421.15;—Am. 1951, p. 386, Act 251, Imd. Eff. Jun. 17;—Am. 1955, p. 712, Act 261, Eff. Jul. 15;—Am. 1957, p. 577, Act 311, Imd. Eff. Jun. 21;—Am. 1959, p. 135, Act 131, Imd. Eff. Jul. 8;—Am. 1965, p. 483, Act 281, Eff. Sep. 5.

421.15a, 421.15b Repealed. 1951, p. 408, Act 251, Imd. Eff. Jun. 17.

Sections provided for legal representation of state and commission by attorney general, and for fees for registering certain leases and recording the discharge thereof.

421.16 Contributions; adjustment or refund.

Sec. 16. If not later than 3 years after the date of payment of any amount as contributions or interest thereon, an employing unit which has paid such amount shall make application for an adjustment or refund thereof the commission shall determine whether such contributions or interest or any portion thereof was erroneously collected; and the employing unit shall be promptly notified of such determination, which shall become final unless the employing unit files with the commission an application for redetermination thereof in accordance with the provisions of section 32a of this act. In the event it is finally determined, redetermined or otherwise decided that any amount thus at issue was erroneously collected, the commission shall allow such employing unit to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him: Provided, That if such adjustment cannot be made within the ensuing 3 months the commission shall refund said amount, without interest, from the appropriate fund or funds. For like cause, in the same manner, and within the same period, adjustment or refund may be made by the commission on its own initiative.

HISTORY: Am. 1941, p. 600, Act 364, Imd. Eff. July 1;—Am. 1947, p. 703, Act 300, Imd. Eff. July 8;—CL 1948, 421.16;—Am. 1951, p. 399, Act 251, Imd. Eff. Jun. 17.

421.17 Solvency account; employer's rating account; definitions; pooling contributions.

Sec. 17. (a) The commission shall maintain in the fund a solvency account, and a separate rating account for each employer as provided in this section. As used in this act, "rating account" means an account in the fund showing an employer's experience with respect to contribution payments and benefit charges under this act, determined and recorded in the manner hereinafter provided. "Solvency account" means the account in the fund maintained as provided in subsection (c) of this section. Any reference in this act to an employer's "experience record" shall be construed to include a reference to his rating account. But nothing in this act shall be construed to grant any employer or individuals in his service prior claims or rights to the amount paid by him to the unemployment compensation fund and credited to his rating account, or to any other account, either on his own behalf or on behalf of such individuals. All contributions to the said fund shall be pooled and available to pay benefits to any individual entitled thereto under this act, irrespective of the source of such contributions.

Rating account, continuation.

(b) The balance of each employer's rating account established as of June 30, 1962, under the provisions of this subsection then in effect, shall be carried over and continued under this section as modified by this 1963 amendatory act.

Solvency account, credits and charges; annual report.

(c) The balance of the solvency account established as of June 30, 1962, under the provisions of this subsection then in effect, shall be carried over and continued under this section as modified by this 1963 amendatory act. Thereafter, the solvency account shall be credited: (1) With all net earnings received on moneys, property or securities in the fund, (2) with any positive balance remaining in an employer's rating account as of the second June 30 computation date occurring after he has ceased to be subject to this act, (3) with the proceeds of the emergency contributions provided in paragraph (4) of subsection (a) of section 19, (4) with all reimbursements received under subsection (c) of section 11, (5) with all amounts which may be paid or advanced by the federal government under section 903 or section 1201 of the federal social security act to the account of the state of Michigan in the federal unemployment trust fund, (6) with

all benefits improperly paid to claimants which have been recovered, (7) with the amount of any benefits forfeited by an individual pursuant to application of subsection 62 (b), (8) with the amount of any benefit check, any employer refund check or any claimant restitution refund check duly issued which has not been presented for payment within 1 year after the date of issue, and (9) with any other unemployment fund income not creditable to the rating account of any employer. This account shall be charged: (i) With any negative balance remaining in an employer's rating account as of the second June 30 computation date occurring after he has ceased to be subject to this act, (ii) with refunds of amounts erroneously collected as emergency contributions, (iii) with all reimbursements and benefits paid under subsection (c) of section 11 of this act, (iv) with all training benefits paid under subsection (k) of section 27, (v) with amounts transferred to employer accounts as provided in paragraph (5) of subsection (a) of section 19, (vi) with the amount credited to an employer's new rating account pursuant to subsection (e) of this section, (vii) with repayments to the federal government of amounts advanced by it under section 1201 of the federal social security act to the unemployment compensation fund established by this act, (viii) with such of the amounts received by the fund under section 903 of the federal social security act as may be appropriated to the commission in accordance with subsection (f) of this section, (ix) with all benefits determined to have been improperly paid to claimants which have been credited to employers' rating accounts in accordance with section 20 (a) of this act, (x) with the amount of any substitute check issued to replace an uncashed benefit check previously credited to this account, (xi) with the amount of any benefit check issued which would be chargeable to the rating account of an employer who has ceased to be subject to this act, and who has had a balance transferred from his rating account to the solvency account, and (xii) with all extended benefits paid under section 64 which are not reimbursable by the federal government.

The commission shall include in each of its annual reports a statement of the condition of the solvency account, its classified transactions and its contingent liabilities as specified in section 18 (b) of this act. The statement shall also show, as of the most recent June 30, the number of the employer rating accounts showing negative balances, and the amount of such balances, classified by the industry, by the annual total and annual taxable payroll, by amount of negative balance, and by the duration of coverage under this act of the employers involved.

Employer contributions, crediting.

(d) All contributions paid by an employer shall be credited to the unemployment compensation fund, and (except as otherwise provided with respect to emergency contributions by paragraph (4) of subsection (a) of section 19) to his rating account, as of the date when paid. However, any such contributions paid during any July shall be credited as of the immediately preceding June 30.

Employer again becoming subject to act; transfer to new rating account.

(e) If an employer who has ceased to be subject to this act, and who has had a positive balance transferred from his rating account to the solvency account as of a computation date thereafter, shall again become subject to this act within 6 years after the computation date, the employer may apply, within 60 days after the commission's determination that he is again subject to this act to the commission to have the positive balance, adjusted by such debits and credits as have been made subsequent to such date of transfer, credited to his new rating account. If the application is timely, the commission shall credit the positive balance to the employer's new rating account. If a positive balance is thus transferred to an employer's new account, notwithstanding any contrary provision of section 19 (a) (1), the employer shall not be deemed a "qualified employer" for the purposes of section 19 until he has again been subject to this

act without having been terminated for a period of not less than 36 consecutive calendar months ending on a given computation date throughout which an individual, if unemployed and eligible, could have received benefits based on wages from such employer. This special limitation shall not apply if the commission finds that it is not necessary to assure continued certification of this act under the additional credit provisions of the federal unemployment tax act.

Solvency account; credits; appropriation for administration.

(f) (1) All moneys credited under section 903 of the federal social security act to the account of the state of Michigan in the federal unemployment trust fund shall immediately be credited by the commission to the fund's solvency account.

(2) There is authorized to be appropriated to the commission from the moneys credited to the solvency account under paragraph (1) of this subsection, sums found necessary for the proper and efficient administration by the commission of the provisions of this act and for purposes for which federal grants under Title III of the social security act and the Wagner-Peyser act are not available or are insufficient. Any such appropriation shall expire not more than 2 years from the date of enactment thereof and shall provide that any unexpended balance thereof shall then be credited to the solvency account.

(3) No appropriation shall be made under this subsection for an amount which exceeds the "adjusted balance" of the solvency account on the most recent computation date.

(4) Appropriations made under this subsection shall limit the total amount which may be obligated by the commission during a fiscal year to an amount which does not exceed the amount by which the aggregate of the amounts credited to the solvency account under paragraph (1) of this subsection during such fiscal year and the 14 preceding fiscal years, exceeds the aggregate of: (a) The amounts obligated by the commission pursuant to appropriation under this subsection and charged against the amounts thus credited to the solvency account during any of such 15 fiscal years and (b) any amounts credited to the solvency account which have been used for the payment of benefits.

HISTORY: Am. 1937, p. 849, Act 347, Imd. Eff. Aug. 5;—Am. 1939, p. 801, Act 324, Imd. Eff. June 22;—Am. 1941, p. 680, Act 364, Imd. Eff. July 1;—Am. 1947, p. 704, Act 360, Imd. Eff. July 8;—CL 1948, 421.17;—Am. 1954, p. 473, Act 197, Imd. Eff. May 7;—Am. 1955, p. 715, Act 281, Eff. Jul. 15;—Am. 1957, p. 580, Act 311, Imd. Eff. Jun. 21;—Am. 1963, p. 349, Act 226, Eff. Sep. 6;—Am. 1965, p. 486, Act 281, Eff. Sep. 5;—Am. 1967, p. 461, Act 254, Imd. Eff. Jul. 19;—Am. 1968, p. 621, Act 338, Imd. Eff. Jul. 19;—Am. 1970, p. 35, Act 14, Imd. Eff. Apr. 14;—Am. 1970, p. 392, Act 128, Imd. Eff. Jul. 27.

421.18 Unemployment compensation; definition.

Sec. 18. As used in this act:

(a) "Computation date" means June 30 of each year. Until January 1, 1969, in an employer's second, third and fourth consecutive years of coverage as an employer subject to this act, "computation date" with respect to such employer's rating account means December 31 of such year.

(b) As applied to an employer's rating account or to the solvency account, the term "balance" means the initial balance of such account plus the credits thereto and minus the charges thereto which are made in accordance with this act. A "negative balance" in a rating account exists when its balance is a minus quantity. As applied to the fund, the term "balance" means the total moneys received by the fund, including contributions credited in accordance with subsection (d) of section 17 but excluding any advances made to the fund by the federal government under section 1201 of the federal social security act which have not been repaid to or recovered by the federal government and excluding any appropriation made by the legislature in accordance with section 903 (c) (2) of the federal social security act, as amended, minus all disbursements from the fund. As applied to the solvency account, the term "adjusted balance" means the balance of such account minus its contingent liabilities, namely, the amount of any

advances made to the fund by the federal government under section 1201 of the social security act which have not been repaid to or recovered by the federal government and the total amount of all negative balances in employer rating accounts as of the most recent June 30.

(c) "Employer's rating account percentage" means the percentage figure arrived at by dividing the balance in his rating account as of a computation date by the total amount of wages (subject to contributions under this act) paid by him within the 12 months' period ending on such computation date. If all of the quarterly reports of wages and contributions due with respect to such period have not been filed by an employer, his contribution rate for the calendar year affected shall be not less than the highest contribution rate in the column of rates applicable to the particular calendar year. However, for his first 4 consecutive calendar years of liability such employer shall be assigned a rate of 2.7% for the calendar year affected, and his contribution rate shall include no emergency contribution, except that an employer whose contribution rate would otherwise be determined under the provisions of subsections 19 (a) (1) (I) or (II) shall be assigned a rate in accordance with the provisions of those subsections. An employer whose contribution rate has been determined under the provisions of this subsection is entitled to have his contribution rate redetermined if he files such reports not later than 15 days after the date of mailing of the notice of determination of contribution rate.

HISTORY: Am. 1937, p. 850, Act 347, Imd. Eff. Aug. 5;—Am. 1939, p. 801, Act 324, Imd. Eff. June 22;—Am. 1941, p. 661, Act 364, Imd. Eff. July 1;—Am. 1945, p. 604, Act 335, Imd. Eff. May 29;—Am. 1947, p. 704, Act 360, Imd. Eff. July 8;—CL 1948, 421.18;—Am. 1951, p. 389, Act 251, Imd. Eff. Jun. 17;—Am. 1954, p. 474, Act 197, Imd. Eff. May 7;—Am. 1957, p. 582, Act 311, Imd. Eff. Jun. 21;—Am. 1963, p. 351, Act 226, Eff. Sept. 6;—Am. 1965, p. 488, Act 281, Eff. Sept. 5;—Am. 1968, p. 624, Act 338, Imd. Eff. Jul. 19.

421.19 Employer's contribution rate; determination.

Sec. 19. (a) The commission shall determine the contribution rate of each employer for each calendar year after 1968 as follows:

Unqualified employer rate; construction industry; seasonal employers.

(1) Each employer's rate shall be 2.7% of the wages paid by him with respect to employment in each calendar year for purposes of this section, unless and until such employer becomes a "qualified employer" except that a qualified employer's contribution rate for the fourth consecutive calendar year of liability shall be determined under column (g) of the table contained in subsection (2) of this section and shall not be more than 2.7%. An employer shall become a "qualified employer" on the computation date which occurs during the third consecutive calendar year of liability, except as otherwise provided in section 17 (e). Consecutive calendar years of liability shall be deemed to exist if there has been no termination of liability in such years.

(I) Notwithstanding any other provisions of this act, and in view of the high risk of loss to the fund in such cases, any employing unit which becomes newly liable for contributions under this act in a calendar year in which it employs (not necessarily simultaneously) in any one week 25 or more individuals in the performance of a contract or subcontract for construction in the state of Michigan of roads, bridges, highways, public buildings, factories, housing developments, or similar construction projects, shall, unless such employing unit would have been required to pay contributions under subsection (1) of section 41 because of employment not directly and exclusively connected with any such project, be liable for contributions at the rate provided in the first line of the currently applicable column in the table of contribution rates in paragraph (2) of this subsection during his first 4 consecutive calendar years of liability.

(II) Notwithstanding any other provision of this act, an employer who immediately prior to the effective date of this 1965 amendatory act had seasonal status under section 21a, shall, for the sole purpose of computing contribution rates under the provisions of sections 17 to 20, be considered a newly liable employer as of January 1, 1966

with his rating account beginning on that date, except that such employer shall not be assigned a contribution rate for any of the years 1966, 1967 or 1968, lower than the rate provided on the first line of that column in the table of contribution rates in subsection (a) (2) of this section applicable to those employers who are qualified employers under subparagraph (I) of subsection (a) (1) of this section. Any employer's rating account established under this subparagraph (II) as beginning on January 1, 1966 shall be charged with all benefits otherwise chargeable to such employer under this act which are paid on and after January 1, 1966 irrespective of whether such benefits are based on wages paid prior to or on or after January 1, 1966. These provisions do not apply if, within 30 days of mailing by the commission of notification to the employer of the balance in his rating account as of June 30, 1965 and of the contribution rate that would be applicable to the calendar year 1966 on the basis of such balance and in accordance with the other provisions of this section, written application not to be considered a newly liable employer under this subsection is received from such employer. In such case he shall then be assigned a contribution rate for the year 1966 and subsequent years as determined under the provisions of section 17 to 20.

Qualified employer, rate.

(2) Each qualified employer's contribution rate for each calendar year shall be determined on the basis of his rating account percentage as of his applicable computation date and the adjusted balance of the solvency account as of June 30 of the calendar year containing such computation date. Each such employer's contribution rate shall be determined from the following table:

[This table is referred to in § 421.19(2)]

If the employer's rating account percentage is	And if the adjusted balance of the solvency account is						
	Negative \$30,000,000 or more	Negative \$24,000,000 or more but less than \$30,000,000	Negative \$18,000,000 or more but less than \$24,000,000	Negative \$12,000,000 or more but less than \$18,000,000	Negative \$6,000,000 or more but less than \$12,000,000	Negative less than \$6,000,000	Positive zero or more
	The employer's contribution rate shall be						
	Col. (A)	Col. (B)	Col. (C)	Col. (D)	Col. (E)	Col. (F)	Col. (G)
Under 3.0%	4.6%	4.5%	4.4%	4.3%	4.2%	4.1%	4.0%
3.0% or more, but less than 4.3%	4.4%	4.3%	4.2%	4.1%	4.0%	3.9%	3.8%
4.3% or more, but less than 5.0%	3.8%	3.7%	3.6%	3.5%	3.4%	3.3%	3.2%
5.0% or more, but less than 5.2%	3.3%	3.2%	3.1%	3.0%	2.9%	2.8%	2.7%
5.2% or more, but less than 5.4%	3.0%	2.9%	2.8%	2.7%	2.6%	2.5%	2.4%
5.4% or more, but less than 5.6%	2.8%	2.7%	2.6%	2.5%	2.4%	2.3%	2.2%
5.6% or more, but less than 5.8%	2.6%	2.5%	2.4%	2.3%	2.2%	2.1%	2.0%
5.8% or more, but less than 6.0%	2.4%	2.3%	2.2%	2.1%	2.0%	1.9%	1.8%
6.0% or more, but less than 6.2%	2.2%	2.1%	2.0%	1.9%	1.8%	1.7%	1.6%
6.2% or more, but less than 6.4%	2.0%	1.9%	1.8%	1.7%	1.6%	1.5%	1.4%
6.4% or more, but less than 6.7%	1.8%	1.7%	1.6%	1.5%	1.4%	1.3%	1.2%
6.7% or more, but less than 7.0%	1.6%	1.5%	1.4%	1.3%	1.2%	1.1%	1.0%
7.0% or more, but less than 7.4%	1.4%	1.3%	1.2%	1.1%	1.0%	0.9%	0.8%
7.4% or more, but less than 8.0%	1.2%	1.1%	1.0%	0.9%	0.8%	0.7%	0.6%
8.0% or more, but less than 9.0%	1.0%	0.9%	0.8%	0.7%	0.6%	0.5%	0.4%
9.0% or more, but less than 10.0%	0.8%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%
10.0% or more, but less than 11.0%	0.7%	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%
11.0% or more	0.6%	0.5%	0.4%	0.3%	0.2%	0.1%	0.0%

Employer subject to act for 84 months; rate.

(3) Notwithstanding the foregoing provisions of this section, in the case of each employer who has been subject to this act throughout the 84 consecutive months ending on his applicable computation date and whose rating account percentage as of his applicable computation date was 6.5% or more and whose rating account balance as of such date was an amount equal to at least 20 times the largest amount of benefits charged to his account within any 12-month period ending on an applicable computation date within such 84-month period, such employer's contribution rate for the immediately following calendar year shall be the rate on the last line of the applicable column of the table in paragraph (2) of this subsection. This paragraph shall not apply to any employer as of a computation date if his wages subject to contributions paid within the 12 months ending on such computation date have increased by 25% or more over his wages subject to contributions paid within the 12 months ending on the next preceding computation date.

Contributions, account credited.

(4) With respect to any calendar year for which an employer's contribution rate is determined by column (g) of the table in paragraph (2) of this subsection, all contributions paid by the employer for such year shall be credited to his rating account. With respect to any calendar year for which an employer's contribution rate is determined by any other column of said table, that part of the employer's contribution payments for such year that would have been payable if his contribution rate had been determined under column (g) of said table shall be credited to his rating account; and the remainder is emergency contributions and shall be credited to the solvency account,

and to the employer's memorandum account as provided in paragraph (5) of this subsection, but any such emergency contributions paid during July shall be credited to the solvency account and to the employer's memorandum account as of the immediately preceding June 30.

Memorandum account; charges, credits, transfers.

(5) The commission shall maintain a memorandum account, for each employer subject to this act who has paid any emergency contributions under this section. The commission shall credit to each employer's memorandum account all emergency contributions paid by him and shall charge to his memorandum account amounts equal to any amounts transferred to his rating account under this paragraph.

If, as the result of a transfer of business, the balance in an employer's rating account is transferred in whole or in part under section 22 of this act, the balance in such employer's memorandum account under this paragraph shall be transferred in the same manner and in the same proportion as his rating account.

If, as of June 30 of any calendar year after 1958, the adjusted balance of the solvency account exceeds \$20,000,000.00 and there are some positive balances in memorandum accounts of employers currently subject to this act, part of such adjusted balance shall be applied, in the form of transfers from the solvency account to employer rating accounts, as reimbursement to employers currently subject to this act, of emergency contributions previously paid by them. The amount and method of making such transfers shall be as provided in the following subparagraphs of this paragraph:

(I) If the total of the positive balances in all memorandum accounts under this paragraph is \$5,000,000.00 or less, the commission shall transfer from the solvency account to each employer's rating account an amount equal to the current positive balance in the employer's memorandum account.

(II) If the total of the positive balances in all such memorandum accounts is more than \$5,000,000.00, the commission shall first transfer from the solvency account to the rating account of each employer whose memorandum account shows a positive balance of \$50.00 or less an amount equal to such balance. The commission shall then subtract the amount thus transferred from \$5,000,000.00. The remainder thus determined shall be transferred from the solvency account to the rating accounts of the remaining employers whose memorandum accounts have positive balances in amounts determined by applying to each such employer's memorandum account balance the same ratio (computed to hundredths of a percentum, with any remainder disregarded) as the remainder thus determined bears to the total of all remaining positive balances in employer's memorandum accounts.

(III) All transfers under this paragraph shall be reflected in employers' rating accounts as of December 31.

Deficiency contributions; liability, rate.

(6) If an employer's rating account shows a negative balance on any computation date after 1964 and his account has also shown a negative balance on 1 or more of the immediately preceding computation dates after 1963, such employer shall be liable to pay deficiency contributions on his wages paid subject to contributions within the next following calendar year: Provided, however, That an employer shall not be liable for a deficiency contribution for any of the first 4 years in which he is liable for contributions under this act. Such deficiency contributions, which shall be in addition to all other contributions required under the preceding provisions of this subsection, shall be credited to the employer's rating account and shall be at a rate determined in accordance with the following table.

If on the most recent computation date, the employer's rating account percentage is negative by:		And if the number of successive computation dates after 1963, including the most recent computation date, on which the employer's rating account has shown a negative balance is:			
		2	3	4	5 or more
		The employer's deficiency contribution rate shall be:			
Less than 1.0%		0.0%	0.1%	0.2%	0.3%
1.0% or more, but less than 2.0%		0.2	0.3	0.4	0.6
2.0% or more, but less than 3.0%		0.4	0.5	0.6	0.7
3.0% or more, but less than 4.0%		0.5	0.6	0.7	0.8
4.0% or more, but less than 5.0%		0.5	0.7	0.8	0.9
5.0% or more, but less than 6.0%		0.5	0.8	0.9	1.0
6.0% or more, but less than 7.0%		0.5	0.9	1.0	1.1
7.0% or more, but less than 8.0%		0.5	1.0	1.1	1.3
8.0% or more, but less than 9.0%		0.5	1.0	1.3	1.5
9.0% or more, but less than 10.0%		0.5	1.0	1.5	1.7
10.0% or more		0.5	1.0	1.5	2.0

Excess payments to rating account.

(b) Any employer may at any time make payments to his rating account in the fund in excess of the requirements of this section; but such payments, when accepted by the commission, shall be irrevocable. Any such payment made by an employer within 30 days after mailing to him by the commission of a notice of his adjusted contribution rate shall be credited to his account as of the computation date for which such rate was computed, and his contribution rate shall be further adjusted accordingly: Provided, That any such payment made more than 120 days after the beginning of any calendar year shall not affect the employer's contribution rate for that year.

HISTORY: Am. 1937, p. 850, Act 347, Imd. Eff. Aug. 5;—Am. 1939, p. 802, Act 324, Imd. Eff. June 22;—Am. 1941, p. 661, Act 364, Imd. Eff. Jan. 1;—Am. 1945, p. 604, Act 335, Imd. Eff. May 29;—Am. 1946, 1st Ex. Ses., p. 62, Act 26, Imd. Eff. Feb. 26;—Am. 1947, p. 704, Act 360, Imd. Eff. July 8;—CL 1948, 421.19;—Am. 1951, p. 399, Act 251, Imd. Eff. Jun. 17;—Am. 1951, 1st Ex. Ses., p. 612, Act 1, Imd. Eff. Aug. 21;—Am. 1954, p. 474, Act 197, Imd. Eff. May 7;—Am. 1955, p. 717, Act 281, Eff. Jul. 15;—Am. 1957, p. 582, Act 311, Imd. Eff. Jun. 21;—Am. 1959, p. 446, Act 270, Imd. Eff. Oct. 30;—Am. 1963, p. 352, Act 226, Eff. Sep. 6;—Am. 1965, p. 489, Act 281, Eff. Sep. 5;—Am. 1968, p. 624, Act 338, Imd. Eff. Jul. 19;—Am. 1970, p. 37, Act 14, Imd. Eff. Apr. 14.

421.19a Employment security act; application to state and political subdivisions.

Sec. 19a. Notwithstanding any contrary provision of this act, the following provisions of this section shall apply to the state of Michigan and the political subdivisions thereof.

Any political subdivision of this state may by ordinance elect as provided in subsections (1) and (2) of section 25.

Service performed by an individual in the classified civil service of this state shall be employment subject to this act.

In lieu of the contributions required of employers by section 19, the state of Michigan and such of its political subdivisions as may elect to be subject to this act shall pay into the fund an amount equivalent to the amount of benefits paid and charged to their respective accounts.

The amount of payments required under this section into the fund shall be ascertained by the commission as soon as practicable after the end of each calendar quarter. The payments by the state and such of its political subdivisions as may elect to be-

come subject to this act shall be made at such times and in such manner as the commission may prescribe.

The commission shall maintain a separate account in the fund for each department, commission or other budgetary unit of the government of this state. Payments made by the state to the unemployment fund under this section shall be charged to funds available for the payment of wages and salaries in each such department, commission or other budgetary unit, according to the amount of benefits charged to the rating account of each such budgetary unit.

HISTORY: Add. 1956, 1st Ex. Sess., p. 13, Act 9, Imd. Eff. Oct. 2;—Am. 1965, p. 494, Act 281, Eff. Sep. 5.

421.20 Benefits charged; multiemployer credit weeks.

Sec. 20. (a) Benefits paid shall be charged against the employer's rating account as of the quarter in which such payments are made. If the commission determines that any benefits paid and charged against an employer's rating account were improperly paid, an amount equal to the charge based on such benefits shall be credited to the employer's rating account and correspondingly charged to the solvency account as of the current period or, in the discretion of the commission, the credit to the employer's rating account may be made as of the date of the charge. Any such benefits paid to an individual as a result of an employer's failure to provide the commission with separation, employment and wage data as required by section 32 shall be considered as benefits properly paid to the extent that such benefits are chargeable to such noncomplying employer.

(b) Benefits paid to an individual shall be based upon the credit weeks earned during his base period and shall be charged against the rating accounts of the employers from whom he earned his credit weeks. If he earned credit weeks from more than 1 employer, a separate determination shall be made of the amount and duration of benefits based upon the total credit weeks and wages earned with each employer. Benefits paid in accordance with said determinations shall be charged against the rating account of the most recent employer first and thereafter as necessary against the rating accounts of other base period employers in inverse order to that in which the claimant earned his last credit week with such employers. If there is any disqualifying act or discharge under subsection 29 (1) with an employer, benefits based upon credit weeks earned from such employer prior to such disqualifying act or discharge shall be charged only after the exhaustion of charges as provided above. Benefits based upon such credit weeks shall be charged first against the rating account of the employer involved in the most recent such disqualifying act or discharge and thereafter as necessary in similar inverse order against the rating accounts of other base period employers involved in disqualifying acts or discharges. The order of charges determined as of the beginning date of a benefit year shall remain fixed during the benefit year.

(c) Except as otherwise provided in subsection (d), the charges to any employer's rating account shall not exceed the weekly benefit rate multiplied by $\frac{3}{4}$ the number of credit weeks earned by the individual during his base period from such employer. If the resultant product is not an even multiple of $\frac{1}{2}$ the weekly benefit rate, such amount shall be raised to an amount equal to the next higher multiple of $\frac{1}{2}$ the weekly benefit rate, and in the case of an individual who was employed by only 1 employer in his base period and who earned 34 credit weeks with such employer, such product shall be raised to the next higher multiple of the weekly benefit rate.

(d) (1) When an individual has multiemployer credit weeks in his base period, and when it becomes necessary to use such credit weeks as a basis for benefit payments, a single determination shall be made of the individual's weekly benefit rate and maximum amount of benefits based on his multiemployer credit weeks and his wages earned therein. Each employer involved in the individual's multiemployer credit

weeks shall be an interested party to such determination. The proviso in subsection 29 (2) shall not be applicable to multiemployer credit weeks, nor shall the reduction provision of subsection 29 (4) apply to benefit entitlement based upon such credit weeks.

(2) The charge for benefits based on multiemployer credit weeks shall be allocated to each employer involved on the basis of the ratio that the total wages earned during the total multiemployer credit weeks counted under subsection 50 (b) with any such employer bears to the total amount of wages earned during the total multiemployer credit weeks counted under subsection 50 (b) with all such employers, computed to the nearest cent: Provided, That, if an adjusted weekly benefit rate is determined in accordance with subsection 27 (g), the charge to the employer who has contributed to the financing of the retirement plan shall be reduced by the same amount by which the weekly benefit rate was adjusted under subsection 27 (g).

(3) Benefits paid in accordance with the determination based on multiemployer credit weeks shall be allocated to each employer involved and charged as of the quarter in which such payments are made. Quarterly notice of charges made under this subsection shall specify the weeks for which benefits were paid based on multiemployer credit weeks, the amount of benefits paid for each such week, and the allocation of charges as provided in this subsection. Such notice shall be deemed to satisfy the requirements of subsections 21 (a) and 32 (d) that notification be given each employer of benefits charged against his rating account by means of a copy of the benefit check, and all protest and appeal rights applicable to benefit check copies shall also be applicable to such notice of charges.

HISTORY: Am. 1939, p. 802, Act 324, Imd. Eff. June 22;—Am. 1941, p. 682, Act 364, Imd. Eff. July 1;—Am. 1947, p. 705, Act 360, Imd. Eff. July 8;—CL 1948, 421.30;—Am. 1949, p. 415, Act 282, Imd. Eff. Jun. 11;—Am. 1951, p. 390, Act 251, Imd. Eff. Jun. 17;—Am. 1954, p. 476, Act 197, Imd. Eff. May 7;—Am. 1955, p. 719, Act 281, Eff. Jul. 15;—Am. 1965, p. 494, Act 281, Eff. Sep. 5;—Am. 1967, p. 464, Act 254, Imd. Eff. Jul. 19;—Am. 1968, p. 628, Act 338, Imd. Eff. Jul. 19.

421.21 Benefits charged against rating account; notice, determination of charge.

Sec. 21. (a) The commission shall currently provide each employer with copies of the benefit checks charged against his rating account. Such copies shall show the name and social security account number of the payee, the amount paid, the date of issuance, the week of unemployment for which the check was issued, the name or account number of the chargeable employer, upon request a code designation of the place of employment by the chargeable employer, and such additional information as may be deemed pertinent, and such copies shall constitute a determination of the charge to the rating account. Such determination shall be final unless further proceedings are taken in accordance with section 32a of this act.

Quarterly statement summarizing total benefits.

The commission shall also furnish at least quarterly, to each employer a statement summarizing the total of such benefits charged against his rating account during the period. If the employer so requests, such summary shall be broken down by places of employment.

Notice of contribution rate, review, extension.

The commission shall also notify each employer, not later than 6 months following the computation date, of his rate of contributions as determined for any calendar year pursuant to section 19 of this act and any such statement or determination shall be final unless further proceedings are taken in accordance with the provisions of section 32a of this act: Provided, That on request an employer shall be given an extension of 15 days' additional time in which to apply for such review and redetermination.

Redetermination, appeal to referee.

(b) Any employer who is not in agreement with a redetermination of the amount of insured payrolls used in computing his rating account percentage, or the computation

of the amount of benefits charged or contributions credited to his rating account, or the computation of his adjusted contribution rate issued under section 32a may, within 15 days after mailing of such notice of redetermination file an appeal and request a hearing on any such issue before a referee.

Adjustment of contribution rate.

(c) Any contribution becoming due and payable while a rate determination is under review or protest may be paid at the rate assessed by the commission for the previous year, but it shall be adjusted by the commission when the proper rate is determined: Provided, That where any such adjustment requires an additional payment from an employer, such additional payment shall be considered as a delinquent contribution as provided by subsection (a) of section 15 of this act.

HISTORY: Am. 1941, p. 682, Act 364, Imd. Eff. July 1;—Am. 1947, p. 706, Act 380, Imd. Eff. July 8;—CL 1948, 421.21;—Am. 1951, p. 391, Act 251, Imd. Eff. Jun. 17;—Am. 1954, p. 477, Act 197, Imd. Eff. May 7;—Am. 1957, p. 586, Act 311, Imd. Eff. Jun. 21.

421.21a Repealed. 1965, p. 522, Act 281, Eff. Sep. 5.

Section related to seasonal employers and their rate of contribution.

421.21b Seamen on American vessel on Great Lakes; benefits; seamen, definition.

Sec. 21b. A seaman employed on an American vessel operating on the great lakes shall be entitled to benefits under this act. An offer of employment to a seaman need not be the individual's customary occupation under conditions of employment and remuneration substantially equivalent to those under which the individual has been customarily employed in such occupation.

The term "seaman" as used in this section shall mean an individual who is employed as an officer or member of a crew on an American vessel.

HISTORY: Add. 1947, p. 707, Act 380, Imd. Eff. Jul. 8;—CL 1948, 421.21b;—Am. 1949, p. 415, Act 282, Imd. Eff. Jun. 11;—Am. 1954, p. 390, Act 131, Eff. Aug. 13;—Am. 1965, p. 498, Act 281, Eff. Sep. 5;—Am. 1967, p. 255, Act 192, Imd. Eff. Jun. 30.

421.22 Transfer of business; effect on rating account.

Sec. 22. (a) If an employer subject to this act transfers subsequent to June 30, 1954, any of the assets of his business by any means otherwise than in the ordinary course of trade, such transfer shall be deemed a "transfer of business" for the purposes of this section if the commission determines:

(1) That the transferee is an employer subject to this act on the transfer date or has become so subject as of the transfer date under section 41 (2); or elects to become subject as of the transfer date under section 25, if the commission has been notified of the transfer of assets by the transferor or transferee within 30 days after the end of the quarter in which the transfer occurred, and provided the transferee makes such election within 15 days after the mailing of a notice of his right to elect; and

(2) That the transferee has acquired and used the transferor's trade name or good will, or that the transferee has continued or within 12 months after the transfer resumed all or part of the business of the transferor either in the same establishment or elsewhere.

(b) (1) In the case of a transfer of business as defined in subsection (a) of this section, the commission shall assign the transferor's rating account, or a pro rata part thereof, to the transferee. The commission shall make such assignment as of the date on which the business was transferred or as of June 30 of the year in which the business was transferred, whichever date is earlier. The pro rata part of the transferor's rating account to be assigned to the transferee shall be determined on the basis of the percentage relationship (to the nearest 1/2 of 1%) of the insured payroll for the 4 completed calendar quarters immediately prior to the date of transfer properly allocable to the transferred portion of the business, to the insured payroll for the same period allocable to the entire business of the transferor immediately prior to the date of the transfer.

(2) When the commission transfers an employer's rating account in whole or in part under this section, it shall also transfer a proportionate share of the amount of the wages (subject to contributions under this act) paid by the transferor and properly allocable to the transferred business; and such transferred account shall be liable to be charged for all benefit payments based on employment in the business or portion thereof transferred.

(3) In determining whether the transferee is a "qualified employer" under section 19 of this act, the experience of the transferred account shall be deemed to be part of the experience of the transferee's rating account. If on the date of the transfer the transferee was a "qualified employer" and the transferor was not a "qualified employer" because of the provisions of section 19 (a) (1) of this act, the transferee shall not thereby lose his status as a "qualified employer".

(c) In the case of a transfer of business as defined in subsection (a) of this section:

(1) The rates of contributions applicable to the transferor and transferee for calendar year subsequent to the calendar year containing transfer date shall be respectively determined in accordance with section 19. In case of a transfer of part of an employer's rating account under subsection (b) of this section, the rate of contributions applicable to the transferor and transferee shall not be changed for the portion of the current calendar year remaining on the transfer date. In case of a transfer of an employer's entire rating account under subsection (b) of this section: (a) the transferor shall have no further interest in the rating account, his coverage shall be terminated as of the effective date of the transfer under section 24 (b), and if he again becomes an employer as defined in section 41 in the same calendar year in which his coverage has been thus terminated his contribution rate for the remainder of the calendar year shall be 2.7% as provided in section 19; and (b) the rate of contributions applicable to the transferee shall not be changed for the portion of the current calendar year remaining on the transfer date.

(2) A transferee or transferees, having no rate of contributions applicable immediately prior to the transfer date, shall, beginning with the first day of the quarter in which the transfer occurs, be assigned the same rate of contributions which was applicable to the transferor on the date of the transfer and a contribution rate of 2.7% for any portion of the calendar year prior to the first day of the quarter in which the transfer occurs.

(3) Where transfers of businesses simultaneously involve 2 or more transferors and a single transferee who has no rate of contributions applicable immediately prior to the transfer date, such transferee shall be assigned a contribution rate beginning with the first day of the quarter in which the transfers occur based upon the rating account percentage determined by the transferred rating account balances and the insured payrolls properly allocable to the transferee as of the date on which the businesses were transferred, or as of June 30 of the year in which the businesses were transferred, whichever is earlier, and a contribution rate of 2.7% for any portion of the calendar year prior to the first day of the quarter in which the transfers occur. If none of the transferors was an employer entitled to an adjusted contribution rate, then a contribution rate of 2.7% shall apply to the transferee for the calendar year in which the transfers occur.

HISTORY: Am. 1937, p. 851, Act 347, Imd. Eff. Aug. 5;—Am. 1941, p. 663, Act 364, Imd. Eff. July 1;—Am. 1943, p. 447, Act 246, Imd. Eff. June 1;—Am. 1947, p. 707, Act 360, Imd. Eff. July 8;—CL 1948, 421.22;—Am. 1954, p. 477, Act 197, Imd. Eff. May 7;—Am. 1955, p. 719, Act 251, Eff. Jul. 15;—Am. 1957, p. 587, Act 311, Imd. Eff. Jun. 21;—Am. 1965, p. 496, Act 281, Eff. Sep. 5;—Am. 1967, p. 466, Act 254, Imd. Eff. Jul. 19;—Am. 1968, p. 630, Act 338, Imd. Eff. Jul. 19.

421.22a Interstate transfer of operations.

Sec. 22a. (1) Notwithstanding any other provision of this act, an employer who transfers all or a segregable part of his operations from another state to this state for

the purposes of this section shall be deemed to be a qualified employer within the meaning of subsection 19 (a) (1), as of the computation date applicable to the calendar year within which the transfer occurs, if

(a) He has paid wages subject to the federal unemployment tax act for 18 consecutive completed calendar quarters immediately preceding the computation date specified in the first paragraph of this section;

(b) Within 90 days of the transfer of operations, he notifies the commission thereof and requests a contribution rate under the provisions of subsection 19 (a) (1); and

(c) He certifies to the commission all information with respect to wages, contributions and benefit charges in connection with the transferred operations and any other information which the commission determines to be necessary.

(2) The employer has 15 days after receipt of notice of determination of contribution rate computed under subsection 19 (a) (1) within which to withdraw his request for application of the provisions of this section.

(3) The employer shall furnish to the commission at such times as the commission prescribes all information which the commission determines to be necessary with respect to those benefits paid, subsequent to the transfer and prior to each succeeding computation date, which were based on wages, applicable to the transferred operations, paid in such other state.

(4) Wages, contributions and benefits resulting in rating account charges in connection with the transferred operations shall be deemed to have been paid in this state for the purpose of computing rates under section 19. The employer's rating account balance applicable to the transferred operations prior to the transfer date shall be debited to the solvency account; and benefits subsequently paid based on wages, applicable to the transferred operations, which were paid in such other state shall be charged to the employer's rating account and credited to the solvency account.

HISTORY: Add. 1902, p. 32, Act 36, Eff. Mar. 28, 1903;—Am. 1905, p. 497, Act 281, Eff. Sep. 5;—Am. 1908, p. 631, Act 338, Imd. Eff. Jul. 19.

421.23 Coverage of employer; period.

Sec. 23. Except as otherwise provided in sections 24 and 25, any employing unit which becomes an employer subject to this act within any calendar year shall be subject to this act during the whole of such calendar year.

HISTORY: Am. 1939, p. 804, Act 324, Imd. Eff. June 22;—Am. 1941, p. 664, Act 364, Imd. Eff. July 1;—CL 1948, 421.23;—Am. 1951, p. 391, Act 251, Imd. Eff. Jun. 17.

421.24 Employing unit ceasing to be employer.

Sec. 24. Except as otherwise provided in section 25, an employing unit shall cease to be an employer subject to this act as provided in this section:

Application for termination of coverage.

(a) If an employing unit which became liable under subsections (1), (2) or (3) of section 41 makes written application for termination of its coverage under this act, the commission shall issue a determination granting or denying such application. The commission shall grant such application terminating coverage effective as of the last day of the calendar quarter in which the application was received by the commission if it finds that such employing unit did not have 20 different weeks in which it had 1 or more individuals in employment and did not have total remuneration of \$1,000.00 or more for employment during the preceding calendar year and during the current calendar year, up to the last day of the calendar quarter in which the application was received. If the employing unit requesting termination became an employer under the provisions of subsection (2) of section 41 in the preceding calendar year, then the individuals in the employ of any predecessor or predecessors in a chain of successorship shall be considered as if they were employees of the requesting employing unit for the

purpose of determining the number of weeks during which 1 or more individuals performed services in employment and in determining total remuneration for employment during such preceding calendar year. If an employing unit liable solely under subsection (5) of section 41 makes written application for termination of its coverage under this act, the commission shall grant such application terminating coverage effective as of the last day of the calendar quarter in which the application was received by the commission if it finds that such employing unit ceased to have employment in Michigan during the calendar year preceding the receipt of the application for termination and had no employment in Michigan during the current calendar year, up to the last day of the calendar quarter in which the application was received. Any employer whose application for termination of coverage is denied may request a redetermination in accordance with the provisions of section 32a.

Termination of coverage, date.

(b) The commission shall terminate the coverage of any employing unit as of the effective date on which such employing unit's entire rating account is transferred to another employer under section 22.

Termination by commission; rescission.

(c) (1) The commission may issue a determination terminating the coverage of any employing unit as of January 1 of any calendar year if it finds that such employing unit ceased to exist during the preceding calendar year or met the requirements for termination as specified in subsection (a). The determination shall be mailed by certified or registered mail to the last known address of the employing unit involved.

(2) The commission may so terminate the coverage of an employing unit as of January first of any previous calendar year with respect to which it makes the foregoing findings, provided the employing unit has not been previously determined to have been an employer with respect to that specific year.

(3) The commission shall rescind its determination terminating the coverage of any employing unit under this subsection if it has received written objection to such determination from the employing unit within 15 days after the date of mailing by the commission.

HISTORY: Am. 1937, p. 851, Act 347, Imd. Eff. Aug. 5;—Am. 1941, p. 664, Act 364, Imd. Eff. July 1;—CL 1948, 431.24;—Am. 1949, p. 415, Act 282, Imd. Eff. Jun. 11;—Am. 1951, p. 391, Act 251, Imd. Eff. Jun. 17;—Am. 1954, p. 478, Act 197, Imd. Eff. May 7;—Am. 1957, p. 598, Act 311, Imd. Eff. Jun. 21;—Am. 1967, p. 467, Act 254, Imd. Eff. Jul. 19;—Am. 1968, p. 631, Act 338, Imd. Eff. Jul. 19.

421.25 Election under act; liability for contributions; termination of election by commission.

Sec. 25. (1) Any employing unit for which services that do not constitute employment as defined in this act are performed may file with the commission a written election that all such services performed by individuals in its employ in 1 or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this act for not less than 2 calendar years. Upon the written approval of such election by the commission, such services shall be deemed to constitute employment subject to this act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of the last day of any calendar quarter subsequent to such 2 calendar years, if, during such calendar quarter such employing unit has filed with the commission a written request for termination of coverage.

(2) Any employing unit for which services that constitute employment are performed, not otherwise subject to this act, which files with the commission its written election to become an employer subject hereto for not less than 2 calendar years, shall, with the written approval of such election by the commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of the last day of any calendar quarter

subsequent to such 2 calendar years, if, during such calendar quarter, it has filed with the commission a written request for termination of coverage.

(3) If on any "computation date" as defined in section 18 of this act, the cumulated total contributions paid by an employer who is or has been subject to this act solely by voluntary election under any section hereof are exceeded by the cumulated total of the benefits charged to his rating account, he shall not be liable for any contribution in excess of the maximum contribution provided under section 19 of this act. The provision of this paragraph shall include and apply to all employers who have heretofore become liable for contributions in excess of said maximum amount under the provisions of section 25 of Act No. 197 of the Public Acts of 1954.

(4) Notwithstanding the provisions of subsections (1), (2) and (3) of this section, the commission may at any time terminate an election by giving written notification to the employing unit involved.

HISTORY: Am. 1937, p. 851, Act 347, Imd. Eff. Aug. 5;—Am. 1941, p. 664, Act 364, Imd. Eff. July 1;—CL 1948, 421.25;—Am. 1954, p. 479, Act 197, Imd. Eff. May 7;—Am. 1955, p. 721, Act 281, Eff. Jul. 15.

421.26 Unemployment compensation fund; establishment.

Sec. 26. (a) There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, herein referred to as the fund, which shall be administered by the commission exclusively for the purposes of this act. Such fund shall consist of (1) all contributions collected under the provisions of this act; (2) interest earned upon any moneys in the fund; (3) any property or securities acquired through the use of moneys belonging to the fund; (4) all earnings of such property or securities; and (5) any other moneys received by the commission for unemployment compensation, except interest, penalties and damages collected under the provisions of this act. All moneys in the fund shall be mingled and undivided.

Treasurer; clearing account, unemployment trust fund account, benefit account.

(b) The commission shall designate a treasurer and custodian of the fund who shall administer such fund in accordance with the directions of the commission and shall issue his vouchers upon it in accordance with such regulations as the commission shall prescribe. He shall maintain within the fund 3 separate accounts: (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the commission, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to section 16 of this act may be paid from the clearing account upon vouchers issued by the treasurer under the direction of the commission. After clearance thereof, all other moneys in the clearing account, except amounts needed for refunds and judgments, shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commission, in any depository designated by the commission.

Unemployment trust fund, requisitions for benefit account, administration fund.

(c) (1) Except as provided in paragraph (2) of this subsection, money shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the commission.

The commission shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his vouchers for the payment of benefits solely from such benefit account. All vouchers issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the counter-signature of a member of the commission or its duly authorized agent for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the commission, shall be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in subsection (b) of this section.

(2) The commission may requisition from this state's account in the unemployment trust fund such amounts, or portions thereof, as have been specifically appropriated by the legislature for the administration of this act in accordance with the provisions of section 903 (c) (2) of the federal social security act, as amended. Upon receipt of such moneys, the treasurer shall deposit them in the administration fund, but such moneys shall remain a part of the unemployment compensation fund until expended.

Management of funds upon discontinuance of unemployment trust fund.

(d) The provisions of subsections (a), (b), and (c) to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate account is no longer maintained, all moneys, properties, or securities therein, belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties, or securities in a manner approved by the commission, in bonds or other interest-bearing obligations of the United States of America or of the state of Michigan. Such investment shall be so made that all the assets of the fund shall be readily convertible into cash when needed for the payment of benefits. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the commission.

Audit.

(e) The unemployment compensation fund shall be audited by the auditor general at such times as shall be requested by the state administrative board.

Assistant treasurer, duties.

(f) The commission may designate an assistant treasurer who, in the absence of the treasurer and custodian as designated by the commission under the authority conferred upon it under section 26(b), shall be authorized to perform such duties as are conferred upon the treasurer and custodian under the provisions of this act.

Advance or grant of funds, agreement; repayment.

(g) The commission is hereby authorized to enter into such agreement as may be necessary to secure any advance or grant of funds by the secretary of the treasury of the United States in accordance with the authority extended under section 1201 of the

social security act as amended, or under any other act of congress extending such authority.

Any amount transferred to the unemployment trust fund by the secretary of the treasury of the United States under the terms of any agreement entered into in accordance with the authority extended in this subsection, shall be repaid to the secretary of the treasury of the United States for the unemployment trust fund.

HISTORY: Am. 1939, p. 804, Act 324, Imd. Eff. June 22;—Am. 1947, p. 708, Act 360, Imd. Eff. July 8;—CL 1948, 421.26;—Am. 1951, p. 391, Act 251, Imd. Eff. Jun. 17;—Am. 1957, p. 588, Act 311, Imd. Eff. Jun. 21.

421.26a, 421.26b Repealed. 1951, p. 408, Act 251, Imd. Eff. Jun. 17.

Sections provided for assistant treasurer and specified his powers, and authorized borrowing of federal funds.

421.27 Payment of benefits.

Sec. 27. (a) Benefits shall become payable from the fund. All benefits shall be paid through employment offices, in accordance with such regulations as the commission may prescribe.

Weekly benefit rate; determination; wage class.

(b) (1) Subject to the provisions of subsection (g) of this section, the weekly benefit rate for each individual whose average weekly wage, determined in accordance with the provisions of section 51 of this act, does not exceed the largest amount in the applicable column of the table shall be the amount determined by the commission, from the table below, as follows. The commission shall determine the individual's family class and wage class in accordance with the following provisions of this subsection. Referring to that column of the following table (a, b, c, d, e or f) which applies to such individual's family class, the commission shall select from such column the line which includes the individual's wage class. The commission shall then assign to such individual the weekly benefit rate which appears in column g of the table on the same line with his wage class. The applicable wage class shall be that class which includes the average weekly wage determined in accordance with the provisions of section 51 of this act.

[This table is referred to in § 427.27(b)(1)]

A	B	C	D	E	F	G
WAGE CLASSES						
FAMILY CLASS "A"	FAMILY CLASS "B"	FAMILY CLASS "C"	FAMILY CLASS "D"	FAMILY CLASS "E"	FAMILY CLASS "F"	WEEKLY BENEFIT RATE
\$25.01 - 25.50	\$25.01 - 25.50	\$	\$	\$	\$	\$16
25.51 - 27.00	25.51 - 27.00	17
27.01 - 28.50	27.01 - 28.50	25.01 - 25.50	18
28.51 - 30.00	28.51 - 30.00	25.51 - 27.00	19
30.01 - 33.00	30.01 - 33.00	27.01 - 28.50	25.01 - 25.50	20
33.01 - 36.00	33.01 - 36.00	28.51 - 30.00	25.51 - 27.00	21
36.01 - 39.00	36.01 - 39.00	30.01 - 33.00	27.01 - 28.50	25.01 - 25.50	22
39.01 - 41.81	39.01 - 41.81	33.01 - 36.00	28.51 - 30.00	25.51 - 27.00	23
		36.01 - 39.00	30.01 - 33.00	27.01 - 28.50	25.01 - 26.00	24
		39.01 - 41.50	33.01 - 36.00	28.51 - 30.00	26.01 - 27.00	25
		41.51 - 44.00	36.01 - 39.00	30.01 - 33.00	27.01 - 28.50	26
		44.01 - 46.00	39.01 - 41.50	33.01 - 36.00	28.51 - 30.00	27
		46.01 - 48.00	41.51 - 44.00	36.01 - 39.00	30.01 - 33.00	28
		48.01 - 51.00	44.01 - 46.00	39.01 - 41.50	33.01 - 36.00	29
		51.01 - 54.00	46.01 - 48.00	41.51 - 44.00	36.01 - 39.00	30
		54.01 - 56.36	48.01 - 51.00	44.01 - 46.00	39.01 - 41.50	31
			51.01 - 54.00	46.01 - 48.00	41.51 - 44.00	32
			54.01 - 57.00	48.01 - 51.00	44.01 - 46.00	33
			57.01 - 61.00	51.01 - 54.00	46.01 - 48.00	34
			61.01 - 63.63	54.01 - 57.00	48.01 - 51.00	35
				57.01 - 61.00	51.01 - 55.00	36
				61.01 - 66.00	55.01 - 60.00	37
				66.01 - 69.09	60.01 - 66.00	38
					66.01 - 70.90	39

Maximum weekly benefit rate.

(1a) Subject to the provisions of subsection (g) of this section, the weekly benefit rate for each individual whose average weekly wage, determined in accordance with the provisions of section 51, is more than the largest amount in the applicable column of the table in paragraph (1) of this subsection shall be 55% of such average weekly wage, adjusted to the next higher multiple of \$1.00, except that such an individual's weekly benefit rate shall not exceed the maximum weekly benefit rate for the individual's family class shown in the following table:

If the individual is assigned to:	His weekly benefit rate shall not exceed:
Family Class "A"	\$53.00
Family Class "B"	57.00
Family Class "C"	63.00
Family Class "D"	73.00
Family Class "E"	81.00
Family Class "F"	87.00

Family class, determination.

(2) The family class to which an individual is assigned shall be determined with respect to the individual's status as of the first day on which such individual files an application for benefits with respect to any benefit year in accordance with the following schedule:

Family Class "A"—An individual who has no dependents.

Family Class "B"—An individual who has 1 dependent other than a child.

Family Class "C"—An individual who has 1 child, or 2 dependents other than a child.

Family Class "D"—An individual who has 2 children, or 1 child and 1 dependent other than a child, or 3 dependents other than a child.

Family Class "E"—An individual who has 3 children, or 2 children and 1 dependent other than a child, or 1 child and 2 dependents other than a child, or 4 dependents other than a child.

Family Class "F"—An individual who has 4 or more children, or 3 children and 1 or more dependents other than a child, or 2 children and 2 or more dependents other than a child, or 1 child and 3 or more dependents other than a child, or 5 or more dependents other than a child.

Dependents.

(3) A dependent means any of the following persons who, as of the beginning date of the current benefit year of an individual claiming benefits under this act, is receiving and for at least 90 consecutive days immediately preceding (or, in the case of a dependent husband, wife or child, for the duration of the marital or parental relationship, if the relationship has existed less than such 90 days) has received more than half the cost of his or her support from the individual claiming benefits.

(a) A child (including stepchild, adopted child or grandchild) of such individual who is as of the beginning date of the individual's current benefit year, under 18 years of age (or 18 years of age and over if, because of physical or mental infirmity, such child is unable to engage in any gainful occupation);

(b) The husband or wife of such individual: Provided, That such husband or wife earned less than \$21.00 remuneration during the week prior to the beginning date of the current benefit year of the individual claiming benefits;

(c) The legal father or mother of such individual if as of the beginning date of such individual's current benefit year such parent is either more than 65 years of age or is permanently disabled from engaging in any gainful occupation;

(d) A brother or sister of such individual if as of the beginning date of such individual's current benefit year (1) such brother or sister is orphaned or the living parents are dependent parents of an individual, and (2) such brother or sister is under 18 years of age (or 18 years of age and over if, because of physical or mental infirmity, such brother or sister is unable to engage in any gainful occupation).

Family class, dependent applying for benefits.

(4) If an individual is assigned for a benefit year to a family class by reason of having 1 or more dependents, and any of such dependents files application for benefits prior to the expiration of the benefit year, such dependent shall be assigned to family class "A".

Family class, redetermination; dependency status nontransferable.

(5) An individual shall be assigned to a family class only as of the first day on which such individual files an application for benefits with respect to any benefit year; and once determined, his family class shall remain fixed during the benefit year: Provided,

however, That failure on the part of an individual, due to misinformation or lack of information, to furnish all information material for determination of his family class when he first files an application with respect to any benefit year, shall be deemed good cause for the issuance of a redetermination, effective as of the benefit year beginning date, as to the amount of benefits based on his family class as of the benefit year beginning date. Dependency status of any dependent, child or otherwise, once having been established or fixed in favor of one person, shall not be transferable to or used by any other person during a benefit year.

Consumer's price index changes, report.

(b-1) A basic purpose of this act is to lighten the burden of involuntary unemployment on the unemployed worker and his family. In view of this, the maximum weekly benefit rates under subsection (b) of this section are related to the cost of the necessities of life for the various family classes recognized in said subsection. At the same time, the legislature has concluded that the maximum weekly benefit rates established in said subsection by this amendatory act will finance the most favorable standard of living consistent with maintaining for unemployed individuals generally a proper incentive to seek and accept new work. In order to maintain this optimum relationship between maximum weekly benefit rates and the standard of living of the unemployed individual, the maximum weekly benefit rates established by this amendatory act shall be reviewed annually. The commission shall annually, not later than February 28, compare the United States department of labor's consumers' price index for the preceding December with the corresponding United States department of labor's consumers' price index for the base month. The base month, as used in this paragraph, means the month of December preceding the most recent calendar year in which an adjustment of maximum weekly benefit rates is made. If in any calendar year the United States department of labor's consumers' price index for the preceding December has increased or decreased as compared to the base month, the commission shall determine the percentage of such increase or such decrease. The commission shall then multiply the maximum weekly benefit rate for each family class by this percentage. If the product thus obtained is \$1.00, or more, the commission shall forthwith report such fact to the governor, the legislature and the Michigan employment security advisory council.

Benefits; waiting period; night shifts; after period of unemployment.

(c) (1) Subject to the provisions of subsection (g) of this section, and of paragraph (2) of this subsection, each eligible individual shall be paid his weekly benefit rate with respect to the week for which he earns or receives no remuneration or remuneration equal to less than $\frac{1}{2}$ his weekly benefit rate, or shall be paid $\frac{1}{2}$ his weekly benefit rate with respect to the week for which he earns or receives remuneration equal to at least $\frac{1}{2}$ but less than his weekly benefit rate. Notwithstanding the definition of week as contained in section 50, if within 2 consecutive weeks in which an individual was not unemployed within the meaning of section 48 there was a period of 7 or more consecutive days for which he earned or received no remuneration, such period shall be considered a week for waiting period or benefit purposes under this act, if a claim for benefits for such period is filed not later than 30 days subsequent to the end of the period. All remuneration for work performed during a shift which terminates on 1 day but which began on the day preceding, shall be deemed to have been earned on such preceding day.

(2) When an individual has had a period of unemployment: (i) For which he has been paid benefits for 1 or more weeks or has received credit for a waiting week, (ii) which commenced with a layoff by an employing unit that continued with such employing unit for more than 3 weeks, and (iii) which has been terminated by his accept-

ing and engaging in full-time work with any employing unit within the 13 weeks immediately following his last week of employment with such employing unit, such individual shall be paid, for the most recent week in such period for which benefits are payable or were paid to him or for which he was entitled to credit for a waiting week, an amount equal to his currently applicable weekly benefit rate in addition to any benefits otherwise payable or paid to him for such week. Benefits shall be payable under this paragraph only for 1 week in an individual's benefit year and only to the extent that the individual is otherwise entitled to benefits under subsection (d) of this section. An individual shall be deemed to be engaged in full-time work for an employing unit if he has earned with such employing unit within any period of 7 consecutive days commencing within such 13 week period an amount equal to his currently applicable weekly benefit rate. To be eligible for benefits under this subsection, an individual shall file therefor within 13 calendar weeks after the end of the week for which benefits are payable in accordance with this subsection.

Benefits, amount, maximum.

(d) (1) Subject to the provisions of subsection (g) of this section and paragraphs (2) and (3) of this subsection, the amount of benefits to which an individual who is otherwise eligible shall be entitled during any one benefit year from an employer with respect to employment during the base period, is the amount obtained by multiplying the weekly benefit rate with respect to such employment by $\frac{3}{4}$ of the number of credit weeks earned in such employment. (2) For the purpose of this subsection and subsection 20 (c), should the resultant product not be an even multiple of $\frac{1}{2}$ the weekly benefit rate, such product shall be raised to an amount equal to the next higher multiple of $\frac{1}{2}$ the weekly benefit rate, and, in the case of an individual who was employed by only 1 employer in his base period and who earned 34 credit weeks with such employer, such product shall be raised to the next higher multiple of the weekly benefit rate. The maximum amount of benefits payable to an individual, within a benefit year, with respect to employment by an employer shall not exceed 26 times the weekly benefit rate with respect to such employment. (3) The maximum amount of benefits payable to an individual within a benefit year shall not exceed the amount to which he would be entitled for 26 weeks of unemployment for each of which he earned or received no remuneration. The limitation of total benefits set forth in this paragraph shall not apply to claimants declared eligible for training benefits in accordance with subsection (k) of this section.

Death or mental incompetency of claimant, disposition of benefits.

(e) Whenever a claimant shall die, or be judicially declared insane, or mentally incompetent, any unemployment compensation benefits accrued and payable to such person for weeks of unemployment prior to his death, insanity or incompetency, but not paid him, shall by operation of this section become due and payable to such person as appears to the commission after investigation to be the legal heir or guardian of such person, or to any other person found by the commission to be equitably entitled to the benefits by reason of having incurred expense in behalf of said claimant for his burial or other necessary expenses.

Veterans.

(f) (1) Notwithstanding any inconsistent provisions of this act the benefit rights of veterans shall be determined in accordance with the provisions of this subsection for the period and with respect to the matters specified herein. Except as herein otherwise provided, all the other provisions of this act shall continue to be applicable in connection with such benefits.

(2) The term "military service" as used in this subsection means active service in the land or naval or air forces of the United States.

(3) The term "veteran" as used in this subsection means an individual who completed a period of military service after June 24, 1950, who continued in service for not less than 90 consecutive days and whose military service was terminated with a discharge, other than dishonorable.

(4) With respect to any veteran, the first benefit year following the termination of his military service shall be the 52 consecutive calendar weeks immediately following the calendar week in which such termination occurred: Provided, That such benefit year shall be cancelled as soon as the veteran is able to establish a benefit year with respect to which he would be entitled to not less than 26 weeks of benefits without assistance of this subsection.

(5) With respect to a veteran's benefit year established as provided in paragraph (4) of this subsection, the base period shall be the period of 52 consecutive calendar weeks immediately preceding the calendar week in which the veteran entered military service. A veteran shall be eligible for benefits during such benefit year only if he has had 14 or more weeks of employment in the base period applicable thereto, in each of which he earned in excess of \$25.00 in wages from employers. The weekly benefit rate and the maximum limitation on total benefits shall otherwise be computed in accordance with the provisions of subsections (b) and (d) of this section; and benefits paid during such a benefit year shall be charged to employers' rating accounts in accordance with section 20 of this act.

(6) The veteran shall be subject to the provisions of sections 28 and 29 of this act. In addition, no veteran shall be eligible to receive benefits based on employment by an employer with respect to which he has reemployment rights under the federal selective service act unless and until he has made application for reemployment by such employer in accordance with the provisions of said act.

Retired persons.

(g) (1) Notwithstanding any inconsistent provisions of this act, the weekly benefit rate of each individual who is receiving or will receive a "retirement benefit" (as defined in paragraph (4) of this subsection) shall be adjusted as provided below in subparagraphs (a), (b) and (c) of this paragraph. Except as herein otherwise provided, all the other provisions of this act shall continue to be applicable in connection with the benefit claims of such retired persons.

(a) If and to the extent that unemployment benefits payable to him under this act would be chargeable to an employer who has contributed to the financing of a retirement plan under which the claimant is receiving or will receive a retirement benefit yielding a pro rata weekly amount equal to or larger than his weekly benefit rate as otherwise established under this act, the claimant shall not receive any unemployment benefits which would be chargeable to said employer under this act.

(b) If and to the extent that unemployment benefits payable to him under this act would be chargeable to an employer who has contributed to the financing of a retirement plan under which the claimant is receiving or will receive a retirement benefit yielding a pro rata weekly amount less than his weekly benefit rate as otherwise established under this act, then the weekly benefit rate otherwise payable to the claimant and chargeable to said employer under this act shall be reduced by an amount equal to the pro rata weekly amount (adjusted to the next lower multiple of \$1.00) which he is receiving or will receive as such retirement benefit.

(c) If the unemployment benefit payable to him under this act would be chargeable to an employer who has not contributed to the financing of a retirement plan under which the claimant is receiving or will receive a retirement benefit, then the weekly benefit rate of such claimant as otherwise established under this act shall not be reduced because of the receipt by him of such retirement benefit.

(d) If the unemployment benefit payable to him under this act is computed on the basis of multiemployer credit weeks and a portion of such benefit is allocable under subsection 20 (d) to an employer who has contributed to the financing of a retirement plan under which the claimant is receiving or will receive a retirement benefit, the adjustments required by subsections (a) or (b) above shall be applied only to that portion of the weekly benefit rate which would otherwise be allocable and chargeable to such employer.

(2) If an individual's weekly benefit rate under this act had been established before the period for which he first receives a retirement benefit, any benefits he may receive after a retirement benefit becomes payable shall be determined in accordance with the formula above stated.

(3) Whenever necessary to assure prompt payment of benefits, the commission shall determine the pro rata weekly amount yielded by an individual's retirement benefit based on the best information currently available to it. In the absence of fraud, such determination shall not be reconsidered unless it is established that the individual's actual retirement benefit in fact differs from the amount determined by \$2.00 or more per week; and such reconsideration shall apply only to such benefits as may be claimed after the information on which such reconsideration is based was received by the commission.

(4) As used in this subsection, the term "retirement benefit" means a benefit (or annuity or pension of any type) which is:

(a) Provided as an incident of employment under an established retirement plan (or policy or agreement), except federal social security; and

(b) Payable to an individual because he has qualified on the basis of attained age or length of service or disability, whether or not the individual has retired or has been retired from his employment: Provided, That amounts paid to individuals in the course of liquidation of a private pension or retirement fund because of termination of the business or of a plant or department of the business of the employer involved shall not be deemed to be retirement benefits.

Minor students below college level, credit week.

(h) Notwithstanding section 50 of this act, no week shall be a credit week for an individual if he is or was a minor student regularly attending either a public or a private school below the college level and such individual's employment during such week was: (a) less than the scheduled hours he would have worked in the department or establishment in which the employment occurred if he were not a student, or (b) within the customary vacation days or vacation periods of his school following which he actually returns to school, or (c) with an employer as a formal and accredited part of the regular curriculum of his school.

College level students.

(i) The denial of credit weeks to minor students provided in subsection (h) shall also apply to students of any age at the college level, but only when the student's employment is a formal and accredited part of the regular curriculum of his school.

Band and orchestra members.

(j) Notwithstanding section 50 of this act, no week shall be a credit week for an individual based on earnings for service performed as a member of a band or orchestra if such service does not represent the principal occupation of such individual.

Vocational students, benefits; account to be charged.

(k) Notwithstanding any other provision of this act, an individual pursuing vocational training or retraining pursuant to subsection 28 (2) who has exhausted all benefits available to him under subsection 27 (d) may be paid, for each week of approved vocational training pursued beyond the date of exhaustion, a benefit amount in ac-

cordance with subsection 27 (c), but not in excess of his most recent weekly benefit rate. However, in no case may an individual be paid training benefits totaling more than 18 times his most recent weekly benefit rate. The expiration or termination of a benefit year shall not stop or interrupt payment of training benefits if the training for which such benefits were granted was begun prior to expiration or termination of such benefit year. No employer's rating account shall be charged with training benefits paid under the provisions of this subsection.

Accrued benefits, maximum period of payment.

(l) A payment of accrued unemployment benefits shall not be made to any eligible individual, or in behalf of such individual as provided in subsection (e) of this section, more than 6 years after the ending date of the benefit year covering such payment or 2 calendar years after the calendar year in which there is final disposition of a contested case, whichever is later.

HISTORY: Am. 1937, p. 851, Act 347, Imd. Eff. Aug. 5;—Am. 1939, p. 806, Act 324, Imd. Eff. June 22;—Am. 1941, p. 665, Act 364, Imd. Eff. July 1;—Am. 1942, 2nd Ex. Ses., p. 59, Act 18, Imd. Eff. Feb. 27;—Am. 1943, p. 448, Act 246, Imd. Eff. June 1;—Am. 1945, p. 605, Act 335, Imd. Eff. May 29;—Am. 1947, p. 710, Act 360, Imd. Eff. July 8;—CL 1948, 421.27;—Am. 1949, p. 416, Act 282, Imd. Eff. Jun. 11;—Am. 1951, p. 393, Act 251, Imd. Eff. Jun. 17;—Am. 1954, p. 479, Act 197, Imd. Eff. May 7;—Am. 1954, Ex. Ses., p. 3, Act 1, Imd. Eff. Aug. 20;—Am. 1955, p. 721, Act 281, Eff. Jul. 15;—Am. 1957, p. 590, Act 311, Imd. Eff. Jun. 21;—Am. 1962, p. 433, Act 196, Eff. Mar. 28, 1963;—Am. 1963, p. 356, Act 226, Eff. Sep. 6;—Am. 1965, p. 498, Act 281, Eff. Sep. 5;—Am. 1966, p. 284, Act 226, Imd. Eff. Jul. 11;—Am. 1967, p. 468, Act 254, Imd. Eff. Jul. 19;—Am. 1968, p. 632, Act 338, Imd. Eff. Jul. 19;—Am. 1970, p. 41, Act 14, Imd. Eff. Apr. 14;—Am. 1970, p. 394, Act 138, Imd. Eff. Jul. 27.

421.27n Repealed. 1965, p. 522, Act 281, Eff. Sep. 5.

Section provided for offset of amounts collected under workmen's compensation act.

421.28 Eligibility for benefits.

Sec. 28. (1) An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that:

Registration for work; report at unemployment office; waiver.

(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the commission may prescribe and is seeking work. (1) The requirements that the individual must register for work and must seek work may be waived by the commission if the individual is laid off and the employer who laid him off notifies the commission in writing that the layoff is temporary and that work is expected to be available for the individual within a declared number of days, not to exceed 45 calendar days following the last day the individual worked. Such waiver shall not be effective unless the notification from the employer has been received by the commission before the individual has completed his waiting week or first compensable week following his layoff. If the individual is not recalled within the specified period, such waiver shall cease to be operative with respect to such layoff. (2) Except for period of disqualification, the requirement that the individual shall seek work may be waived by the commission where it finds that suitable work is unavailable both in the locality where the individual resides and in those localities in which the individual has earned base period credit weeks.

Claim for benefits.

(b) He has made a claim for benefits in accordance with the provisions of section 32.

Ability and availability to perform full-time work; ineligibility due to pregnancy.

(c) He is able and available to perform full-time work of a character which he is qualified to perform by past experience or training, and of a character generally similar to work for which he has previously received wages, and he is available for such work, full time, either at a locality at which he earned wages for insured work during his base period or at a locality where it is found by the commission that such work is available. However, a pregnant woman shall be ineligible to receive benefits for any week within the period beginning with the tenth calendar week before expected con-

finement, as determined by a physician, and extending through the sixth calendar week following the termination of pregnancy.

Waiting period, payment of benefit.

(d) Within each benefit year and prior to the first period with respect to which he claims benefits for unemployment in such benefit year, he must have served a waiting period of 1 week of unemployment in which he was eligible for, and entitled to, benefits in all other respects: Provided, That this requirement shall not interrupt the payment of benefits for consecutive weeks of unemployment nor prevent the payment of benefits as provided in subsection 27 (c) (2).

Vocational training, authorization; waiver.

(2) The commission may authorize an individual with an unexpired benefit year to pursue vocational training or retraining only if the commission finds that:

(a) Reasonable opportunities for employment, in occupations for which the individual is fitted by training and experience, do not exist in the locality in which he is claiming benefits.

(b) The vocational training course relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities.

(c) The training course has been approved by a local advisory council on which both management and labor are represented, or if there is no local advisory council, by the commission.

(d) The individual has the required qualifications and aptitudes to complete the course successfully.

(e) The vocational training course has been approved by the state board of education and is maintained by a public or private school or by the commission.

For each week that the commission finds that an individual who is claiming benefits under this act is satisfactorily pursuing an approved course of vocational training, it may waive the requirements that he be available for work and be seeking work as prescribed in subsections (1) (a) and (1) (c) of this section, and it may find good cause for his failure to apply for suitable work, report to a former employer for an interview concerning suitable work, or accept suitable work as required in subsections 29 (1) (c), 29 (1) (d) and 29 (1) (e).

HISTORY: Am. 1939, p. 807, Act 324, Imd. Eff. June 22;—Am. 1941, p. 666, Act 364, Imd. Eff. July 1;—Am. 1942, 2nd Ex. Ses., p. 61, Act 18, Imd. Eff. Feb. 27;—Am. 1943, p. 451, Act 246, Imd. Eff. June 1;—Am. 1944, 1st Ex. Ses., p. 17, Act 9, Imd. Eff. Feb. 19;—Am. 1947, p. 713, Act 360, Imd. Eff. July 8;—CL 1948, 421.28;—Am. 1949, p. 418, Act 282, Imd. Eff. Jun. 11;—Am. 1951, p. 396, Act 251, Imd. Eff. Jun. 17;—Am. 1954, p. 485, Act 197, Imd. Eff. May 7;—Am. 1955, p. 728, Act 281, Eff. Jul. 15;—Am. 1965, p. 505, Act 281, Eff. Sep. 5;—Am. 1967, p. 475, Act 254, Imd. Eff. Jul. 19.

421.29 Disqualification for benefits.

Sec. 29. (1) An individual shall be disqualified for benefits in all cases in which he:

(a) Has left his work voluntarily without good cause attributable to the employer or employing unit, or

(b) Has been discharged for misconduct connected with his work, whether or not such discharge has subsequently been reduced to a disciplinary lay off or suspension, or for intoxication while at work, or

(c) Has failed without good cause to apply for available suitable work of which he has been notified by the employment office or the commission, or

(d) Being unemployed has failed without good cause to report to his former employer or employing unit within a reasonable time after notice from said employer or employing unit for an interview concerning available suitable work with said former employer or employing unit, or

(e) Has failed without good cause to accept suitable work when offered him, or to

return to his customary self employment, if any, when so directed by the employment office or the commission, or

(f) Has lost his job by reason of being absent from work as a result of a violation of law for which he has been convicted, and sentenced to jail or prison: Provided, however, That this paragraph (f) shall not apply if such conviction of any person results in a sentence to a county jail under conditions of day parole as provided in Act No. 60 of the Public Acts of 1962, being sections 801.251 to 801.258 of the Compiled Laws of 1948, or when the conviction has been for a traffic violation that has resulted in an absence of less than 10 consecutive work days from his place of employment, or

(g) Is discharged, whether or not such discharge is subsequently reduced to a disciplinary lay off or suspension, for:

(I) Participation in a strike or other concerted action resulting in any curtailment of work or restriction of or interference with production, contrary to the provisions of an applicable collective bargaining agreement, or

(II) Participation in a wildcat strike or other concerted action not authorized by the individual's recognized bargaining representative, or

(h) Has been discharged for an act of assault, theft or sabotage connected with his work.

Start of disqualification period; waiting week credit; payments, exceptions.

(2) Any disqualification provided in subsection 29 (1) shall begin with the week in which the act or discharge occurred which caused the disqualification and shall continue until the disqualified individual requalifies under subsection 29 (3): Provided, That, except with respect to multiemployer credit weeks, the disqualification shall not prevent the granting of waiting week credit nor the payment of benefits if there are credit weeks subsequent to the most recent disqualifying act or discharge.

Requalifying weeks.

(3) An individual who is disqualified under subsection 29 (1) shall, subsequent to the week in which the disqualifying act or discharge occurred, complete 6 requalifying weeks (12 if disqualified under paragraph 29 (1) (h)) for each of which he either

(a) Earns or receives remuneration in excess of \$25.00, or

(b) Would otherwise meet all of the requirements of this act to receive a waiting period credit or a benefit payment if he were not disqualified under subsection 29 (1), or

(c) Receives waiting week credit or a benefit payment based on credit weeks subsequent to the disqualifying act or discharge.

Individual's maximum benefits; reduction.

(4) Subject to the conditions hereinafter provided in this subsection, an individual's maximum amount of benefits otherwise available to him, under subsection 27 (d) of this act, based on wages earned prior to an act or discharge with the employer involved therein as the result of which the individual has been disqualified under subsection 29 (1), except those benefits based upon multiemployer credit weeks, shall be reduced by an amount equal to the individual's weekly benefit rate as to such employer multiplied by the number of requalifying weeks required of him under this subsection or multiplied by the number of weeks of benefit entitlement remaining with such employer, whichever is less, subject, however, to the following conditions: If the individual has no potential benefit entitlement remaining with such employer in the benefit year in existence on the date of the disqualifying determination, such reduction shall be applicable in a succeeding benefit year with respect to any benefit entitlement based upon credit weeks earned with the employer involved in the disqualification prior to the disqualifying act or discharge.

Permanent full-time work with another employer.

(5) If an individual leaves his work to accept permanent full-time work with another employer, and performs services for such employer, or to accept a recall from a former employer, the disqualification provisions of subsection 29 (1) shall not apply to said leaving; but the wages earned with the employer that he last left, including wages previously transferred under this provision to such last employer, shall, for the purpose of computing and charging benefits, be deemed wages earned from the employer with whom the individual accepted such work or recall, and any benefits paid based upon such wages, shall be charged to such employer. When issuing any determination covering said period of employment, the commission shall advise the chargeable employer of the name and address of the other employer, the period covered by said employment, and the extent of the benefits which may be charged to the rating account of the chargeable employer.

Suitable work.

(6) In determining whether or not any work is suitable for an individual, the commission shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

Unsuitable work.

(7) Notwithstanding any other provisions of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (a) If the position offered is vacant due directly to a strike, lockout or other labor dispute; (b) if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (c) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Labor disputes.

(8) An individual shall be disqualified for benefits for any week with respect to which his total or partial unemployment is due to a labor dispute in active progress, or to shut-down or start-up operations caused by such labor dispute, in the establishment in which he is or was last employed, or to a labor dispute (other than a lockout) in active progress, or to shut-down or start-up operations caused by such labor dispute, in any other establishment within the United States which is functionally integrated with such establishment and is operated by the same employing unit. No individual shall be disqualified under this subsection 29 (8) if he is not directly involved in such dispute.

Criteria of determining involvement.

(a) For the purposes of this subsection 29 (8), no individual shall be deemed to be directly involved in a labor dispute unless it is established that:

(I) At the time or in the course of a labor dispute in the establishment in which he was then employed, he shall in concert with 1 or more other employees have voluntarily stopped working other than at the direction of his employing unit, or

(II) He is participating in or financing or directly interested in the labor dispute which causes his total or partial unemployment. The payment of regular union dues (in amounts and for purposes established prior to the inception of such labor dispute) shall not be construed as financing a labor dispute within the meaning of this subparagraph, or

(III) At any time, there being no labor dispute in the establishment or department in which he was employed, he shall have voluntarily stopped working, other than at the

direction of his employing unit, in sympathy with employees in some other establishment or department in which a labor dispute was then in progress, or

(IV) His total or partial unemployment is due to a labor dispute which was or is in progress in any department or unit or group of workers in the same establishment.

Directly interested, reasonable expectation, defined.

(b) The term "directly interested" as used in this subsection 29 (8) shall be construed and applied so as not to disqualify individuals unemployed as a result of a labor dispute the resolution of which may not reasonably be expected to affect their wages, hours or other conditions of employment, and to disqualify individuals whose wages, hours or other conditions of employment may reasonably be expected to be affected by the resolution of such labor dispute. A "reasonable expectation" of an effect on an individual's wages, hours or other conditions of employment shall be deemed to exist, in the absence of substantial and preponderating evidence to the contrary:

(I) If it is established that there is in the particular establishment or employing unit a practice or custom or contractual obligation to extend within a reasonable period to members of the individual's grade or class of workers in the establishment in which the individual is or was last employed changes in terms and conditions of employment which are substantially similar or related to some or all of the changes in terms and conditions of employment which are made for the workers among whom there exists the labor dispute which has caused the individual's total or partial unemployment; or

(II) If it is established that one of the issues in or purposes of such labor dispute is to obtain a change in the terms and conditions of employment for members of the individual's grade or class of workers in the establishment in which the individual is or was last employed; or

(III) If such labor dispute exists at a time when the collective bargaining agreement (which covers the individual's grade or class of workers in the establishment in which the individual is or was last employed and the workers in another establishment of the same employing unit who are actively participating in such labor dispute) has expired, has been opened by mutual consent or may by its terms be modified, supplemented or replaced.

Grade or class of workers, evidence.

(c) In determining the scope of the grade or class of workers any evidence submitted to show the following shall be relevant:

(I) Representation of the workers by the same national or international labor organization or by local affiliates thereof, and

(II) Whether such workers are included in a single, legally designated or negotiated bargaining unit, and

(III) Whether such workers are (or have within the past 6 months been) covered by a common master collective bargaining agreement which sets forth all or any part of their terms and conditions of employment, or by separate agreements which are or have been bargained as a part of the same negotiations, and

(IV) Any functional integration of the work performed by such workers, and

(V) Whether the resolution of issues of the type involved in the labor dispute, as to some of such workers, could directly or indirectly affect the advancement, negotiation or settlement of the same or similar issues in respect to the remaining workers, and

(VI) Whether such workers are currently, or have been, covered by the same or similar demands by their recognized or certified bargaining agent or agents for changes in their wages, hours or other conditions of employment, and

(VII) Whether issues on the same subject matter as those involved in the labor dispute have been the subject of proposals or demands made upon the employing unit which would by their terms have applied to all such workers.

Disciplinary layoff or suspension.

(9) An individual shall be disqualified for benefits for the duration of his disciplinary lay off or suspension in all cases where the individual becomes unemployed because of a disciplinary lay off or suspension based upon misconduct directly or indirectly connected with his work or for

(a) Participation in a strike or other concerted action resulting in a curtailment of work or restriction of or interference with production contrary to the provisions of an applicable collective bargaining agreement, or

(b) Participation in a wildcat strike or other concerted action not authorized by the individual's recognized bargaining representative, but subsection (9) applies only if the individual is not subject to disqualification under the provisions of paragraphs (b) or (g) of subsection 29 (1).

Notice by employing unit of ineligibility.

(10) Notwithstanding any of the above provisions of this section, if the employing unit submits notice to the commission of possible ineligibility or disqualification beyond the time limits prescribed by commission regulation, such notice shall not form the basis of a determination of ineligibility or disqualification for any claim period compensated prior to the receipt of the notice by the commission.

Benefits from another state or the United States.

(11) An individual shall be disqualified for benefits for any week with respect to which or a part of which he has received or is receiving or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States: Provided, That if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits, this disqualification shall not apply.

HISTORY: Am. 1937, p. 852, Act 347, Imd. Eff. Aug. 5;—Am. 1939, p. 806, Act 324, Imd. Eff. Jun. 22;—Am. 1941, p. 667, Act 364, Imd. Eff. Jul. 1;—Am. 1942, 2nd Ex. Ses., p. 62, Act 18, Imd. Eff. Feb. 27;—Am. 1943, p. 452, Act 246, Imd. Eff. June 1;—Am. 1947, p. 714, Act 360, Imd. Eff. July 8;—CL 1948, 421.29;—Am. 1951, p. 397, Act 251, Imd. Eff. Jun. 17;—Am. 1954, p. 486, Act 197, Imd. Eff. May 7;—Am. 1955, p. 729, Act 281, Eff. Jul. 15;—Am. 1963, p. 362, Act 226, Eff. Sep. 6;—Am. 1965, p. 506, Act 281, Eff. Sep. 5;—Am. 1967, p. 476, Act 254, Imd. Eff. Jul. 19;—Am. 1970, p. 49, Act 14, Imd. Eff. Apr. 14.

421.29m, 421.29n Repealed. 1965, p. 522, Act 281, Eff. Sep. 5.

Sections provided for disqualification for benefits by reason of a jail sentence and by reason of a disciplinary layoff or suspension.

421.30 Benefits inalienable.

Sec. 30. Benefits inalienable. All rights to benefits shall be absolutely inalienable by any assignment, sale, garnishment, execution or otherwise, and, in case of bankruptcy, the benefits shall not pass to or through any trustees or other persons acting on behalf of creditors: Provided, That this section shall not prohibit the use of any remedy provided by law insofar as the collection of obligations incurred for necessities furnished to the recipient of such benefits or his dependents during the time when such individual was unemployed is concerned.

HISTORY: CL 1948, 421.30.

421.31 Waiver of rights; limitation of fees.

Sec. 31. No agreement by an individual to wave, [sic] release, or commute his rights to benefits or any other rights under this act from an employer shall be valid. No agreements by an individual in the employ of any person or concern to pay all or any portion of the contributions of an employer, required under this act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from the remuneration of any individual in his employ to finance the contributions of the employer required from him, or require or accept any waiver of any right hereunder by any individual in his employ.

No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the commission or its representatives or by any court or any officer

thereof. Any individual claiming benefits in any proceeding before the commission or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the commission.

Any employer may be represented in any proceeding before the commission by counsel or other duly authorized agent.

HISTORY: CL 1948, 421.31;—Am. 1968, p. 639, Act 338, Imd. Eff. Jul. 19.

421.32 Claims for benefits; examination of claims, determination of facts, notice.

Sec. 32. (a) Claims for benefits shall be made in accordance with such regulations as the commission may prescribe. The commission shall designate representatives who shall promptly examine claims and make a determination on the facts. The commission may establish regulations providing for the examination of claims, the determination of their validity, and the amount and duration of benefits to be paid. The claimant and other interested parties shall be promptly notified of such determination and the reasons therefor.

Notice of claim to employer; request for information.

(b) The commission may also prescribe regulations for notifying and shall notify the employer whose rating account may be charged and the employing unit where the claimant last worked that he has filed an application for benefits. The notice shall also require the employer and employing unit to furnish such information to the commission as may be necessary to determine the claimant's benefit rights.

Notice of determination; contents.

Upon receipt of the foregoing information the commission shall promptly make a determination based upon the available information. The claimant and the employer whose rating account may be charged pursuant to said determination shall be promptly notified thereof. Such notice shall at least show (1) the name and account number of the employer whose rating account may be charged pursuant to said determination; (2) the weekly benefit amount and the maximum number of credit weeks against which the individual may draw benefits; and (3) whether or not the claimant is eligible and qualified to draw benefits.

Failure of employer to file information.

If any employer or employing unit fails to respond, within 7 days after mailing of the request for information, the commission shall make a determination upon the available information. In the absence of a showing by the employer satisfying the commission that he could not reasonably comply with the foregoing requirements, such determination shall be final, as to the noncomplying employer, as to any benefits paid prior to the week following the receipt of his reply and chargeable against his rating account as a result of his late reply. The commission may require any employer who consistently fails to meet the commission's requirements as to submission of reports covering employment of individuals, to provide such reports automatically upon the separation of individuals from employment, in such manner and within such time limits as the commission may prescribe by regulation as necessary to carry out the provisions of this section: Provided, That any employer may be permitted to provide such reports automatically upon separation of individuals from employment, in the manner and within the time limits prescribed by the commission.

Other determinations as to other base period employers.

After an application for benefits is filed, the commission's determination shall include only the most recent employer and thereafter, as necessary, the commission shall issue other determinations covering other base period employers individually in in-

verse order to that in which the claimant earned his last credit week with such employers.

Application for redetermination; withholding payment of benefits.

(c) The claimant or any other interested party may file an application with an office of the commission for a redetermination in accordance with the provisions of section 32a. In the event that such an application for redetermination is filed, the payment of benefits with respect to any week of possible ineligibility or disqualification or week of entitlement subject to possible reduction under subsection 29 (4) or to forfeiture under subsection 62 (b) shall be withheld pending the final disposition of such matter on redetermination or on appeal therefrom.

Redetermination of eligibility; investigation as to error or fraud.

(d) The issuance of each benefit check shall be considered a determination by the commission that the claimant receiving the check was, during the compensable period, covered thereby, eligible and qualified for benefits, and any employer upon receipt of a copy of the check as provided in subsection 21(a) may protest by requesting a redetermination as to such eligibility or qualification as to such period and a determination as to later weeks and benefits still unpaid as are affected by such protest. Upon receipt of such protest or request, the commission shall investigate and redetermine whether the claimant is eligible and qualified as to such period. If, upon such redetermination, the claimant is found ineligible or not qualified, the commission shall investigate and determine whether the claimant obtained benefits (for 1 or more preceding weeks within the series of consecutive weeks which includes the week covered by such redetermination) improperly as the result of administrative error, false statement, misrepresentation, or non-disclosure of a material fact. If the commission finds that the claimant has obtained such benefits through administrative error, false statement, misrepresentation, or non-disclosure of a material fact, the commission shall proceed under the appropriate provisions of section 62 of this act. Subsection (c) of this section shall apply to protests made under this subsection.

Filing of claims through different state claim office, notice to employer.

(e) Whenever a claimant commences to file his continued claims through a different state claim office in this state or elsewhere, the commission shall promptly issue written notice of that fact to the chargeable employer.

Refusal of offer of work, failure to apply for work; notice of determination.

(f) In any case where a claimant refuses an offer of work, or where a claimant fails to apply for work of which he has been notified as provided in subsection 29 (1) (c) or (d), the commission shall promptly make a written determination as to whether or not such refusal or failure requires disqualification under section 29. Notice of such determination (specifying the name and address of the employing unit offering or giving notice of the work and of the chargeable employer) shall be sent to the claimant, the employing unit offering or giving notice of the work, and the chargeable employer.

HISTORY: Am. 1939, p. 809, Act 324, Imd. Eff. Jun. 22;—Am. 1941, p. 669, Act 364, Imd. Eff. Jul. 1;—Am. 1947, p. 716, Act 360, Imd. Eff. Jul. 8;—CL 1948, 421.32;—Am. 1951, p. 399, Act 251, Imd. Eff. Jun. 17;—Am. 1954, p. 468, Act 197, Imd. Eff. May 7;—Am. 1955, p. 731, Act 281, Eff. Jul. 15;—Am. 1965, p. 510, Act 281, Eff. Sep. 5.

421.32a Claim for benefits; redetermination; appeal; reconsideration; failure to file protest; benefits through clerical error or fraud.

Sec. 32a. The commission shall upon application by an interested party filed with the commission within 15 days after the mailing or personal service of a notice of determination, or may upon its own motion within said period, review any determination and thereafter issue a redetermination affirming, modifying or reversing the prior determination and stating the reasons therefor. The commission shall promptly notify the interested parties of such redetermination which shall become final unless within 15 days after the mailing or personal service of a notice thereof an appeal is filed with the

commission for a hearing on such redetermination before a referee in accordance with the provisions of section 33 of this act: Provided, That the commission may, for good cause, including any administrative clerical error, reconsider any prior determination or redetermination after the 15-day period has expired and issue a redetermination affirming, modifying or reversing the prior determination or redetermination, but no such reconsideration shall be made unless the request therefor is filed with the commission, or reconsideration is initiated by the commission with notice to the interested parties, within 1 year from the date of mailing or personal service of the original determination on the disputed issue. If, in the event of failure on the part of an interested party to file a protest within the 15-day period, the commission for good cause reconsiders any prior determination or redetermination and issues a redetermination, no disqualification or ineligibility imposed thereunder, except ineligibility imposed by reason of receipt of retroactive pay, shall apply to any waiting period for which credit has been granted or compensable period for which benefits have been paid or are payable unless such credit or benefits have been obtained by reason of an administrative clerical error or a false statement or non-disclosure or misrepresentation of a material fact by the claimant: Provided further, That such redetermination shall become final unless within 15 days after the date of mailing or personal service of such notice of redetermination an appeal is filed for a hearing on such redetermination before a referee in accordance with the provisions of section 33 of this act.

HISTORY: Add. 1941, p. 609, Act 304, Imd. Eff. Jul. 1;—CL 1946, 421.32a;—Am. 1951, p. 400, Act 251, Imd. Eff. Jun. 17;—Am. 1955, p. 732, Act 281, Eff. Jul. 15;—Am. 1957, p. 597, Act 311, Imd. Eff. Jun. 21;—Am. 1965, p. 511, Act 281, Eff. Sep. 5.

421.33 Hearing on appeal; denial of redetermination; rehearing.

Sec. 33. The commission shall appoint an adequate number of impartial referees to hear and decide appeals from any redetermination issued by the commission in accordance with section 32a. If any interested party requests a hearing before a referee on any redetermination, all matters pertinent to the claimant's benefit rights or to the liability of the employing unit under this act shall be referred to a referee; and the referee shall afford all interested parties a reasonable opportunity for a fair hearing and, unless such appeal is withdrawn, the referee shall decide the rights of the interested parties and shall notify the interested parties of his decision within 60 days, setting forth the findings of fact upon which such decision is based, together with the reasons therefor: Provided, That with respect to an appeal from a denial of redetermination, if the referee finds that there was good cause for the issuance of a redetermination, such denial shall be a redetermination affirming the determination and the appeal from such denial shall be an appeal from such affirmance: Provided further, That when the same or substantially similar evidence is material to the matter in issue with respect to more than 1 interested party, the same time and place for considering all such cases may be fixed, hearing thereon jointly conducted, a single record of the proceedings made, and evidence introduced with respect to 1 proceeding considered as introduced in the others, provided no interested party is prejudiced thereby. If the appellant fails to appear or prosecute the appeal the referee may dismiss the proceedings or take such other action as he may deem advisable. A referee may, either upon application for rehearing by an interested party or on his own motion, proceed to rehear, affirm, modify, set aside or reverse any prior decision on the basis of the evidence previously submitted in such case, or on the basis of additional evidence: Provided, That such application or motion be made within 15 days after the date of mailing of such decision. The referee may, for good cause, reopen and review any prior decision of a referee and issue a new decision after the 15-day appeal period has expired: Provided, That a request for such review be made within 1 year from the date of mailing of the prior decision. No referee shall participate in any case in which he has a direct or indirect interest.

Appeal to appeal board.

Any interested party within 15 days after the mailing of a copy of a decision of the referee or of a denial of a motion for rehearing may file an appeal therefrom to the appeal board, and unless such an appeal is filed the decision or denial shall be final.

HISTORY: Am. 1939, p. 810, Act 324, Imd. Eff. Jun. 22;—Am. 1941, p. 669, Act 364, Imd. Eff. Jul. 1;—Am. 1947, p. 717, Act 300, Imd. Eff. Jul. 6;—CL 1948, 421.33;—Am. 1951, p. 400, Act 251, Imd. Eff. Jun. 17;—Am. 1963, p. 279, Act 190, Eff. Sep. 6;—Am. 1965, p. 512, Act 281, Eff. Sep. 5.

421.34 Hearing and rehearing on appeal.

Sec. 34. The appeal board, on the basis of evidence previously submitted and such additional evidence as it may require, shall affirm, modify, set aside or reverse the findings of fact and decision of the referee or a denial by the referee of a motion for rehearing. The parties shall be promptly notified of the decision of the appeal board and its reasons therefor. But said board, in its discretion may omit the giving of any reasons in cases where the decision of a referee is affirmed without any alteration or modification. If the appellant fails to appear or prosecute the appeal, the appeal board may dismiss the proceedings or take such other action as it may deem advisable. The appeal board may, either upon application by an interested party for rehearing or on its own motion, proceed to rehear, affirm, modify, set aside or reverse any prior decision on the basis of the evidence previously submitted in such case, or on the basis of additional evidence: Provided, That such application or motion be made within 15 days after the date of mailing of such prior decision. The appeal board may, for good cause, reopen and review any prior decision of the appeal board and issue a new decision after the 15-day appeal period has expired, but no such review shall be made unless the request therefor is filed with the appeal board, or review is initiated by the appeal board with notice to the interested parties, within 1 year from the date of mailing of the prior decision. Unless an interested party, within 15 days after mailing of a copy of a decision of the appeal board or of a denial of a motion for a rehearing, files an appeal from any such decision or denial, or seeks judicial review thereof as provided in section 38, such decision shall be final.

HISTORY: Am. 1939, p. 810, Act 324, Imd. Eff. Jun. 22;—Am. 1941, p. 670, Act 364, Imd. Eff. Jul. 1;—CL 1948, 421.34;—Am. 1951, p. 401, Act 251, Imd. Eff. Jun. 17;—Am. 1965, p. 512, Act 281, Eff. Sep. 5.

421.35 Appeal board; powers and duties; appointment, term, compensation.

Sec. 35. The appeal board may on its own motion affirm, modify, set aside or reverse any decision or order of a referee on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision or order to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision or order of a referee or by the commission if its initial ruling has been overruled or modified by a referee. The appeal board may remove to itself or transfer to another referee the proceedings on any appeal, rehearing or review pending before a referee. Any proceedings so removed to the appeal board shall be heard by a quorum thereof in accordance with the requirements in section 33. The appeal board shall promptly notify the interested parties of its findings and decisions.

Any member of the appeal board is authorized to administer oaths, take depositions, issue and enforce subpoenas requiring any person to appear before such board and be examined with reference to any matter within the scope of the inquiry or investigation being conducted by said board and to produce any books, records and papers, in the same manner as provided in section 9 with respect to the issuance of a subpoena by a member of the commission.

There is created an appeal board of 3 members to be appointed by the governor, with the advice and consent of the senate, for terms of 6 years each, except that a va-

cancy shall be filled in the same manner as is provided for appointment in the first instance for the unexpired term. If a vacancy shall occur, by virtue of the expiration of the term of a member, such member shall continue in office until his successor has been appointed by the governor and confirmed by the senate. The governor may at any time, after notice and hearing, remove any member for cause. No member of the appeal board shall participate in any case in which he is an interested party. Members of the appeal board shall receive \$18,500.00 per year, except that the member designated as chairman shall receive \$19,000.00 per year. Each member of the board shall devote full time to the functions of the board. Each member shall, therefore, personally perform the duties of his office during the hours generally worked by other officers and employees of the executive department of the state. Members shall be entitled to actual and necessary expenses incurred in the discharge of their official duties. Such salaries and expenses shall be paid from the administration fund.

HISTORY: Am. 1937, p. 853, Act 347, Imd. Eff. Aug. 5;—Am. 1941, p. 670, Act 364, Imd. Eff. Jul. 1;—CL 1948, 421.35;—Am. 1940, p. 419, Act 282, Imd. Eff. Jun. 11;—Am. 1951, p. 401, Act 251, Imd. Eff. Jun. 17;—Am. 1959, p. 450, Act 270, Imd. Eff. Oct. 30;—Am. 1964, p. 397, Act 231, Eff. Aug. 28;—Am. 1965, p. 711, Act 361, Imd. Eff. Jul. 23;—Am. 1968, p. 640, Act 338, Imd. Eff. Jul. 19.

CITED IN OTHER SECTIONS: The above section is cited in § 16.479.

421.36 Appeal board; procedure, reports, record of proceedings, transcript of testimony.

Sec. 36. The manner in which appeals to referees and the appeal board shall be presented, the reports thereon required from the interested party or parties, and the procedure governing such appeals shall be in accordance with rules prescribed by the appeal board. The commission shall be deemed to be an interested party. No unreasonable reports shall be required. A full and complete record shall be kept of all proceedings in connection with an appeal. All testimony at any hearing before a referee or the appeal board shall be recorded, but need not be transcribed unless the decision is further appealed or a transcript is requested by an interested party, who shall pay the cost of preparing such transcript: Provided, however, That no charge shall be made for such transcript if an appeal is filed by the interested party.

HISTORY: Am. 1941, p. 671, Act 364, Imd. Eff. July 1;—CL 1948, 421.36;—Am. 1951, p. 402, Act 251, Imd. Eff. Jun. 17;—Am. 1957, p. 397, Act 311, Imd. Eff. Jun. 21.

421.37 Appeal board; witnesses; fees, subpoenas.

Sec. 37. Witnesses subpoenaed pursuant to this act shall be allowed fees at the rate fixed by law. Such fees and all expenses of proceedings involving disputed determinations, decisions or notices of assessments before a referee or the appeal board shall be deemed a part of the expense of administering this act. If any interested party to a hearing formally requests the commission, a referee or the appeal board to obtain a subpoena for witnesses whose evidence it deems necessary, the commission, referee or appeal board shall promptly issue such subpoena as provided in sections 9 and 35 of this act, unless such request is determined to be unreasonable.

HISTORY: Am. 1941, p. 671, Act 364, Imd. Eff. July 1;—CL 1948, 421.37;—Am. 1967, p. 480, Act 254, Imd. Eff. Jul. 19.

421.38 Appeal board; judicial review of referee; appeal board orders.

Sec. 38. The circuit court of the county in which the claimant resides, or, if no claimant is a party to the case, the circuit court of the county in which the employer's principal place of business in Michigan is located, or in any case the circuit court for the county of Ingham, shall have power to review questions of fact and law on the record made before the referee and the appeal board involved in any such final order or decision of said appeal board, and to make such further orders in respect thereto as justice may require, but said court may reverse such order or decision only if it finds that such order or decision is contrary to law or is not supported by competent, material and substantial evidence on the whole record. Application for such review must be made within 15 days after mailing of a copy of the order or decision by any method

permissible under the rules and practices of the circuit courts of this state. The commission shall be deemed to be a party to any judicial action involving any order or decision of the appeal board. An appeal may be had from the decision of said circuit court in the same manner as provided by the laws of this state with respect to appeals from circuit courts.

HISTORY: Am. 1937, p. 854, Act 347, Imd. Eff. Aug. 5;—Am. 1939, p. 810, Act 324, Imd. Eff. June 22;—Am. 1941, p. 671, Act 364, Imd. Eff. July 1;—CL 1948, 421.38;—Am. 1951, p. 402, Act 251, Imd. Eff. Jun. 17;—Am. 1967, p. 480, Act 254, Imd. Eff. Jul. 19.

421.39 Employment security act; definitions.

Sec. 39. Definitions. As used in this act, unless the context clearly requires otherwise, the terms defined in this act shall be construed to have the meaning as prescribed and set forth in the several definitions.

HISTORY: CL 1948, 421.39.

421.40 Employing unit; definition.

Sec. 40. "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to this amendatory act, had in its employ 1 or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains 2 or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

HISTORY: CL 1948, 421.40;—Am. 1954, p. 489, Act 197, Imd. Eff. May 7;—Am. 1955, p. 733, Act 281, Eff. Jul. 15.

421.41 Employer; definition.

Sec. 41. "Employer" means: (1) (a) Any employing unit which in each of 20 different weeks within the calendar year 1956 or within any succeeding calendar year through 1968, whether or not such weeks are or were consecutive, has or had in employment 4 or more individuals, not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week.

(b) Beginning January 1, 1966, and until subsection (c) is applicable, an employing unit (i) which in the preceding calendar year had in each of 20 different weeks, whether or not such weeks were consecutive, in employment 1 or more individuals irrespective of whether the same individual was employed in each such week, or (ii) by which total remuneration of \$1,000.00 or more for employment was paid or payable within the preceding calendar year.

(c) Beginning January 1, 1969, an employing unit (i) which in each of 20 different calendar weeks within a calendar year, whether or not such weeks were consecutive, has or had in employment 1 or more individuals irrespective of whether the same individual was employed in each such week, or (ii) by which total remuneration of \$1,000.00 or more for employment was paid or payable within the calendar year.

(d) For the purposes of paragraphs (a), (b) and (c) of this subsection, a week which falls in 2 calendar years shall be deemed to fall entirely within that calendar year which contains the majority of days of such week.

(2) Any individual, legal entity or employing unit which acquired the organization, trade or business, or 75% or more of the assets thereof, of another which at the time of such acquisition was an employer subject to this act;

(3) Any employing unit which having become an employer under paragraphs (1), (2), (4) or (5) hereof, has not, under sections 24 and 25 of this act, ceased to be an employer subject to this act; or

(4) For the effective period of its election pursuant to section 25, any other employing unit which has elected to become fully subject to this act;

(5) Any employing unit not an employer by reason of any other paragraph of this section for which services in employment are performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund; but services performed for such employing unit shall constitute employment for the purposes of this act only to the extent that such services constitute employment with respect to which such federal tax is payable.

HISTORY: Am. 1937, p. 854, Act 347, Imd. Eff. Aug. 5;—Am. 1941, p. 672, Act 364, Imd. Eff. July 1;—CL 1948, 421.41;—Am. 1951, p. 408, Act 251, Imd. Eff. Jun. 17;—Am. 1955, p. 733, Act 281, Eff. Jul. 15;—Am. 1965, p. 513, Act 281, Eff. Sep. 5;—Am. 1968, p. 640, Act 338, Imd. Eff. Jul. 19.

421.41a Repealed. 1951, p. 408, Act 251, Imd. Eff. Jun. 17.

Section provided for limitation by commission of retroactive effect of its rulings or decisions.

Sec. 41b.

HISTORY: Am. 1937, p. 855, Act 347, Imd. Eff. Aug. 5;—Rep. 1939, p. 814, Act 384, Imd. Eff. June 22.

This section as originally enacted and amended defined term "unemployed individual."

421.42 Employment; definition.

Sec. 42. (1) Subject to the other provisions of this section "employment" means service, including service in interstate commerce, performed for remuneration or under any contract of hire, written or oral, express or implied.

Service within and without this state.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(a) The service is localized in this state; or

(b) The service is not localized in any state but some of the service performed in this state and (1) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state; or

(c) After December 31, 1964, the service is not localized in any state but is performed by an employee on or in connection with an American aircraft, if either the contract of service is entered into within this state or if the contract of service is not entered into within this state or within any other state and during the performance of the contract of service and while the employee is employed on the aircraft, it touches at an airfield in this state, and the employee is employed on and in connection with such aircraft when outside the United States. The commission may enter into reciprocal agreements with other states with respect to such aircraft which touch airfields in more than 1 state.

Service within this state not otherwise covered or excluded.

(3) Service performed within this state but not covered under the provisions of subsection (2) of this section and not excluded under the provisions of subsection (8) of this section shall be deemed to be employment subject to this act if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

Service without state; election of employer.

(4) Services, not covered under the provisions of subsection (2) of this section, performed entirely without this state, with respect to no part of which contributions are

required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act (a) if the commission approves the election of the employer for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act. Such an election may be cancelled by the employer by filing a written notice with the commission before January 30 of any year stating his desire to cancel such election or at any time by submitting to the commission satisfactory proof that the services designated in such election are covered by an unemployment compensation law of another state or of the federal government, or (b) if such services are covered by an arrangement pursuant to section 11 between the commission and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within the state, shall be deemed to be employment if the commission has approved an election of the employing unit for which such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be employment.

Service deemed localized.

(5) Service shall be deemed to be localized within a state if:

- (a) The service is performed entirely within such state; or
- (b) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

Employer's control or direction.

(6) Services performed by an individual for remuneration shall not be deemed to be employment subject to this act, unless such individual is under the employer's control or direction as to the performance of his services both under his contract for hire and in fact. Service performed by an individual for remuneration under an exclusive contract which provides for his control and direction by a person, firm or corporation possessing a public service permit or by a certificated motor carrier transporting goods or property for hire shall be deemed employment subject to this act. Service performed by any person who by lease, contract or arrangement places at the disposal of a person, firm or corporation a piece of motor vehicle equipment and under a contract of hire, which provides for his control and direction, is engaged by such person, firm or corporation to operate such motor vehicle equipment shall be deemed to be employment subject to this act.

Service not included.

(7) Except as otherwise provided in subsection (8) of this section the term "employment" shall not include:

State or political subdivision, exception.

(a) Service performed in the employ of this state, or any political subdivision thereof, except as otherwise provided in section 19a;

Other states or political subdivisions, United States.

(b) Service performed in the employ of any other state or its political subdivisions, or of an instrumentality of any other state or states or their political subdivisions; and service performed in the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this act, except that to the extent that the congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all the provisions of this act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same

extent and on the same terms as to all other employers, employing units, individuals and services: Provided, That if this state shall not be certified for any year by the appropriate agency of the United States under section 3304 (c) of the federal internal revenue code, the payments required of such instrumentalities with respect to such year shall be refunded by the commission from the fund in the same manner and within the same period as is provided in section 16 of this act with respect to contributions erroneously collected;

Service under act of congress; reciprocity agreement.

(c) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress: Provided, That the commission is hereby authorized and directed to enter into agreements with the proper agencies under such act of congress, which agreements shall become effective 10 days after publication thereof in the manner provided in section 4 of this act for regulations, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under such act of congress, or who have, after acquiring potential rights to unemployment compensation under such act of congress, acquired rights to benefits under this act;

Agricultural labor.

(d) "Agricultural labor" which shall comprise all service performed:

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) In connection with the production or harvesting of maple syrup or maple sugar or any commodity defined as an agricultural commodity in section 15 (g) of the federal agricultural marketing act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes;

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

Domestic service.

(e) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority not operated for profit;

Ship's officer or crew; fishing.

(f) Service as an officer or member of a crew of an American vessel performed on or in connection with such vessel, except a vessel of less than 200 horsepower, if the operating office, from which the operations of the vessel operating on navigable waters within or without the United States are ordinarily and regularly supervised, managed, directed and controlled, is without this state; and service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking or harvesting of any kind of fish (including service performed by an individual as an ordinary incident to any such activity), except service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);

Parent, spouse or child.

(g) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

Charities.

(h) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, and homes operated for welfare and old age assistance patients, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual;

Professional capacity.

(i) Service performed in a purely professional capacity, not in the nature of permanent employment;

Real estate, investment and insurance agents on commission basis.

(j) Service performed by real estate salesmen, sales representatives of investment companies and agents or solicitors of insurance companies who are compensated principally or wholly on a commission basis;

Foreign agents.

(k) Service performed within this state which is incidental to the individual's service in a foreign country in which the base of operation is maintained or from which such service is directed or controlled;

Logging, piecework.

(l) Service performed in logging or woods operations, compensated wholly on a piecework or quantity basis, unless such services are included as "employment" under the federal unemployment tax act;

Service subject to election under another compensation law.

(m) Service covered by an arrangement between the commission and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within such agency's state or under such federal law.

Teacher in nonprofit school.

(n) Service performed as a teacher or instructor in a non-profit private school or college.

Band or orchestra member.

(o) Service performed by an individual as a member of a band or orchestra provided such service does not represent the principal occupation of such individual.

Students for whom no week is a credit week.

(p) Services of students for whom no week is a credit week in accordance with subsections 27 (h) and (i).

Tax exempt organization.

(q) Service performed by an individual in a calendar quarter in the employ of an organization exempt from income tax under section 501 (a) of the federal internal revenue code of 1954, as amended, other than an organization described in section 401 (a) of the code, or under section 521 of the code if the remuneration earned is \$50.00 or less.

Service for which employing unit is subject to federal tax.

(8) Notwithstanding the provisions of subsection (7) of this section, any services performed for an employing unit, with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund, shall be deemed to constitute employment for the purposes of this act, but only to the extent that such services constitute employment with respect to which such federal tax is payable. The commission may waive the provisions of this subsection with respect to services performed within this state if the employing unit is an employer solely by reason of the provisions of section 41 (5) and establishes that such services are covered by the election of such employing unit under any other state unemployment compensation law.

Service on American vessel operating within or without United States.

(9) Notwithstanding subsections (2) and (5) of this section all service performed after December 31, 1964, by an officer or member of the crew of an American vessel on or in connection with such vessel is deemed to be employment subject to this act if the operating office, from which the operations of the vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled, is within this state.

HISTORY: Am. 1937, p. 855, Act 347, Imd. Eff. Aug. 5;—Am. 1939, p. 811, Act 324, Imd. Eff. June 22;—Am. 1941, p. 672, Act 364, Imd. Eff. July 1;—Am. 1942, 2nd Ex. Ses., p. 64, Act 18, Imd. Eff. Feb. 27;—Am. 1943, p. 454, Act 246, Imd. Eff. June 1;—Am. 1947, p. 718, Act 360, Imd. Eff. July 8;—CL 1948, 421.42;—Am. 1949, p. 420, Act 282, Imd. Eff. Jun. 11;—Am. 1951, p. 403, Act 251, Imd. Eff. Jun. 17;—Am. 1955, p. 733, Act 281, Eff. Jul. 15;—Am. 1957, p. 597, Act 311, Imd. Eff. Jun. 21;—Am. 1965, p. 513, Act 281, Eff. Sep. 5;—Am. 1966, p. 291, Act 296, Imd. Eff. Jul. 11;—Am. 1967, p. 255, Act 192, Imd. Eff. Jun. 30;—Am. 1968, p. 641, Act 338, Imd. Eff. Jul. 19.

421.42a Repealed. 1951, p. 408, Act 251, Imd. Eff. Jun. 17.

Section defined term "employment office."

421.43 Employment office; definition.

Sec. 43. "Employment office" means a free public employment office or branch thereof operated by this state or any other state as a part of a state-controlled system of public employment offices, or by a federal agency charged with the administration of an unemployment compensation program or free public employment offices.

HISTORY: Am. 1937, p. 857, Act 347, Imd. Eff. Aug. 5;—CL 1948, 421.43;—Am. 1951, p. 406, Act 251, Imd. Eff. Jun. 17.

421.44 Remuneration and wages; definitions.

Sec. 44. (1) "Remuneration" means all compensation paid for personal services, including commissions and bonuses and the cash value of all compensation payable in any medium other than cash. Any remuneration payable to an individual which has not been actually received by such individual within 21 days after the end of the pay period in which such remuneration was earned shall, for the purposes of subsection (2), be deemed to have been paid on the twenty-first day after the end of such pay period. The reasonable cash value of compensation payable in any medium other than cash, shall be estimated and determined in accordance with rules prescribed by the

commission. The term "remuneration" shall not include moneys paid an individual by any unit of government for services rendered as a member of the national guard of the state of Michigan, or for similar services to any state or the United States.

(2) "Wages" means remuneration paid by employers for employment. For the purpose of determining the amount of contributions due from any employer under the provisions of this act it shall exclude all remuneration paid within a calendar year to an individual by an employing unit for personal services after such individual has been paid within that year by that employing unit remuneration equal to \$3,600.00 for personal services on which unemployment taxes had been paid or were payable in this and any other states. If an employing unit (hereinafter referred to as successor) during any calendar year becomes a transferee in a transfer of business as defined in section 22 of another (hereinafter referred to as a predecessor), and immediately after the transfer employs in his trade or business an individual who immediately prior to the transfer was employed in the trade or business of such predecessor, then for the purpose of determining whether the successor has paid remuneration with respect to employment equal to \$3,600.00 to such individual during such calendar year, any remuneration with respect to employment paid to such individual by such predecessor during such calendar year and prior to such transfer shall be considered as having been paid by such successor. Further, the term "wages" shall not include:

(a) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of (1) retirement, or (2) sickness or accident disability, or (3) medical or hospitalization expenses in connection with sickness or accident disability, or (4) death.

(b) Any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement.

(c) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer.

(d) Any payment made to, or on behalf of, an employee or his beneficiary (1) from or to a trust described in section 401(a) of the federal internal revenue code which is exempt from tax under section 501(a) of the federal internal revenue code at the time of such payment, unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or (2) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a) of the federal internal revenue code, or under or to a bond purchase plan which at the time of such payment, is a qualified bond purchase plan described in section 405(a) of the federal internal revenue code.

(e) The payment by an employer (without deduction from the remuneration of the employee) of the tax imposed upon an employee under section 3101 of the federal internal revenue code.

(f) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business.

(g) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of 65, if he did not work for the employer in the period for which such payment is made.

(h) Remuneration paid to or on behalf of an employee as moving expenses if (and to the extent that) at the time of payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the federal internal revenue code.

(3) The changes in subsection (2) made by this 1968 amendatory act shall apply to all remuneration paid after January 1, 1968.

HISTORY: Am. 1941, p. 675, Act 364, Imd. Eff. July 1;—Am. 1943, p. 457, Act 246, Imd. Eff. June 1;—Am. 1947, p. 721, Act 360, Imd. Eff. July 8;—CL 1948, 421.44;—Am. 1951, p. 406, Act 251, Imd. Eff. Jun. 17;—Am. 1963, p. 365, Act 226, Eff. Sep. 6;—Am. 1965, p. 517, Act 281, Eff. Sep. 5;—Am. 1967, p. 480, Act 254, Imd. Eff. Jul. 19;—Am. 1968, p. 313, Act 215, Imd. Eff. Jun. 24;—Am. 1968, p. 645, Act 338, Imd. Eff. Jul. 19.

421.45 Base periods; definition.

Sec. 45. The term “base period” means the period of 52 consecutive calendar weeks ending with the day immediately preceding the first day of an individual’s benefit year.

HISTORY: Am. 1939, p. 813, Act 324, Imd. Eff. June 22;—Am. 1947, p. 721, Act 360, Imd. Eff. July 8;—CL 1948, 421.45;—Am. 1951, p. 407, Act 251, Imd. Eff. Jun. 17.

421.46 Benefit years; conditions; cancellation; redetermination.

Sec. 46. (a) “Benefit year” with respect to any individual means the period of 52 consecutive calendar weeks beginning with the first calendar week with respect to which the individual, who does not already have a benefit year in effect, files an application in accordance with section 32 of this act: Provided, however, That no benefit year may be established unless the individual meets all of the following conditions: (1) That the individual has earned wages in excess of \$25.00 during not less than 14 of the 52 consecutive calendar weeks preceding the week with respect to which the individual filed his application for benefits; (2) that the individual with respect to the week for which he is filing his application for benefits, is unemployed and meets all the other requirements of section 28 of this act except the waiting period requirement of subsection 28 (1) (d); (3) that with respect to the week for which he is filing his application for benefits the individual is not disqualified nor subject to disqualification (except in case of a labor dispute under subsection 29 (8)) under this act, with respect to the most recent period of employment with the most recent employer with whom he earned wages in excess of \$25.00 in a calendar week.

If such individual files an application for a 7-day period as provided in subsection 27 (c), the benefit year with respect to such individual shall begin with the calendar week which contains the first day of such 7-day period.

(b) If all, or the then remaining part, of a claimant’s rights to benefits during his benefit year are cancelled under the provisions of subsection 62 (b), the remaining portion of such benefit year shall be terminated as of the effective date of the cancellation.

(c) An individual may request a redetermination of his benefit rights and cancellation of a previously established benefit year if he has not completed a compensable period; in such case, the benefit year shall begin with the first day of the first week with respect to which the request for redetermination of benefit rights is duly filed.

HISTORY: Am. 1939, p. 813, Act 324, Imd. Eff. Jun. 22;—Am. 1941, p. 678, Act 364, Imd. Eff. Jul. 1;—Am. 1947, p. 722, Act 360, Imd. Eff. Jul. 8;—CL 1948, 421.46;—Am. 1949, p. 422, Act 282, Imd. Eff. Jun. 11;—Am. 1951, p. 407, Act 251, Imd. Eff. Jun. 17;—Am. 1954, p. 489, Act 197, Imd. Eff. May 7;—Am. 1965, p. 518, Act 281, Eff. Sep. 5;—Am. 1970, p. 52, Act 14, Imd. Eff. Apr. 14.

421.47 Calendar quarter; definition.

Sec. 47. “Calendar quarter” means a period of 3 consecutive calendar months, ending with the last day of March, June, September or December.

HISTORY: Am. 1937, p. 857, Act 347, Imd. Eff. Aug. 5;—CL 1948, 421.47;—Am. 1951, p. 407, Act 251, Imd. Eff. Jun. 17.

421.48 Unemployed; definition; determination of lost remuneration.

Sec. 48. An individual shall be deemed “unemployed” with respect to any week during which he performs no services and with respect to which no remuneration is

payable to him, or with respect to any week of less than full-time work if the remuneration payable to him is less than his weekly benefit rate: Provided, That any loss of remuneration incurred by an individual during any week resulting from any cause other than the failure of his employing unit to furnish full-time, regular employment shall be included as remuneration earned for purposes of this section and of subsection (c) of section 27 of this act: Provided further, That the total amount of remuneration thus lost shall be determined in such manner as the commission shall by regulation prescribe. For the purposes of this act, an individual's weekly benefit rate shall mean the weekly benefit rate shown in the table in section 27 (b), which is applicable to the individual.

Payments for vacation or holiday deemed remuneration.

All amounts paid to a claimant by an employing unit or former employing unit for a vacation or a holiday, and amounts paid in the form of retroactive pay, or in lieu of notice, shall be deemed remuneration in determining whether an individual is unemployed under this section and also in determining his benefit payments under section 27 (c), for the period designated by the contract or agreement providing for the payment, or if there is no contractual specification of the period to which such payments shall be allocated, then for the period designated by the employing unit or former employing unit: Provided, however, That payments for a vacation or holiday made, or the right to which has irrevocably vested, after 14 days following such vacation or holiday, and payments in the form of termination, separation, severance or dismissal allowances, and bonuses, shall not be deemed wages or remuneration within the meaning of this section.

Leaves of absence granted.

An individual shall not be deemed to be unemployed during any leave of absence from work granted by an employer either at the request of the individual or pursuant to an agreement with his duly authorized bargaining agent, or in accordance with law.

HISTORY: Am. 1939, p. 813, Act 324, Imd. Eff. Jun. 22;—Am. 1942, 2nd Ex. Ses., p. 67, Act 18, Imd. Eff. Feb. 27;—Am. 1943, p. 457, Act 246, Imd. Eff. Jun. 1;—Am. 1947, p. 722, Act 360, Imd. Eff. Jul. 8;—CL 1948, 421.48;—Am. 1951, p. 407, Act 251, Imd. Eff. Jun. 17;—Am. 1954, p. 490, Act 197, Imd. Eff. May 7;—Am. 1955, p. 736, Act 281, Eff. Jul. 15.

421.48a Repealed. 1951, p. 408, Act 251, Imd. Eff. Jun. 17.

Section defined terms "unemployed" and "weekly benefit rate".

421.49 Statutory 15 day period ending on Saturday, Sunday or holiday; extension.

Sec. 49. Whenever the last day of the 15-day period, provided for in sections 14, 32a, 33, 34 and 38, falls on a Saturday, Sunday or legal holiday, such 15-day period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday.

The 15-day protest or appeal period after the mailing of a notice of determination or redetermination as provided in sections 14 and 32a of this act and the 1-year period from the date of mailing of the original determination as provided in section 32a of this act shall begin to run from either the date of mailing or from the date of personal service of such determination or redetermination.

HISTORY: Am. 1937, p. 857, Act 347, Imd. Eff. Aug. 5;—Am. 1941, p. 676, Act 364, Imd. Eff. Jul. 1;—Am. 1947, p. 723, Act 360, Imd. Eff. Jul. 8;—CL 1948, 421.49;—Rep. 1951, p. 408, Act 251, Imd. Eff. Jun. 17;—Add. 1955, p. 737, Act 281, Eff. Jul. 15;—Am. 1957, p. 601, Act 311, Imd. Eff. Jun. 21.

421.50 Week, credit week; definition.

Sec. 50. (a) "Week" means calendar week, ending at midnight Saturday, but all work performed and wages earned during a working shift which starts before midnight Saturday shall be included in the week in which such shift begins.

(b) "Credit week" means any calendar week of an individual's base period during

which he earned wages in excess of \$25.00 subject to the following paragraphs of this subsection:

(1) If an individual earns wages from more than 1 employer in a credit week, such week shall be counted as 1 multiemployer credit week and shall be governed by the provisions of subsection 20 (d), unless the individual has earned sufficient wages in his base period with only 1 of the employers for whom he performed services in said week of concurrent employment to entitle him to a maximum weekly benefit rate for his family class, in which case, such week shall be a credit week with respect to that employer only and not a multiemployer credit week.

(2) Not more than 35 uncanceled and uncharged credit weeks shall be counted as credit weeks. In determining the 35 credit weeks to be used for computing and paying benefits, credit weeks shall be counted in the following sequence:

(a) First, all such credit weeks which are not multiemployer credit weeks and which were earned with employers not involved in a disqualifying act or discharge under subsection 29 (1), and all such credit weeks earned with an employer involved in such a disqualifying act or discharge which were earned subsequent to the last such act or discharge in which the employer was involved, shall be counted in inverse order of most recent employment with each such employer.

(b) Second, if the credit weeks counted under paragraph (a) total less than 35, all credit weeks which are not multiemployer credit weeks and which were earned with each employer prior to a disqualifying act or discharge shall be counted, in inverse order to that in which the most recent disqualifying act or discharge with each employer occurred, to the extent necessary to use all available credit weeks with respect to such employers, or a total of 35 credit weeks, whichever is less.

(c) Third, if the credit weeks counted under paragraphs (a) and (b) total less than 35, all multiemployer credit weeks shall be counted, in inverse chronological order of their occurrence, to the extent necessary to count all available credit weeks, or a total of 35 credit weeks, whichever is less.

(3) As used in this subsection:

(a) The term "uncharged credit week" means a credit week which has not been used as a basis for a benefit payment, a reduction of benefits under subsection 29 (4), or a forfeiture under subsection 62 (b).

(b) The term "uncanceled credit week" means a credit week which is not canceled in accordance with subsection 62 (b).

(4) There shall not be counted toward the wages required to establish a credit week under this subsection payments in the form of termination, separation, severance or dismissal allowances; nor shall there be so counted any payments for a vacation or a holiday unless such payment has been made, or the right to receive it has irrevocably vested, within 14 days following such vacation or holiday.

HISTORY: Am. 1947, p. 723, Act 380, Eff. Jan. 1, 1948;—CL 1948, 421.50;—Am. 1948, p. 423, Act 282, Imd. Eff. Jun. 11;—Am. 1951, p. 408, Act 251, Imd. Eff. Jun. 17;—Am. 1954, p. 490, Act 197, Imd. Eff. May 7;—Am. 1955, p. 737, Act 281, Eff. Jul. 15;—Am. 1965, p. 519, Act 281, Eff. Sep. 5;—Am. 1967, p. 482, Act 254, Imd. Eff. Jul. 19;—Am. 1970, p. 53, Act 14, Imd. Eff. Apr. 14.

421.51 Benefits, average weekly wage; definitions.

Sec. 51. "Benefits" means the money payments payable to an eligible and qualified individual, as provided in this act, with respect to unemployment.

An individual's "average weekly wage", with respect to a base period employer, shall be the amount determined by dividing his total wages for credit weeks earned from such employer by the number of such credit weeks.

HISTORY: Am. 1947, p. 723, Act 380, Imd. Eff. Jul. 8;—CL 1948, 421.51;—Am. 1951, p. 408, Act 251, Imd. Eff. Jun. 17.

421.51a Repealed. 1951, p. 408, Act 251, Imd. Eff. Jun. 17.

Section defined terms "benefits" and "average weekly wage".

421.52 State; definition.

Sec. 52. "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico and the Virgin Islands of the United States.

HISTORY: CL 1948, 421.52;—Am. 1965, p. 519, Act 281, Eff. Sep. 5;—Am. 1968, p. 646, Act 338, Imd. Eff. Jul. 19;—Am. 1970, p. 54, Act 14, Imd. Eff. Apr. 14.

421.53 Social security act, Wagner-Peyser act; definitions.

Sec. 53. Same; social security act, Wagner-Peyser act. "Social security act" means the social security act passed by the congress of the United States of America, approved August 14, 1935, as amended.

"Wagner-Peyser act" means the act passed by the congress of the United States of America entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of said system, and for other purposes," approved June 6, 1933 (48 statutes, 113; United States code, title 29, section 49(c)), as amended, known as the Wagner-Peyser act.

HISTORY: Am. 1937, p. 857, Act 347, Imd. Eff. Aug. 5;—CL 1948, 421.53.

NOTE: The social security act, above referred to, is 42 U.S.C.A. § 301 et seq. The Wagner-Peyser Act, above referred to, is 29 U.S.C.A. § 49 et seq.

421.54 Violations of act; penalties.

Sec. 54. (a) Any person who shall wilfully violate or fail to comply with any of the provisions of this act, or any regulation of the commission promulgated under the authority of this act, and whose violation is not otherwise covered by the penalty provisions of this act shall be deemed guilty of a misdemeanor.

(b) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or knowingly and wilfully with intent to defraud fails to disclose a material fact, to obtain or increase any benefit or other payment under this act or under the unemployment compensation law of any state or of the federal government, either for himself or any other person, to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining a subject employer, or to avoid or reduce any contribution or other payment required from an employing unit under this act or under the unemployment compensation law of any state or of the federal government and whose violation is not otherwise covered by the penalty provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than 90 days or by a fine of not more than \$100.00, or by both such fine and imprisonment.

(c) Any employing unit or any officer or agent of an employing unit or any other person failing within 10 days after demand in writing by the commission, to submit any contribution report, wage and employment report or such other reports as are lawfully prescribed and required by the commission shall be subject to the assessment of a penalty of \$10.00 for each such report not submitted within the time prescribed by the commission, except that when such report or reports are filed after the prescribed time and it is shown to the satisfaction of the commission that the failure to submit such reports was due to reasonable cause and not to wilful neglect, no such penalty shall be imposed: Provided further, That an additional \$10.00 penalty shall be assessed for each additional month until the report is filed. The assessment of such penalties as are provided in this subsection shall constitute a determination which shall be final unless the employer files with the commission an application for a redetermination of such assessment in accordance with the provisions of section 32a.

(d) If any commissioner, employee or agent of the commission or member of the appeal board wilfully makes any disclosure of confidential information obtained from any employing unit or individual in the administration of this act for any purpose inconsistent with or contrary to the purposes of this act, or any person who having ob-

tained any list of applicants for work, or of claimants or recipients of benefits, under this act shall use or permit the use of such list for any political purpose or for any purpose inconsistent with or contrary to the purposes of this act, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than 90 days or by a fine of not more than \$100.00, or by both such fine and imprisonment.

(e) Any person who, without proper authority from the commission, represents himself to be an employee of the commission to any employing unit or person for the purpose of securing information regarding the unemployment or employment record of any individual shall be deemed to be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than 90 days or by a fine of not more than \$100.00, or by both such fine and imprisonment.

(f) Any person associated with any college, university or public agency of this state who makes use of any information, obtained from the commission in connection with a research project of a public service nature, in such a manner as to reveal the identity of any individual or employing unit from or concerning whom such information was obtained by the commission, or for any purpose other than use in connection with such a research project, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than 90 days or by a fine of not more than \$100.00, or by both fine and imprisonment.

(g) A person as used in this section includes an individual, co-partnership, joint venture, corporation, receiver or trustee in bankruptcy.

HISTORY: Am. 1939, p. 813, Act 324, Imd. Eff. Jun. 22;—Am. 1941, p. 676, Act 364, Imd. Eff. Jul. 1;—Am. 1947, p. 723, Act 360, Imd. Eff. Jul. 6;—CL 1948, 421.54;—Am. 1965, p. 519, Act 281, Eff. Sep. 5;—Am. 1965, p. 801, Act 398, Imd. Eff. Oct. 26.

421.55 Catchline headings of section not part of act.

Sec. 55. Catchline headings of sections not part of act. The catchline headings of the sections of this act shall in no way be considered to be a part of the respective sections or of this act but are inserted herein for purposes of convenience.

HISTORY: CL 1948, 421.55.

421.56 American vessel, American aircraft; definitions.

Sec. 56. "American vessel" as used in this act means a vessel documented or numbered under the laws of the United States, or a vessel which is neither documented nor numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by 1 or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state. "American aircraft" means an aircraft registered under the laws of the United States.

HISTORY: Add. 1965, p. 520, Act 281, Eff. Sep. 5.

Original section 56 of Act 1 of 1936 (Ex. Ses.), p. 3, was a severing clause section and was repealed by Act 267 of 1945.

421.57 Amendment or repeal of act.

Sec. 57. Amendment or repeal of act. All the rights, privileges or immunities conferred under or by virtue of the provisions of this act, or acts done pursuant thereto, shall exist subject to the power of amendment or repeal of this act by the legislature.

HISTORY: CL 1948, 421.57.

421.58 Suspension of provisions.

Sec. 58. Suspension of certain provisions. If at any time the governor shall find that the provisions of this act requiring the payment of contributions and benefits have been held invalid under the constitution of this state by the supreme court of this state, or under the United States constitution by the supreme court of the United States, in such manner that any person or concern required to pay contributions under this act might secure a similar decision, the governor shall publicly so proclaim and

upon the date of such proclamation, the provisions of this act requiring the payment of contributions and benefits shall be suspended. The commission shall thereupon requisition from the unemployment trust fund all moneys therein standing to its credit and shall direct the treasurer of the unemployment compensation fund to deposit such moneys, together with any other moneys in the fund, as a special fund in any banks or public depositories in this state in which general funds of the state may be deposited and to hold such moneys for such disposition as the legislature may prescribe.

HISTORY: Am. 1937, p. 857, Act 347, Imd. Eff. Aug. 5;—CL 1948, 421.58.

421.59 Repeal.

Sec. 59. Repeal. All acts and parts of acts in so far as inconsistent with the provisions of this act are hereby repealed, and whenever provisions of a general act are inconsistent with this act, then the provisions of this act only shall prevail in so far as this act is concerned.

HISTORY: Am. 1941, p. 677, Act 364, Imd. Eff. July 1;—CL 1948, 421.59.

421.60 Advance from federal fund; repayment.

Sec. 60. Upon request of the commission acting under the authority of section 26 (g) of this act, the governor may apply under section 1201 of the federal social security act to the secretary of labor of the United States for an advance to the unemployment compensation fund of this state; and, upon request of the commission, the governor shall request, under section 1202 (a) of the social security act, a transfer from the account of the state of Michigan in the federal unemployment trust fund to the federal unemployment account in said trust fund in repayment of part or all of any remaining balance of such advances to the unemployment compensation fund of this state.

HISTORY: Add. 1949, p. 423, Act 282, Imd. Eff. Jun. 11;—Am. 1951, p. 408, Act 251, Imd. Eff. Jun. 17;—Am. 1954, p. 491, Act 197, Imd. Eff. May 7;—Am. 1955, p. 737, Act 281, Eff. Jul. 15;—Am. 1957, p. 601, Act 311, Imd. Eff. Jun. 21;—Am. 1958, p. 367, Act 230, Imd. Eff. Jun. 13;—Am. 1959, p. 451, Act 270, Imd. Eff. Oct. 30;—Am. 1965, p. 521, Act 281, Eff. Sep. 5;—Am. 1970, p. 54, Act 14, Imd. Eff. Apr. 14.

Original section of Act 1 of 1936 (Ex. Ses.), p. 3, (as added by Act 324 of 1939, p. 813), contained transition provisions and was repealed by Act 360 of 1947.

421.60a Protection of deaf.

Sec. 60a. The commission shall exercise and perform all the powers and duties in relation to the protection of the deaf and deafened, as are presently held and exercised by the department of labor under the provisions of Act No. 72 of the Public Acts of 1937, being sections 408.201 to 408.205 of the Compiled Laws of 1948.

HISTORY: Add. 1957, p. 601, Act 311, Imd. Eff. Jun. 21.

421.61 Repealed. 1951, p. 408, Act 251, Imd. Eff. Jun. 17.

Section provided for disqualification due to other benefits.

421.62 Benefits obtained illegally; recovery.

Sec. 62. (a) If the commission determines that any person has obtained benefits to which he is not entitled for any reason, the commission shall recover a sum equal to the amount so received by 1 or a combination of the following methods: (1) deduction from any benefits that may be or may become payable to the individual, or (2) payment by the individual to the commission in cash.

(b) If the commission determines that any person has intentionally made a false statement or misrepresentation or has concealed material information to obtain benefits, whether or not he obtains benefits by or because of such intentional false statement, misrepresentation or concealment of material information he shall, in addition to any other applicable penalties, have all of his uncharged credit weeks with respect to the benefit year in which such act occurred canceled as of the date the commission receives notice of, or initiates investigation of, possible false statement, or misrepresentation or concealment of material information whichever date is earlier. He shall thereafter forfeit the first 6 weeks of benefits which would otherwise be payable to him for any week within 52 weeks following his completion of restitution required un-

der subsection (a) of this section. The forfeiture does not apply to an individual who has been convicted under section 54 or any other criminal statute if prosecution thereunder was based upon a violation of the provisions of this act. Forfeited benefits shall be charged to the rating account of the currently chargeable employer and credited to the solvency account.

(c) If the commission determines that any employer subject to the provisions of this act has personally, or by agent or employee, intentionally made a false statement or misrepresentation or has concealed material information to avoid, prevent or decrease the payment of benefits or to avoid or reduce liabilities for charges of benefits, in addition to any other applicable penalties under this act, he shall forfeit to the commission an amount equal to the total amount of any benefits which are or would be allowed the individual, with respect to whose claim for benefits the false statement, misrepresentation or concealment of information was made, on the basis of his employment with such employer, as finally determined or adjudicated.

(d) An employing unit or an officer or agent of an employing unit who intentionally makes a false statement or misrepresentation or conceals material information to obtain or increase any benefit or other payment under this act for himself or any other person, shall, in addition to any other applicable penalties under this act, forfeit to the commission an amount equal to the total amount of any benefits so obtained or increased.

(e) Any determination made by the commission under this section of the act shall be final unless an application for a redetermination is filed with the commission in accordance with the provisions of section 32a.

(f) The commission shall take such action as may be necessary to recover all benefits improperly obtained or paid under this act and to enforce all forfeitures under the provisions of subsections (b), (c) and (d) of this section.

HISTORY: Add. 1939, p. 814, Act 324, Imd. Eff. Jun. 22;—Am. 1941, p. 678, Act 364, Imd. Eff. Jul. 1;—Am. 1947, p. 725, Act 360, Imd. Eff. Jul. 8;—CL 1948, 421.62;—Am. 1955, p. 737, Act 281, Eff. Jul. 15;—Am. 1965, p. 521, Act 281, Eff. Sep. 5;—Am. 1967, p. 483, Act 254, Imd. Eff. Jul. 19;—Am. 1970, p. 54, Act 14, Imd. Eff. Apr. 14.

421.63 Effective date and applicability of amendments.

Sec. 63. (a) If this 1970 amendatory act is given immediate effect, the effective date of this amendatory act shall be the first day of the calendar week containing the thirtieth day after it is approved by the governor or becomes law without his approval.

(b) An individual who has a current and unexhausted benefit year on the effective date of this 1970 amendatory act shall have his weekly benefit rate and maximum amount of benefits recomputed in accordance with this amendatory act with respect to any week of unemployment beginning on or after that date on that portion of his benefit rights not exhausted prior to that date but his weekly benefit rate and maximum amount of benefits established and not exhausted prior to the effective date of this 1970 amendatory act shall not be subject to reduction or elimination by such re-computation.

(c) The amended provisions of subsections 27 (f) (5), 46 (a) and section 50 (b) of this 1970 amendatory act shall apply only with respect to benefit years beginning on or after the effective date of this 1970 amendatory act.

(d) The commission shall apply the amended provision of subsection 29 (3) (a) with respect to weeks beginning on or after the effective date of this 1970 amendatory act, notwithstanding any prior determination, redetermination or decision with respect to subsection 29 (3) (a) of the law in effect prior to this 1970 amendatory act.

HISTORY: Add. 1965, p. 522, Act 281, Eff. Sep. 5;—Am. 1967, p. 483, Act 254, Imd. Eff. Jul. 19;—Am. 1970, p. 55, Act 14, Imd. Eff. Apr. 14.

421.64 Extended benefits; rate; eligibility.

Sec. 64. (1) (a) Payment of extended benefits under this section shall be made at the individual's weekly benefit rate as defined in subsection (6) (d), for any week of unemployment which begins in the individual's eligibility period, to each individual who is fully eligible and not disqualified under this act, who has exhausted all rights to regular benefits under this act and who has no rights to regular benefits with respect to such week under any unemployment compensation law of another state or the United States or to compensation under any other federal law, such as readjustment allowances under the trade expansion act of 1962 or the automotive products trade act of 1965, and is not claiming or receiving unemployment benefits with respect to such week under the unemployment insurance law of Canada. For the purpose of the preceding sentence, an individual shall have exhausted his rights to regular benefits under this section with respect to any week of unemployment in his eligibility period:

(i) When no payments of regular benefits can be made to him for such week because such individual has received all regular benefits available to him based on his employment or wages during the base period for his current benefit year, or

(ii) When his rights to such benefits have terminated prior to such week by reason of the expiration of the benefit year with respect to which such rights existed; and he has no (or insufficient) wages or employment to establish a new benefit year: Provided, That for purposes of this subsection, an individual shall be deemed to have exhausted his rights to regular benefits with respect to any week of unemployment in his eligibility period, when he may become entitled to regular benefits with respect to such week, or future weeks, but such benefits are not payable at the time he claims extended benefits because final action has not yet been taken with respect to eligibility or qualification for such regular benefits.

(b) Except where inconsistent with the provisions of this section, the terms and conditions of this act which apply to claims for regular benefits, and to the payment thereof shall apply to claims for extended benefits and to the payment thereof.

Extended benefit account; amount.

(2) The commission will establish, for each eligible individual who files an application therefor, an extended benefit account with respect to such individual's benefit year. The amount established in such account shall be whichever of the following is the lesser:

(a) Fifty percent of the total amount of regular benefits payable to him under this act during such benefit year, or

(b) Thirteen times his weekly benefit rate.

In case any amount determined under paragraph (a) or (b) of this subsection is not an exact multiple of $\frac{1}{2}$ the individual's weekly extended benefit rate, the amount shall be increased to the next higher such multiple.

Extended benefit period, duration.

(3) An extended benefit period:

(a) Shall begin with the third week after whichever of the following weeks first occurs:

(i) A week for which there is a national "on" indicator, or

(ii) A week for which there is a Michigan "on" indicator, and

(b) Shall end with the third week after the first week for which there is both a national "off" indicator and a Michigan "off" indicator.

(c) Shall not last for a period of less than 13 consecutive weeks, and shall not begin by reason of a Michigan "on" indicator before the fourteenth week after the close of a prior extended benefit period under this section.

Eligibility period, determination.

(4) An individual shall have an eligibility period only if he has a benefit year current on the beginning date of an extended benefit period. In such case, the individual's eligibility period shall include all weeks which begin in such extended benefit period.

Indicators, defined.

(5) (a) There is a national "on" indicator for a week if for each of the 3 most recent calendar months ending before such week, the rate of insured unemployment, seasonally adjusted, for all states equaled or exceeded 4.5%, determined by reference to the average monthly covered employment for the first 4 of the most recent 6 calendar quarters ending before the month in question.

(b) There is a national "off" indicator for a week if for each of the 3 most recent calendar months ending before such week, the rate of insured unemployment, seasonally adjusted, for all states was less than 4.5%, determined by reference to the average monthly covered employment for the first 4 of the most recent 6 calendar quarters ending before the month in question.

(c) There is a Michigan "on" indicator for a week if the rate of insured unemployment under this act for the period consisting of such week and the immediately preceding 12 weeks:

(i) Equaled or exceeded 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years, and

(ii) Equaled or exceeded 4%.

(d) There is a Michigan "off" indicator for a week if, for the period consisting of such week and the immediately preceding 12 weeks, either subsection (5) (c) (i) or subsection (5) (c) (ii) was not satisfied.

(e) For purposes of subsections (5) (c) and (d), the rate of insured unemployment for any 13-week period shall be determined by reference to the average monthly covered employment under this act for the first 4 of the most recent 6 calendar quarters ending before the close of such period.

(f) For purposes of subsection (5), the term "rate of insured unemployment" means the percentage arrived at by dividing:

(i) The average weekly number of individuals filing claims for weeks of unemployment with respect to the specified period, as determined on the basis of the reports made by all state agencies, or in the case of subsections (5) (c) and (d), by the commission, to the federal government; by

(ii) In the case of subsections (5) (a) and (b), the average monthly covered employment under all state laws for the specified period; and, in the case of subsections (5) (c) and (d), the average monthly covered employment under this act for the specified period.

(g) Calculations under subsections (5) (c) and (d) shall be made by the commission and shall conform to regulations, if any, prescribed by the United States secretary of labor under authority of the federal-state extended unemployment compensation act of 1970.

Definitions.

(6) For purposes of this section:

(a) "Regular benefits" means benefits payable to an individual under this act and, unless otherwise expressly provided, under any other state unemployment compensation law, including unemployment benefits payable pursuant to 5 U.S.C. chapter 85, other than extended benefits, and additional benefits which includes training benefits under subsection 27 (k).

(b) "Extended unemployment benefits" means benefits, including additional benefits and unemployment benefits payable pursuant to 5 U.S.C. chapter 85, payable for weeks of unemployment beginning in an extended benefit period to an individual as provided under this section.

(c) "Additional benefits" means benefits payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors including training benefits under subsection 27 (k).

(d) "Weekly extended benefit rate" means an amount equal to the amount of regular benefits payable under this act to an individual within his benefit year for a week of total unemployment, unless the individual had more than 1 such weekly rate within such benefit year in which case his weekly extended benefit rate shall be computed by dividing the maximum amount of regular benefits payable under this act to him within his benefit year by the number of weeks for which such benefits were payable, adjusted to the next higher multiple of \$1.00.

(e) "Benefits payable" includes all benefits computed in accordance with subsection 27 (d) of the act, irrespective of whether the individual was otherwise eligible for such benefits within his current benefit year and irrespective of any benefit reduction by reason of a disqualification which required such reduction.

Extended periods; beginning dates.

(7) (a) No extended benefit period on the basis of a national "on" indicator may begin with a calendar week starting before January 1, 1972.

(b) With respect to calendar weeks beginning before January 1, 1972, an extended benefit period under this section shall be determined solely by reference to the Michigan "on" indicator and the Michigan "off" indicator, however no extended benefit period established on the basis of a Michigan "on" indicator may begin with a week earlier than 60 days after the date of the enactment of the federal-state extended unemployment compensation act of 1970.

HISTORY: Add. 1970, p. 401, Act 128, Imd. Eff. Jul. 27.

421.201-421.212. Expired June 30, 1965.

Sections (Secs. 1-12, Act 239, 1964, p. 326, Imd. Eff. May 28) authorized Michigan employment security commission to establish work training programs for youth. Sections expired June 30, 1965 by the terms of the act.

Act 170, 1958, p. 193; Imd. Eff. Apr. 18.

AN ACT to authorize cities or counties to establish a system of unemployment compensation for their employees. Am. 1959, p. 283, Act 198, Imd. Eff. Jul. 22.

The People of the State of Michigan enact:

421.501 City or county unemployment compensation system; benefits inalienable.

Sec. 1. Notwithstanding any other provisions of law, any city or county may establish, by ordinance, a system of unemployment compensation to cover its own employees and may adopt such conditions in connection therewith as it may deem proper. Benefits payable to any person under a city system of unemployment compensation shall be inalienable to the same extent as benefits payable under Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being sections 421.1 to 421.62 of the Compiled Laws of 1948.

HISTORY: New 1958, p. 193, Act 170, Imd. Eff. Apr. 18;—Am. 1959, p. 283, Act 198, Imd. Eff. Jul. 22.

CHAPTER 423. LABOR—MEDIATION—PUBLIC EMPLOYMENT—FAIR EMPLOYMENT PRACTICES

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Act 176, 1939, p. 336; Imd. Eff. Jun. 8.

AN ACT to create a board for the mediation of labor disputes, and to prescribe its powers and duties; to provide for the mediation and arbitration of labor disputes, and the holding of elections thereon; to provide methods for settlement of hospital or public utility labor disputes, including the use of special fact finding commissions, to regulate the conduct of parties to labor disputes and to require the parties to follow certain procedures; to regulate and limit the right to strike and picket; to protect the rights and privileges of employees, including the right to organize and engage in lawful concerted activities; to protect the rights and privileges of employers; to make certain acts unlawful; and to prescribe means of enforcement and penalties for violations of the provisions of this act. Am. 1947, p. 524, Act 318, Eff. Oct. 11;—Am. 1949, p. 272, Act 230, Imd. Eff. May 31;—Am. 1965, p. 523, Act 282, Imd. Eff. Jul. 22.

The People of the State of Michigan enact:

423.1 Declaration of policy.

Sec. 1. It is hereby declared as the public policy of this state that the best interests of the people of the state are served by the prevention or prompt settlement of labor disputes; that strikes and lockouts and other forms of industrial strife, regardless of where the merits of the controversy lie, are forces productive ultimately of economic waste; that the interests and rights of the consumers and the people of the state, while not direct parties thereto, should always be considered, respected and protected; and that the voluntary mediation of such disputes under the guidance and supervision of a governmental agency will tend to promote permanent industrial peace and the health, welfare, comfort and safety of the people of the state.

HISTORY: CL 1948, 423.1.

CITED IN OTHER SECTIONS: Sections 423.1 to 423.30 are cited in § 340.509b.

423.2 Labor mediation; definitions.

Sec. 2. When used in this act:

(a) "Company union" includes any employee association, committee, agency or representation plan, formed or existing for the purpose, in whole or in part, of dealing with employers concerning grievances or terms and conditions of employment, which in any manner or to any extent, and by any form of participation, interference or assistance, financial or otherwise, either in its organization, operation or administration, is dominated or controlled, sponsored or supervised, maintained, directed or financed by the employer.

(b) "Dispute" and "labor dispute" shall include but are not restricted to any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of employees in negotiating, fixing, maintaining or changing terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(c) "Board" means the employment relations commission. Wherever the term labor mediation board appears in this or any other act it means the employment relations commission created by section 3.

(d) "Person" includes an individual, partnership, association, corporation, business trust or labor organization.

(e) "Employee" includes any employee, and shall not be limited to the employees of a particular employer, unless the act explicitly provides otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any

current labor dispute or because of any act which is illegal hereunder, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or any person at his home, or any individual employed by his parent or spouse, or any individual employed as an executive or supervisor, or any individual employed by an employer subject to the railway labor act, as amended from time to time, or by any other person who is not an employer as herein defined.

(f) "Employer" means a person and includes any person acting as an agent of an employer, but shall not include the United States or any corporation wholly owned by the United States, or any federal reserve bank, or any employer subject to the railway labor act, as amended from time to time, or the state or any political subdivision thereof, or any labor organization, or anyone acting in the capacity of officer or agent of such labor organization, other than when acting as an employer.

(g) "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

(h) "Public utility service" means the furnishing for compensation of water, light, heat, gas, electric power, public passenger transportation, other than taxi service, communication or any 1 or more of them, to the public of this state, but shall not include transportation service rendered by an employer subject to the railway labor act.

(i) "Public utility employee" means an employee of an employer engaged in providing public utility service.

(j) "Public utility employer" means an employer engaged in providing public utility service.

HISTORY: CL 1948, 423.2;—Am. 1949, p. 273, Act 230, Imd. Eff. May 31;—Am. 1969, p. 361, Act 181, Imd. Eff. Aug. 5.

423.3 Labor mediation board; members, qualifications, terms.

Sec. 3. There is created a state board to be known as the labor mediation board, which shall consist of 3 members appointed by the governor, with the advice and consent of the senate. Each member shall be a citizen of the United States and a resident of the state, and shall have been a qualified elector in the state for a period of at least 5 years next preceding appointment. Members of the board shall be selected so as to insure that no more than 2 members represent any one political party and all members shall be appointed for the term of 3 years each.

HISTORY: CL 1948, 423.3;—Am. 1969, p. 384, Act 202, Eff. Mar. 20, 1970.

CITED IN OTHER SECTIONS: The above section is cited in § 16.481.

423.4 Labor mediation board; oath of office; vacancies; removal; chairman; quorum.

Sec. 4. Members of the board shall qualify by taking and subscribing to the constitutional oath of office, and shall hold office until the appointment and qualification of their successors. Vacancies shall be filled in the same manner as is provided for appointment in the first instance for the remainder of the unexpired term. The governor shall designate 1 member to serve as chairman of the board. Any member of the board may be removed by the governor for misfeasance, malfeasance or nonfeasance in office, after hearing. A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the board. Two members of the board shall at all times constitute a quorum; but official orders shall require concurrence of a majority of the board. The board shall have an official seal of which courts shall take judicial notice.

HISTORY: CL 1948, 423.4.

423.5 Labor mediation board; members, compensation, expenses.

Sec. 5. Members of the board shall receive such compensation as is appropriated by the legislature. Members and employees of the board shall be entitled to actual and necessary traveling and other expenses incurred in the performance of duties under this act. The compensation and expenses of members and employees of the board shall be paid in accordance with the accounting laws of the state.

HISTORY: CL 1948, 423.5;—Am. 1957, p. 311, Act 253, Imd. Eff. Jun. 6;—Am. 1969, p. 353, Act 174, Imd. Eff. Aug. 5.

423.6 Labor mediation board; secretary; compensation; assistants, expenses, compensation.

Sec. 6. The board may appoint a secretary, who shall receive such compensation and perform such duties and have such powers as the board shall prescribe, and such assistants and employees as it may from time to time find necessary for a proper performance of its duties, who shall be entitled to receive actual and necessary travel and other expenses incurred in the performance of their duties, and such compensation as shall be determined by the board, subject to the laws of this state with respect thereto. The board is also authorized to incur such other expense as may be necessary to carry out the provisions of this act.

HISTORY: CL 1948, 423.6.

423.7 Labor mediation board; offices; rules and regulation, authority of board to adopt.

Sec. 7. The principal office of the board shall be in the city of Lansing. It shall be the duty of the board of state auditors to provide suitable office space for the use of the board. The board shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this act.

HISTORY: CL 1948, 423.7.

423.8 Employees; right to organize, collective bargaining.

Sec. 8. It shall be lawful for employees, to organize together or to form, join or assist in labor organization, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their employers through representatives of their own free choice.

HISTORY: CL 1948, 423.8.

423.9 Acts required prior or lockout; notice of dispute, service, time; settlement by mediation.

Sec. 9. No strike or lockout shall take place or be put into effect until and unless each of the steps have been taken and the requirements complied with as provided in this section.

1. In the event the parties thereto are unable to settle any labor dispute, the employees or their representatives, in the case of impending strike, or the employer or his agent, in the case of an impending lockout, shall serve notice of such dispute together with a statement of the issues involved upon the board and the other party to the dispute. Said notice may be served personally on any member of the board and a copy thereof personally served upon the other party, or sent by registered mail to the board at a regularly established office thereof and to the employer or the representative of his employees at his regular address not less than 10 days before the strike or lockout is to become effective, or in the case of an industry rendering a hospital or public utility service, said notice shall be so served not less than 30 days before the strike or lockout is to become effective.

2. Upon receipt of such notice it shall be the duty of the board to exercise the powers herein granted to effect a settlement of such dispute by mediation between the parties. Prior to the calling of an election as provided hereinafter, it shall be the duty of each of the parties to such dispute to actively and in good faith participate in the mediation thereof. At least 1 member of the board, to be designated by the chairman, shall actively participate in the negotiations to mediate any dispute in an industry rendering a hospital or public utility service.

HISTORY: Am. 1947, p. 524, Act 318, Eff. Oct. 11;—CL 1948, 423.9;—Am. 1949, p. 273, Act 230, Imd. Eff. May 31.

423.9a Election to strike; board, notice, holding election, time, place; rules and regulations; eligibility of voters; disputes involving hospital or public utility service.

Sec. 9a. (1). In the event that it becomes apparent to the board that there is no reasonable probability of settlement of a labor dispute by mediation and that further efforts to that end would be without avail, there shall be held in the case of an impending strike, an election upon such issue which election shall be conducted and supervised by the board, or by its duly authorized representative. In the event either party to said dispute notifies the board in writing, a copy of which shall at the same time be served on the other party, that, in the opinion of such party, further efforts to settle said dispute by mediation would be without avail, it shall be the duty of the board to cause an election to be held within 10 days of the receipt of such notice unless it is not practicable to hold such election within said period, in which event said election shall be held within 20 days of receipt of such notice. Every employee in the bargaining unit, which is involved in such dispute, as such bargaining unit is determined under section 9e of this act or as recognized by the employer or as identified by contract or past practice, shall be entitled to vote in such election and in order to authorize a strike under the provisions of this act, a majority of all employees casting valid ballots must vote in favor of such action. Said election shall be by secret ballot, and shall be held on the premises where those voting are employed unless the board shall determine that the election cannot be fairly held there, in which case it shall be held at such place as the board shall determine. The board shall have the power and authority to promulgate such rules and regulations as shall be necessary to effectively conduct any election, including provisions for absentee voting. Such provisions shall facilitate voting by all employees, but shall also insure secrecy of the ballot. The wilful violation of any such rules and regulations shall be a violation of the provisions of this act. The board shall also have the power and authority to determine, after proper hearing (which may be held either before or after an election and may be conducted by a duly authorized representative of the board) any disputed issue concerning the eligibility of a person or persons to vote in such election. Any such determination with respect to eligibility shall be applicable in the administration of this section, but shall have no force and effect for any other purpose under this act.

(2) Anything in this section to the contrary notwithstanding, if a dispute involves a hospital or public utility service, and said dispute is certified to the governor as provided in section 13a of this act, an election under this section 9a shall not be conducted until the expiration of at least 10 days following the filing with the governor of the report of such special commission.

HISTORY: Am. 1947, p. 524, Act 318, Eff. Oct. 11;—CL 1948, 423.9a;—Am. 1949, p. 274, Act 230, Imd. Eff. May 31.

423.9b Ceasing employment or operation of business during mediation or until strike authorized; prohibited.

Sec. 9b. It shall be the duty of both employees and employer to avoid a cessation of employment or a change in the normal operation of the business during the entire pe-

riod in which the respective steps required by section 9 of this act are being taken or until a strike is authorized by an election held as provided in section 9a.

HISTORY: Add. 1947, p. 525, Act 318, Eff. Oct. 11;—CL 1948, 423.9b.

423.9c Jurisdictional dispute; bargaining unit representation; mediation; election, expenses; rules, violation; strike limitations.

Sec. 9c. Whenever a jurisdictional dispute arises in regard to representation of employees in any bargaining unit, it shall be the duty of each party to such dispute or its representative to at once file with the board a statement of the claim of such party and at the same time serve a copy upon each interested party. Upon receipt thereof it shall be the duty of the board, if possible, to settle such dispute by mediation. If the dispute cannot be thus settled, the board shall call an election of the employees in the unit involved, as such unit is herein provided, to determine such issue as provided in section 9a of this act. No strike shall take place or be put into effect pending the determination of such issue as herein provided. The expense of such election shall not be paid by the union or unions contending for such right of representation but by the state. The board shall have the power and authority to promulgate such rules and regulations as shall be necessary to effectively conduct any election and the wilful violation of any such rules and regulations shall be a violation of the provisions of this act.

HISTORY: Add. 1947, p. 525, Act 318, Eff. Oct. 11;—CL 1948, 423.9c;—Am. 1949, p. 275, Act 230, Imd. Eff. May 31.

423.9d Voluntary arbitration; procedure; agreement binding, to be in writing, contents; expense; conducting hearing; transcripts; finding; award enforceable; penalty.

Sec. 9d. 1. Any labor dispute, other than a representation question, may lawfully be submitted to voluntary arbitration in the manner provided in this section: Provided, That arbitration of labor disputes without complying with the provisions of this section shall be valid as it has heretofore been under the common law.

2. (a) Whenever a labor dispute involves the meaning or interpretation of an existing collective agreement between an employer and a labor organization and the collective agreement provides for the use of a designated arbitrator to decide disputes thereunder, or provides the method for selection of arbitrator or arbitrators, the provisions of such agreement shall be binding upon the parties, and shall be complied with unless the parties agree to submit the dispute to some other arbitration procedure.

(b) Disputes, other than representation questions, for which no settlement procedure by arbitration is provided under any collective agreement between the employer and the labor organization involved, may be submitted to arbitration by agreement of the parties. The agreement to arbitrate shall be in writing, shall provide that such arbitration shall be conducted pursuant to the provisions of this section, and shall include an undertaking by each of the parties thereto that he will faithfully abide by and perform the arbitration award. Such agreement, or a supplemental agreement, shall also specify the issue or issues to be decided, shall make provision for the payment by the parties, or either of them, of the costs and expenses of the arbitration, and may include such other provisions, not inconsistent herewith, as shall be agreeable to the parties: Provided, That the board may, upon the request of the parties, and upon finding that the parties, or either of them, are unable to bear the expense of the arbitration, designate an arbitrator for a dispute, in which event the expense of the arbitration, including a per diem fee of \$50.00 and necessary expenses of the arbitrator, shall be paid out of the general fund. Any such agreement to arbitrate an existing or future dispute shall be enforceable in equity by any circuit court having jurisdiction.

3. The arbitrator or arbitrators designated in a proceeding hereunder shall within 20 days after his or their appointment, proceed to conduct hearings in the dispute. Reasonable notice of such hearings shall be given to the parties, who may appear and be

heard both in person and by counsel or other representative. Hearings shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any oral or documentary evidence and other data deemed relevant by the arbitrator or arbitrators may be received in evidence. A transcript of the proceedings shall be taken if the arbitrator or arbitrators so desire, or at the request and at the expense of any party. Within 30 days after the conclusion of the hearing, or within such additional period as the parties shall stipulate, the arbitrator or arbitrators shall make written findings and promulgate a written opinion and award upon the issue or issues presented, and shall mail or otherwise deliver a true copy thereof to each of the parties. A majority vote of the arbitrators, if there be more than 1, shall constitute a decision on any matter: Provided, That this section shall not supersede or invalidate the provisions of any collective agreement under which the parties are required to arbitrate disputes under subsection 2 (a) of this section.

4. An award rendered in a proceeding hereunder shall be enforceable at law or in equity as the agreement of the parties.

HISTORY: Add. 1947, p. 528, Act 318, Eff. Oct. 11;—CL 1948, 423.9d;—Am. 1949, p. 275, Act 230, Imd. Eff. May 31.

423.9e Arbitration board; determination of bargaining unit, adopting unit recognized by employer.

Sec. 9e. The board, after consultation with the parties, shall determine such a bargaining unit as will best secure to the employees their right of collective bargaining. The unit shall be either the employees of 1 employer employed in 1 plant or business enterprise within this state, not holding executive or supervisory positions, or a craft unit, or a plant unit, or a subdivision of any of the foregoing units: Provided, however, That if the group of employees involved in the dispute has been recognized by the employer or identified by certification, contract or past practice, as a unit for collective bargaining, the board may adopt such unit.

HISTORY: Add. 1947, p. 528, Act 318, Eff. Oct. 11;—CL 1948, 423.9e;—Am. 1965, p. 523, Act 282, Imd. Eff. Jul. 22.

423.9f Mass picketing; threats or force, picketing private residence, misdemeanor.

Sec. 9f. It shall be unlawful (1) for any person or persons to hinder or prevent by masspicketing, unlawful threats or force the pursuit of any lawful work or employment, (2) to obstruct or interfere with entrance to or egress from any place of employment, (3) to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance, or (4) to engage in picketing a private residence by any means or methods whatever: Provided, That picketing, to the extent that the same is authorized under constitutional provisions, shall in no manner be prohibited. Violation of this section shall be a misdemeanor and punishable as such.

HISTORY: Add. 1947, p. 528, Act 318, Eff. Oct. 11;—CL 1948, 423.9f;—Am. 1949, p. 276, Act 230, Imd. Eff. May 31.

423.9g Strike election vote; ballot, statement of employer's latest offer to bargaining unit.

Sec. 9g. Whenever a vote is held pursuant to this act on the question of calling a strike, the board, if so requested by the employer or by the collective bargaining unit to be affected by the strike, shall cause to be either printed on the ballot or affixed thereto a copy or statement of the most recent offer submitted by the employer to the bargaining unit representing the employees in the course of collective bargaining negotiations between said employer and said unit.

HISTORY: Add. 1947, p. 528, Act 318, Eff. Oct. 11;—CL 1948, 423.9g.

423.10 Labor mediation board; duty and authority to assist in settlement.

Sec. 10. After the board has received the above notice, or upon its own motion, in an existing, imminent or threatened labor dispute, the board may end, upon the direc-

tion of the governor, the board must take such steps as it may deem expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between employer and employees which have precipitated or culminated in or threatened to precipitate or culminate in such labor dispute. To this end, it shall be the duty of the board:

(a) To arrange for, hold, adjourn or reconvene a conference or conferences between the disputants and/or 1 or more of their representatives;

(b) To invite the disputants and/or their representatives to attend such conference and submit, either orally or in writing, the grievances of and differences between the disputants;

(c) To discuss such grievances and differences with the disputants or their representatives; and

(d) To assist in negotiating and drafting agreements for the adjustment or settlement of such grievances and differences and for the termination or avoidance, as the case may be, of the existing or threatened labor dispute.

In carrying out any of its work under this act, the board may designate 1 of its members or an officer of the board to act in its behalf and may delegate to such designee 1 or more of its duties hereunder including, by way of illustration and not limitation, the mediation of specialized categories of disputes or grievances and, for such purpose, such designee shall have all of the powers hereby conferred upon the board in connection with the discharge of the duty or duties so delegated.

HISTORY: CL 1948, 423.10;—Am. 1965, p. 523, Act 282, Imd. Eff. Jul. 22.

423.11 Hearings; witnesses; service of process.

Sec. 11. The board and each member thereof and each person designated thereby shall have power to hold public or private hearings at any place within the state, subpoena witnesses and compel their attendance, administer oaths, take testimony and receive evidence. Subpoenas may be issued only after the mediation of a dispute shall have been actually undertaken.

(a). In case of contumacy or refusal to obey a subpoena issued to any person, the circuit court of any county within the jurisdiction of which the inquiry is carried on, upon application by the board or commission, shall have jurisdiction to issue to such person an order requiring such person to appear before the board or commission, to produce evidence or to give testimony touching the matter in question. Failure to obey any such order may be punished by the court as a contempt thereof.

(b). Process and papers of the board or commission may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person to be served. Return by the individual serving the same setting forth the manner of such service, return post office receipt or telegraph receipt therefor, shall be proof of service of the same.

HISTORY: CL 1948, 423.11.

CITED IN OTHER SECTIONS: The above section is cited in § 423.216.

423.12 Disqualification of member of board.

Sec. 12. No member or officer of the board having any financial interest in or having membership in or affiliation with any labor organization in a trade, business, or occupation in which a labor dispute exists or is threatened and of which the board has taken cognizance, shall be qualified to participate in any way in the acts or efforts of the board in connection with the settlement or avoidance thereof.

HISTORY: CL 1948, 423.12.

423.13 Applicability of certain provisions to public utilities and hospitals; disputes involving selection of collective bargaining representatives.

Sec. 13. The provisions of sections 13a to 13g shall be applicable only to public utility employers, public utility employees, hospital employers and hospital employees and to labor organizations representing such employees. Labor disputes involving the designation or selection of collective bargaining representatives for such employees shall not be certified by the board to the governor, as provided in section 13a, but such disputes shall be determined in accordance with sections 26 to 30.

HISTORY: Am. 1947, p. 526, Act 318, Eff. Oct. 11;—CL 1948, 423.13;—Am. 1949, p. 276, Act 230, Imd. Eff. May 31;—Am. 1965, p. 524, Act 282, Imd. Eff. Jul. 22.

423.13a Labor disputes involving hospital or public utility employees; selection of collective bargaining representatives; procedure.

Sec. 13a. (1) In case of any labor dispute involving hospital or public utility employees, except labor disputes concerning the designation or selection of collective bargaining representatives, the following procedure shall be followed.

(2) Disputes for which a settlement procedure is provided in a collective agreement between a hospital or public utility employer and a labor organization shall be handled in accordance with such procedure, or if such procedure does not terminate in voluntary arbitration or does not result in settlement, then in accordance with the procedure provided in subsection (3).

(3) Disputes concerning wages, hours or other terms or conditions of employment, or concerning the interpretation or application of a collective agreement, which are not settled pursuant to the procedure, if any, provided for such settlement in a collective agreement or in a separate agreement between a hospital or public utility employer and a labor organization, shall be handled and settled in accordance with the following procedure:

(a) The board shall intervene and investigate such dispute to determine whether the parties have engaged in collective bargaining as herein defined. The parties to a hospital or public utility dispute shall be obligated under this act to bargain collectively at all times. The parties shall be under a further obligation to participate actively and in good faith in the mediation of such dispute by the board.

(b) The board shall also, if at any time it concludes that the parties may not be able to settle their disputes by bargaining, mediation and conciliation, urge upon the parties that they submit the same to arbitration pursuant to section 9d. If, within 30 days following the notice to the board, the dispute has not been resolved, or submitted to voluntary arbitration, the board forthwith shall certify such dispute to the governor.

(c) The governor shall cause the dispute to be submitted to a special commission as provided in section 13b.

HISTORY: Add. 1949, p. 276, Act 230, Imd. Eff. May 31;—Am. 1965, p. 524, Act 282, Imd. Eff. Jul. 22.

Former section 423.13a (Sec. 13a, Act 318, 1947, p. 527, Eff. Oct. 11, as added) was repealed by Act 230, 1949, p. 279, Imd. Eff. May 31. It provided for circuit court aid in compelling the attendance or testimony of witnesses before the labor mediation board.

423.13b Labor disputes involving hospital or public utility employees; special commission; designation, hearings, expenses.

Sec. 13b. A special commission under this act shall consist of 3 disinterested persons designated by the governor and 2 non-voting members 1 to be selected by each party to the dispute, to act with respect to a labor dispute. Such commission shall proceed promptly to conduct public or private informal hearings in said dispute, at which the parties shall appear and be heard, following such hearings, and in any case within 30 days after its appointment or such additional time as the governor may allow, the commission shall make written findings and recommendations with respect to the issues in the dispute, and report such findings and recommendations to the governor. A majority vote of the members of the commission shall constitute the recommendation of the

commission on any matter. Such findings and recommendations shall not be binding upon the parties, but shall be made public. The costs and expenses of such a commission proceeding, including a per diem fee of \$50.00 and necessary expenses for each member of the commission, shall be paid out of the general fund.

HISTORY: Add. 1949, p. 277, Act 230, Imd. Eff. May 31.

423.13c Labor disputes involving hospital or public utility employees; notice of hearing; transcript.

Sec. 13c. Reasonable notice of such hearings shall be given to the parties, who shall appear and be heard either in person or by counsel or other representative. Hearings shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding. Any oral or documentary evidence and other data deemed relevant by the special commission may be received in evidence. A transcript of the proceedings shall be taken, and for this purpose the mediation board shall supply the necessary stenographic service.

HISTORY: Add. 1949, p. 277, Act 230, Imd. Eff. May 31.

423.13d Labor disputes involving hospital or public utility employees; powers of commission.

Sec. 13d. The special commission appointed under section 13b of this act shall have the power to administer oaths, require the attendance of witnesses, and the production of such books, papers, contracts, agreements, and documents as may be deemed by the special commission material to a just determination of the issues in dispute, and may for such purpose issue subpoenas. If any person shall refuse to obey such subpoena, or shall refuse to be sworn or to testify, or any witness, party or attorney is guilty of any contempt while in attendance at any hearing held hereunder, the special commission may, or the attorney general if requested shall, on its behalf invoke the aid of any circuit court within the jurisdiction of which the hearing is being held, and such court shall have jurisdiction to issue an appropriate order. Any failure to obey such order may be punished by the court as a contempt thereof.

HISTORY: Add. 1949, p. 277, Act 230, Imd. Eff. May 31.

423.13e Labor disputes involving hospital or public utility employees; evidence, governing provisions; report, filing with governor.

Sec. 13e. (1). The special commission in making its report and recommendations shall consider only the evidence in the record and shall be governed by the following:

(a). When a valid contract is or was in existence defining the rights, duties, and liabilities of the parties with respect to any matter in dispute, the special commission shall have power, as to such matter, only to determine the proper interpretation and application of the relevant contract provisions;

(b). When there is no contract between the parties, or when there is a contract, but the issues, or any of them, have arisen with respect to a new contract or an amendment of an existing contract which, with respect to such issues, is subject to reopening and has been duly reopened, the standards, if any, which have been stipulated by the parties as properly controlling with respect to any such issues shall be applied. In the absence of such stipulation, the special commission shall make just and reasonable findings and recommendations.

(2). The report and recommendations of the special commission shall be filed with the governor, together with the complete record in the case. The governor shall forthwith make such report and recommendation public and deliver a true copy of such report and recommendation to the board and to each of the parties, and the complete record shall be filed with the board. The parties shall thereupon, and for a period of 10 days following the filing with the governor of the report of the special commission, resume collective bargaining, and shall in good faith attempt to settle their disputes by

this means, with the assistance of the board, and the board shall again urge the parties voluntarily to submit such disputed issues as may remain unsettled to arbitration under section 9d of this act. In the event the parties shall not reach an agreement or submit to arbitration within this period, the board shall thereupon certify this fact and the issues remaining unsettled to the governor.

HISTORY: Add. 1949, p. 277, Act 230, Imd. Eff. May 31.

423.13f Labor disputes involving hospital or public utility employees; changing wages during proceedings.

Sec. 13f. During the pendency of proceedings under sections 13a to 13e hereof, existing wages, hours, and other terms and conditions of employment shall not be changed by action of either party without the consent of the other.

HISTORY: Add. 1949, p. 278, Act 230, Imd. Eff. May 31.

423.13g Labor disputes involving hospital or public utility employees; unlawful conduct; injunction; penalty.

Sec. 13g. It shall be unlawful for a hospital or public utility employer to engage in or continue a lockout, or for a labor organization to engage in or continue a strike or other work stoppage, slowdown, or other attempt to interrupt a hospital or public utility service, before the proceedings provided in sections 13a to 13e have been completed. At the request of the governor, the attorney general shall, on behalf of the people, petition any circuit court having jurisdiction for appropriate injunctive relief with respect to any such unlawful conduct. An employer or labor organization which engages in conduct in violation of such injunction shall, upon conviction thereof, be deemed guilty of contempt of court and subject to punishment therefor. Nothing in this act shall be construed to require an individual employee to continue rendering labor or service without his consent or to make illegal the quitting of his employment, and no court shall have power to issue any process to compel any such employee to continue to render such labor or to remain at his place of employment without his consent.

HISTORY: Add. 1949, p. 278, Act 230, Imd. Eff. May 31;—Am. 1965, p. 524, Act 282, Imd. Eff. Jul. 22.

423.14 Closed shop; agreements between employer and union.

Sec. 14. Nothing in this act shall be construed to interfere with the right of an employer to enter into an all-union agreement with 1 labor organization if it is the only organization established among his employees and recognized by him, by consent, as the representative of a majority of his employees; nor shall anything in this act be construed to interfere with the right of the employer to make an all-union agreement with more than 1 labor organization established among his employees if such organizations are recognized by him, by consent, as the representatives of a majority of his employees.

HISTORY: CL 1949, 423.14.

423.15 Unlawful possession of property; penalty.

Sec. 15. It shall be unlawful for any person to enter or take part in entering upon, or take possession or control of, any property, or to withhold possession of property, against the will of the owner thereof, or other person in the rightful possession or use thereof, or to interfere with the free use thereof, whether the same be accomplished by force or unlawful threats. Violation of this provision shall be a misdemeanor and punishable as such.

HISTORY: CL 1949, 423.15;—Am. 1949, p. 278, Act 230, Imd. Eff. May 31.

423.16 Company unions; interference with unions and discrimination prohibited.

Sec. 16. It shall be unlawful for an employer or any officer or agent of an employer (1) to interfere with, restrain or coerce employees in the exercise of their rights guaranteed in section 8; (2) to initiate, create, dominate, contribute to, or interfere with the formation or administration of, any labor organization: Provided, That an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay; (3) to discriminate in regard to hire, terms or other conditions of employment in order to encourage or discourage membership in any labor organization; (4) to encourage membership in, or initiate, create, dominate, or contribute to a company union; (5) to discriminate against any employee because he has given testimony or instituted a proceeding under this act; or (6) to refuse to bargain collectively with the representative of his employees, subject to the provisions of section 26.

HISTORY: CL 1948, 423.16;—Am. 1949, p. 278, Act 230, Imd. Eff. May 31;—Am. 1965, p. 524, Act 282, Imd. Eff. Jul. 22.

423.17 Coercion to join union or to refrain from work; misdemeanor.

Sec. 17. It shall be unlawful (1) for any employee or other person by force or unlawful threats to force, or attempt to force any person to become or remain a member of a labor organization, or (2) for an employee or other person by force or unlawful threats to force or attempt to force any person to refrain from engaging in employment. Violation of this section shall be a misdemeanor and punishable as such.

HISTORY: CL 1948, 423.17;—Am. 1949, p. 279, Act 230, Imd. Eff. May 31.

423.17a Unlawful picketing to force recognition or bargain with labor organization.

Sec. 17a. It shall be unlawful for a labor organization or its agents to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where the primary object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative

- (1) Where another labor organization has been certified or has been lawfully recognized in accordance with this act and a question concerning representation may not appropriately be raised under section 27, or
- (2) Where, within the preceding twelve months a valid election under section 27 has been conducted,

unless the picketing labor organization is currently certified or lawfully recognized as the representative of such employees.

HISTORY: Add. 1965, p. 525, Act 282, Imd. Eff. Jul. 22.

Sec. 18. (This was a severing clause section.)

HISTORY: Rep. 1945, p. 409, Act 267, Imd. Eff. May 25.

423.19 Liberal construction of act; police powers.

Sec. 19. This act shall be deemed an exercise of the police power of the state of Michigan for the protection of the public welfare, safety, prosperity, health and peace of the people; and all the provisions of this act shall be liberally construed for the accomplishment of said purposes.

HISTORY: CL 1948, 423.19.

423.20 Expenses paid from legislated appropriations.

Sec. 20. The expense of carrying out the provisions of this act shall be paid from appropriations made therefor by the legislature.

HISTORY: CL 1948, 423.20;—Am. 1949, p. 279, Act 230, Imd. Eff. May 31.

Sec. 21. (This was a repeal section.)

HISTORY: Rep. 1945, p. 408, Act 267, Imd. Eff. May 25.

ACT REPEALED: Act 230, 1915, CL 1929, 8616-8628.

423.22 Strike or lockout before serving notice or pending mediation; legal or equitable remedies.

Sec. 22. (a) It shall be unlawful for an employer to engage in a lockout or for a labor organization to engage in or instigate a strike (1) without first having served notice as required in section 9, or (2) which has not been authorized by a vote of employees as required by section 9a, or (3) while mediation is pending or proceeding with respect to the issues involved under section 9a, or (4) while mediation or an election is pending under section 9c, or (5) while any of the procedures specified in sections 13a to 13e, are pending or proceeding with respect to the issues involved.

(b) It shall be unlawful for any individual to instigate a lockout or strike which is unlawful under this section.

(c) Any individual or person may pursue any appropriate legal or equitable remedy or other relief in any circuit court having jurisdiction with respect to any act or conduct in violation of any of the provisions of this act, except sections 16, 17a and 22(a). The existence of a criminal penalty with respect to any such act or conduct shall not be deemed to preclude appropriate equitable relief.

HISTORY: Add. 1947, p. 528, Act 318, Eff. Oct. 11;—CL 1948, 423.22;—Am. 1949, p. 279, Act 230, Imd. Eff. May 31;—Am. 1965, p. 525, Act 282, Imd. Eff. Jul. 22.

423.22a Repealed. 1949, p. 279, Act 230, Imd. Eff. May 31.

Section provided for use of other legal or equitable remedy.

423.23 Rulings or orders of board; review by supreme court.

Sec. 23. Rulings or orders promulgated by the board shall be reviewable only by the supreme court and on petition for writ of certiorari or such other process as may be appropriate, except as provided in this section.

Unfair labor practices; board remedies.

(a) Violations of the provisions of sections 16, 17a and 22(a) of this act only, shall be deemed to be unfair labor practices remediable by the board in the following manner:

Unfair labor practice; filing complaint; notice of hearing; amendments; intervening parties; conducting proceedings.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the board, or any agent designated by the board for such purposes, may issue and cause to be served upon the person a complaint stating the charges in that respect, and containing a notice of hearing before the board or a member thereof, or before a designated agent, at a place therein fixed, not less than 5 days after the serving of the complaint. No complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the board and the service of a copy thereof upon the person against whom the charge is made, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6 month period shall be computed from the day of his discharge. Any complaint may be amended by the member or agent conducting the hearing or the board, at any time prior to the issuance of an order based thereon. The person upon whom the complaint is served may file an answer to the original or amended complaint and appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member or agent conducting the hearing or the board, any other person may be allowed to intervene in the proceeding and to present testimony. Any proceeding shall be conducted in accordance with the provisions of section 5 of Act No. 197 of the Public Acts of 1952, as amended, being section 24.105 of the Compiled Laws of 1948.

Taking testimony; reducing to writing; finding of unfair labor practice; cease and desist order; reports; dismissal of complaint; reinstatement of discharged employee.

(c) The testimony taken by the member, agent or the board shall be reduced to writing and filed with the board. Thereafter the board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the board is of the opinion that any person named in the complaint has engaged in or is engaging in the unfair labor practice, then it shall state its findings of fact and shall issue and cause to be served on the person an order requiring such person to cease and desist from the unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this act. The order may further require the person to make reports from time to time showing the extent to which such person has complied with the order. If upon the preponderance of the testimony taken the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if the individual was suspended or discharged for cause. If the evidence is presented before a member of the board, or before examiners thereof, the member, or examiners shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within 20 days after service thereof upon the parties, or within such further period as the board may authorize, the recommended order shall become the order of the board and become effective as prescribed in the order.

Modification or setting aside finding or order.

(d) Until the record in a case has been filed in a court, the board at any time, upon reasonable notice and in such manner as it deems proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

Petition to enforce order or for injunction; filing record; notice; hearing; procedure; jurisdiction; review by supreme court.

(e) The board may petition the court of appeals for the enforcement of the order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings. Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction of the proceeding and shall grant such temporary or permanent relief or restraining order as it deems just and proper, enforcing, modifying, enforcing as so modified, or setting aside in whole or in part the order of the board. No objection that has not been urged before the board, its member or agent, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact if supported by competent, material and substantial evidence on the record considered as a whole shall be conclusive. If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the board, its member or agent, the court may order the additional evidence to be taken before the board, its member or agent, and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file the modifying or new findings, which findings with respect to questions of fact if supported by competent, material and substantial evidence on the record considered as a whole shall be conclusive, and shall file its

recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the supreme court in accordance with the general court rules.

Judicial review of final order of board; filing complaint; procedure.

(f) Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the court of appeals by filing in the court a complaint praying that the order of the board be modified or set aside, with copy of the complaint filed on the board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the board. Upon the filing of the complaint, the court shall proceed in the same manner as in the case of an application by the board under subsection (e), and shall grant to the board such temporary relief or restraining order as it deems just and proper, enforcing, modifying, enforcing as so modified, or setting aside in whole or in part the order of the board. The findings of the board with respect to questions of fact if supported by competent, material and substantial evidence on the record considered as a whole shall be conclusive.

Commencement of court action as stay of board's order.

(g) The commencement of proceedings under subsection (e) or (f) shall not, unless specifically ordered by the court, operate as a stay of the board's order.

Expeditious hearing by courts.

(h) Complaints filed under this act shall be heard expeditiously by the courts to which presented, and for good cause shown shall take precedence over all other civil matters except earlier matters of the same character.

Temporary relief or restraining order, petition; granting relief.

(i) The board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any circuit court within any circuit where the unfair labor practice in question is alleged to have occurred or where such person resides or transacts business, for appropriate temporary relief or restraining order, in accordance with the general court rules, and the court shall have jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper.

Hearings and investigations, applicable act; subpoenas.

(j) For the purpose of all hearings and investigations, which, in the opinion of the board, are necessary and proper for the exercise of the powers vested in it under this section, the provisions of section 11 shall be applicable, except that subpoenas may issue as provided in section 11 without regard to whether mediation shall have been undertaken.

Labor relations and mediation functions to be separate.

(k) The labor relations and mediation functions of this act shall be separately administered by the board.

HISTORY: Add. 1949, p. 279, Act 230, Imd. Eff. May 31;—Am. 1965, p. 525, Act 282, Imd. Eff. Jul. 22.

423.24 Conspiracy; penalty.

Sec. 24. Any person who shall conspire with 1 or more other persons to violate any of the provisions of this act, violation of which is made a penal offense hereunder, shall upon conviction thereof, be deemed guilty of a misdemeanor, and punished by a fine of not to exceed \$1,000.00, or by imprisonment of not to exceed 6 months, or both.

HISTORY: Add. 1949, p. 279, Act 230, Imd. Eff. May 31.

423.25 Mediation of labor disputes; public employees; findings made public; delegates, mediation panel, procedure.

Sec. 25. Whenever in the course of mediation under section 7 of Act No. 336 of the Public Acts of 1947, being section 423.207 of the Compiled Laws of 1948, it shall become apparent to the board that matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known, the board may make written findings with respect to the matters in disagreement. Such findings shall not be binding upon the parties but shall be made public: Provided, That if prior to the commencement of mediation upon the matters in dispute, the public employer party to such dispute shall have, by resolution of its governing body, spread upon their minutes, voted to adopt the following procedures set forth in this section, which resolution remains unrescinded at the time such procedures are instituted, then the board may, after mediation has been resumed as in this section above provided, if it is apparent to them that no progress in the mediation is being made, direct the parties to proceed as follows:

(a) Within 10 days the public employer shall choose a member of its governing body as a delegate and the petitioners referred to in section 7 of Act No. 336 of the Public Acts of 1947, being section 423.207 of the Compiled Laws of 1948, shall choose 1 of their number as a delegate to discuss, consider and recommend a settlement of the question or questions at issue. The said petitioners shall make their choice by a majority vote of their number present at a meeting of which reasonable notice has been given to all petitioners.

(b) The said 2 delegates shall then enter upon a discussion to reach a recommended settlement of the matters in dispute. In considering the said matters the said 2 delegates may hold hearings if they deem the same to be helpful or advisable, and consider testimony, affidavits and documents which may be submitted to them at their invitation and in an effort to reach a recommended settlement on all points of controversy. The interested parties shall be required to submit all documents and information within their knowledge and control. If the said delegates reach a recommended settlement on all points at issue, they shall reduce the same to writing and file the same with the parties but the same shall not be binding upon the parties. During such discussions, each delegate shall continue on the payroll of the public employer at his usual rate of pay. Each delegate shall have the right to have legal counsel and/or a representative of his group present at all times.

(c) Upon the failure of the said 2 delegates to reach a recommended settlement on all questions at issue within 20 days of the date when the said delegates shall have been appointed, the said delegates shall within 5 days thereafter designate an impartial, competent and reputable person to act as a mediator and with them to constitute a mediation panel to further consider and recommend a settlement of all said matters. Upon their failure to agree upon and appoint the said mediator within said time, they shall promptly request the chairman of the state labor mediation board to appoint the said mediator, who shall be a citizen and a resident of the county in which the dispute arose.

(d) Upon the appointment of the said mediator, he shall proceed to act as chairman of said panel of mediation, and shall promptly call a hearing to be held within 10 days from the date of his appointment and acceptance, and shall give at least 7 days' notice of the time and place of said hearing. The said chairman shall conduct the said hearing and shall take testimony, and any interested person may appear and be heard both in person and by counsel or by other representative chosen by him appearing at the said hearing. The said hearing shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. Any or all documentary evidence and other data

deemed relevant by the mediation panel may be received in evidence. A transcript of the proceedings shall be taken. One-half of the expense of the proceedings, including a fee of \$50.00 per day to the mediator for the time actually spent as a member of the said mediation panel, shall be borne by each of the parties to the dispute. The delegates shall continue on the payroll of the public employer at their usual rate of pay. The hearing or hearings conducted by the mediation panel shall be concluded within 20 days of the time of the commencement of said hearing, and within 10 days from the conclusion of the hearing the mediation panel shall make written findings and promulgate a written opinion upon the issues presented, and shall mail or otherwise deliver a true copy thereof to the governing body of the public employer and to the attorney or other designated representatives of the employees of the said municipality. A majority decision by the mediation panel shall not constitute a controlling decision but shall represent to the public employer and to the petitioners the considered recommendations of the panel. In disputes arising in a transportation utility the governing body shall be the commission in charge of such utility.

HISTORY: Add. 1949, p. 279, Act 230, Imd. Eff. May 31;—Am. 1954, p. 105, Act 86, Eff. Aug. 13;—Am. 1956, p. 254, Act 140, Eff. Aug. 11.

423.26 Collective bargaining representatives; duties; grievances by individual employee; adjustment.

Sec. 26. Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment, and shall be so recognized by the employer: Provided, That any individual employee at any time may present grievances to his employer and have the grievances adjusted, without intervention of the bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect, if the bargaining representative has been given opportunity to be present at such adjustment.

HISTORY: Add. 1965, p. 528, Act 282, Imd. Eff. Jul. 22.

423.27 Petition for collective bargaining units; determination by hearing, election.

Sec. 27. Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the board:

(a) By an employee or group of employees, or an individual or labor organization acting in their behalf, alleging that 30% or more of the employees within a unit claimed to be appropriate for such purpose wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 26, or assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 26; or

(b) By an employer or his representative alleging that 1 or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 26;

the board shall investigate the petition and, if it has reasonable cause to believe that a question of representation exists, shall provide an appropriate hearing after due notice. If the board finds upon the record of the hearing that a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules and regulations of the board.

HISTORY: Add. 1965, p. 528, Act 282, Imd. Eff. Jul. 22.

423.28 Board to determine unit for collective bargaining.

Sec. 28. The board shall decide in each case, in order to insure employees the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining as provided in section 9e.

HISTORY: Add. 1965, p. 528, Act 282, Imd. Eff. Jul. 22.

423.29 Election to determine collective bargaining unit; eligibility to vote; rerun and runoff elections; time limitations on holding election.

Sec. 29. An election shall not be directed in any bargaining unit or any subdivision within which, in the preceding 12-month period, a valid election has been held. The board shall determine who is eligible to vote in the election and shall establish rules governing the election. A rerun election may be conducted in the event of conduct improperly affecting a prior election. In an election involving more than 2 choices, where none of the choices on the ballot receives a majority vote, a runoff election shall be conducted between the 2 choices receiving the 2 largest numbers of valid votes cast in the election. No election shall be directed in any bargaining unit or subdivision thereof where there is in force and effect a valid collective bargaining agreement which was not prematurely extended and which is of fixed duration: Provided, however, No collective bargaining agreement shall bar an election upon the petition of persons not parties thereto where more than 3 years have elapsed since the agreement's execution or last timely renewal, whichever was later.

HISTORY: Add. 1965, p. 528, Act 282, Imd. Eff. Jul. 22.

423.30 Duty to bargain; collective bargaining, definition.

Sec. 30. An employer shall bargain collectively with the representatives of its employees as defined in section 26 and is authorized to make and enter into collective bargaining agreements with such representatives. For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement, or any question arising under an agreement, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

HISTORY: Add. 1965, p. 529, Act 282, Imd. Eff. Jul. 22.

Act 336, 1947, p. 633; Eff. Oct. 11.

AN ACT to prohibit strikes by certain public employees; to provide review from disciplinary action with respect thereto; to provide for the mediation of grievances and the holding of elections; to declare and protect the rights and privileges of public employees; and to prescribe means of enforcement and penalties for the violation of the provisions of this act. Am. 1965, p. 745, Act 379, Imd. Eff. Jul. 23.

*The People of the State of Michigan enact:***423.201 Strike; definition; rights of public employees.**

Sec. 1. As used in this act the word "strike" shall mean the concerted failure to report for duty, the wilful absence from one's position, the stoppage of work, or the abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, for the purpose of inducing, influencing or coercing a change in the conditions, or compensation, or the rights, privileges or obligations of employment. Nothing contained in this act shall be construed to limit, impair or affect the right of any public employee to the expression or communication of a view, grievance, complaint or opinion on any matter related to the conditions or compensation of public employment or their betterment, so long as the same is not designed to and does not interfere with the full, faithful and proper performance of the duties of employment.

HISTORY: CL 1948, 423.201;—Am. 1965, p. 745, Act 379, Imd. Eff. Jul. 23.

CITED IN OTHER SECTIONS: Sections 423.201 to 423.216 are cited in §§ 388.177 and 423.244.

423.202 Public employee; definition; strike prohibited.

Sec. 2. No person holding a position by appointment or employment in the government of the state of Michigan, or in the government of any 1 or more of the political subdivisions thereof, or in the public school service, or in any public or special district, or in the service of any authority, commission, or board, or in any other branch of the public service, hereinafter called a "public employee," shall strike.

HISTORY: CL 1948, 423.202.

423.203 Public employees; persons in authority approving or consenting to strike prohibited; participating in submittal of grievance.

Sec. 3. No person exercising any authority, supervision or direction over any public employee shall have the power to authorize, approve or consent to a strike by public employees, and such person shall not authorize, approve or consent to such strike, nor shall any such person discharge or cause any public employee to be discharged or separated from his or her employment because of participation in the submission of a grievance in accordance with the provisions of section 7.

HISTORY: CL 1948, 423.203;—Am. 1965, p. 746, Act 379, Imd. Eff. Jul. 23.

423.204 Repealed. 1965, p. 750, Act 379, Imd. Eff. Jul. 23.

Section declared that public employee who violated the act abandoned and terminated his employment.

423.204a Application of act to state civil service employees.

Sec. 4a. The provisions of this act as to state employees within the jurisdiction of the civil service commission shall be deemed to apply in so far as the power exists in the legislature to control employment by the state or the emoluments thereof.

HISTORY: CL 1948, 423.204a.

423.205 Repealed. 1965, p. 750, Act 379, Imd. Eff. Jul. 23.

Section related to conditions upon which public employee who had violated the act could be reemployed.

423.206 Public employee; conduct deemed strike; proceeding to determine violation of act; time; decision, review.

Sec. 6. Notwithstanding the provisions of any other law, any person holding such a position who, by concerted action with others, and without the lawful approval of his superior, wilfully absents himself from his position, or abstains in whole or in part from the full, faithful and proper performance of his duties for the purpose of inducing, influencing or coercing a change in the conditions or compensation, or the rights, privileges or obligations of employment shall be deemed to be on strike but the person, upon request, shall be entitled to a determination as to whether he did violate the provisions of this act. The request shall be filed in writing, with the officer or body having power to remove or discipline such employee, within 10 days after regular compensa-

tion of such employee has ceased or other discipline has been imposed. In the event of such request the officer or body shall within 10 days commence a proceeding for the determination of whether the provisions of this act have been violated by the public employee, in accordance with the law and regulations appropriate to a proceeding to remove the public employee. The proceedings shall be undertaken without unnecessary delay. The decision of the proceeding shall be made within 10 days. If the employee involved is held to have violated this law and his employment terminated or other discipline imposed, he shall have the right of review to the circuit court having jurisdiction of the parties, within 30 days from such decision, for determination whether such decision is supported by competent, material and substantial evidence on the whole record.

HISTORY: CL 1948, 423.206;—Am. 1965, p. 746, Act 379, Imd. Eff. Jul. 23.

423.207 Mediation of grievances; petition, signing, filing; labor mediation board, powers and duties.

Sec. 7. Upon the request of the collective bargaining representative defined in section 11, or if no representative has been designated or selected, upon the request of a majority of any given group of public employees evidenced by a petition signed by said majority and delivered to the labor mediation board, or upon request of any public employer of such employees, it shall be the duty of the labor mediation board to forthwith mediate the grievances set forth in said petition or notice, and for the purposes of mediating such grievances, the labor mediation board shall exercise the powers and authority conferred upon said board by sections 10 and 11 of Act No. 176 of the Public Acts of 1939.

HISTORY: CL 1948, 423.207;—Am. 1965, p. 746, Act 379, Imd. Eff. Jul. 23.

CITED IN OTHER SECTIONS: The above section is cited in § 423.25.

423.208 Repealed. 1965, p. 750, Act 379, Imd. Eff. Jul. 23.

Section provided penalties for inciting public employees to strike.

423.209 Public employees forming or joining labor organizations; collective bargaining.

Sec. 9. It shall be lawful for public employees to organize together or to form, join or assist in labor organizations, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, or to negotiate or bargain collectively with their public employers through representatives of their own free choice.

HISTORY: Add. 1965, p. 746, Act 379, Imd. Eff. Jul. 23.

423.210 Interference, coercion or discrimination by employer; refusal to bargain collectively.

Sec. 10. It shall be unlawful for a public employer or an officer or agent of a public employer (a) to interfere with, restrain or coerce public employees in the exercise of their rights guaranteed in section 9; (b) to initiate, create, dominate, contribute to or interfere with the formation or administration of any labor organization: Provided, That a public employer shall not be prohibited from permitting employees to confer with it during working hours without loss of time or pay; (c) to discriminate in regard to hire, terms or other conditions of employment in order to encourage or discourage membership in a labor organization; (d) to discriminate against a public employee because he has given testimony or instituted proceedings under this act; or (e) to refuse to bargain collectively with the representatives of its public employees, subject to the provisions of section 11.

HISTORY: Add. 1965, p. 746, Act 379, Imd. Eff. Jul. 23.

423.211 Public employees; designation of bargaining representatives; grievances of individual employees.

Sec. 11. Representatives designated or selected for purposes of collective bargaining by the majority of the public employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the public employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment, and shall be so recognized by the public employer: Provided, That any individual employee at any time may present grievances to his employer and have the grievances adjusted, without intervention of the bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect, provided that the bargaining representative has been given opportunity to be present at such adjustment.

HISTORY: Add. 1965, p. 747, Act 379, Imd. Eff. Jul. 23.

423.212 Petition; claim for recognition as collective bargaining agent; investigation, hearing, election; stipulation for consent election.

Sec. 12. Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the board:

(a) By a public employee or group of public employees, or an individual or labor organization acting in their behalf, alleging that 30% or more of the public employees within a unit claimed to be appropriate for such purpose wish to be represented for collective bargaining and that their public employer declines to recognize their representative as the representative defined in section 11, or assert that the individual or labor organization, which has been certified or is being currently recognized by their public employer as the bargaining representative, is no longer a representative as defined in section 11; or

(b) By a public employer or his representative alleging that 1 or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 11;

The board shall investigate the petition and, if it has reasonable cause to believe that a question of representation exists, shall provide an appropriate hearing after due notice. If the board finds upon the record of the hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof. Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules and regulations of the board.

HISTORY: Add. 1965, p. 747, Act 379, Imd. Eff. Jul. 23.

423.213 Decision as to bargaining unit; fire-fighting personnel.

Sec. 13. The board shall decide in each case, in order to insure public employees the full benefit of their right to self-organization, to collective bargaining and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining as provided in section 9e of Act No. 176 of the Public Acts of 1939: Provided, That in any fire department, or any department in whole or part engaged in, or having the responsibility of, fire fighting, no person subordinate to a fire commission, fire commissioner, safety director, or other similar administrative agency or administrator, shall be deemed to be a supervisor.

HISTORY: Add. 1965, p. 747, Act 379, Imd. Eff. Jul. 23.

CITED IN OTHER SECTIONS: The above section is cited in § 224.10a.

423.214 Elections; time of holding; eligibility and rules; effect of valid, existing collective bargaining unit.

Sec. 14. An election shall not be directed in any bargaining unit or any subdivision within which, in the preceding 12-month period, a valid election has been held. The

board shall determine who is eligible to vote in the election and shall establish rules governing the election. In an election involving more than 2 choices, where none of the choices on the ballot receives a majority vote, a runoff election shall be conducted between the 2 choices receiving the 2 largest numbers of valid votes cast in the election. No election shall be directed in any bargaining unit or subdivision thereof where there is in force and effect a valid collective bargaining agreement which was not prematurely extended and which is of fixed duration: Provided, however, No collective bargaining agreement shall bar an election upon the petition of persons not parties thereto where more than 3 years have elapsed since the agreement's execution or last timely renewal, whichever was later.

HISTORY: Add. 1965, p. 747, Act 379, Imd. Eff. Jul. 23.

423.215 Collective bargaining; duties of employer and employees' representative; subjects and limitations.

Sec. 15. A public employer shall bargain collectively with the representatives of its employees as defined in section 11 and is authorized to make and enter into collective bargaining agreements with such representatives. For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract, ordinance or resolution incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

HISTORY: Add. 1965, p. 748, Act 379, Imd. Eff. Jul. 23.

423.216 Unfair labor practices; remedies and procedures.

Sec. 16. Violations of the provisions of section 10 shall be deemed to be unfair labor practices remediable by the labor mediation board in the following manner:

(a) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the board, or any agent designated by the board for such purposes, may issue and cause to be served upon the person a complaint stating the charges in that respect, and containing a notice of hearing before the board or a member thereof, or before a designated agent, at a place therein fixed, not less than 5 days after the serving of the complaint. No complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the board and the service of a copy thereof upon the person against whom the charge is made, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge. Any complaint may be amended by the member or agent conducting the hearing or the board, at any time prior to the issuance of an order based thereon. The person upon whom the complaint is served may file an answer to the original or amended complaint and appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member or agent conducting the hearing or the board, any other person may be allowed to intervene in the proceeding and to present testimony. Any proceeding shall be conducted in accordance with the provisions of section 5 of Act No. 197 of the Public Acts of 1952, as amended, being section 24.105 of the Compiled Laws of 1948.

(b) The testimony taken by the member, agent or the board shall be reduced to writing and filed with the board. Thereafter the board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the board is of the opinion that any person named in the complaint has engaged in or is engaging in the unfair labor practice, then it shall state its findings of fact and shall is-

sue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this act. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. If upon the preponderance of the testimony taken the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if the individual was suspended or discharged for cause. If the evidence is presented before a member of the board, or before examiners thereof, the member, or examiners shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within 20 days after service thereof upon the parties, or within such further period as the board may authorize, the recommended order shall become the order of the board and become effective as prescribed in the order.

(c) Until the record in a case has been filed in a court, the board at any time, upon reasonable notice and in such manner as it deems proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

(d) The board may petition the court of appeals for the enforcement of the order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings. Upon the filing of the petition, the court shall cause notice thereof to be served upon the person, and thereupon shall have jurisdiction of the proceeding and shall grant such temporary or permanent relief or restraining order as it deems just and proper, enforcing, modifying, enforcing as so modified, or setting aside in whole or in part the order of the board. No objection that has not been urged before the board, its member or agent, shall be considered by the court, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact if supported by competent, material and substantial evidence on the record considered as a whole shall be conclusive. If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the board, its member or agent, the court may order the additional evidence to be taken before the board, its member or agent, and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file the modifying or new findings, which findings with respect to questions of fact if supported by competent, material and substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the supreme court in accordance with the general court rules.

(e) Any person aggrieved by a final order of the board granting or denying in whole or in part the relief sought may obtain a review of such order in the court of appeals by filing in the court a complaint praying that the order of the board be modified or set aside, with copy of the complaint filed on the board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the board. Upon the filing of the complaint, the court shall proceed in the same manner as in the case of an application by the board under subsection (d), and shall grant to the board such temporary relief or restraining order as it deems just and proper, enforcing, modifying,

enforcing as so modified, or setting aside in whole or in part the order of the board. The findings of the board with respect to questions of fact if supported by competent, material and substantial evidence on the record considered as a whole shall be conclusive.

(f) The commencement of proceedings under subsections (d) or (e) shall not, unless specifically ordered by the court, operate as a stay of the board's order.

(g) Complaints filed under this act shall be heard expeditiously by the court to which presented, and for good cause shown shall take precedence over all other civil matters except earlier matters of the same character.

(h) The board shall have power, upon issuance of a complaint as provided in subsection (a) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any circuit court within any circuit where the unfair labor practice in question is alleged to have occurred or where such person resides or exercises or may exercise its governmental authority, for appropriate temporary relief or restraining order, in accordance with the general court rules, and the court shall have jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper.

(i) For the purpose of all hearings and investigations, which in the opinion of the board are necessary and proper for the exercise of the powers vested in it under this section, the provisions of section 11 of Act No. 176 of the Public Acts of 1939, being section 423.11 of the Compiled Laws of 1948, shall be applicable, except that subpoenas may issue as provided in section 11 without regard to whether mediation shall have been undertaken.

(j) The labor relations and mediation functions of this act shall be separately administered by the board.

HISTORY: Add. 1965, p. 748, Act 379, Imd. Eff. Jul. 23;—Am. 1965, p. 794, Act 397, Imd. Eff. Oct. 26.

Act 312, 1969, p. 602; Eff. Oct. 1.

AN ACT to provide for compulsory arbitration of labor disputes in municipal police and fire departments; to define such public departments; to provide for the selection of members of arbitration panels; to prescribe the procedures and authority thereof; and to provide for the enforcement and review of awards thereof.

The People of the State of Michigan enact:

423.231 Compulsory arbitration in police and fire departments; policy.

Sec. 1. It is the public policy of this state that in public police and fire departments, where the right of employees to strike is by law prohibited, it is requisite to the high morale of such employees and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of disputes, and to that end the provisions of this act, providing for compulsory arbitration, shall be liberally construed.

HISTORY: New 1969, p. 602, Act 312, Eff. Oct. 1.

423.232 Compulsory arbitration in police and fire departments; definitions.

Sec. 2. Public police and fire departments means any department of a city, county, village or township having employees engaged as policemen or in fire fighting or subject to the hazards thereof.

HISTORY: New 1969, p. 603, Act 312, Eff. Oct. 1.

423.233 Arbitration; initiation; time; manner.

Sec. 3. Whenever in the course of mediation of a public police or fire department employee's dispute, the dispute has not been resolved to the agreement of both parties within 30 days of the submission of the dispute to mediation and fact-finding, or within such further additional periods to which the parties may agree, the employees or employer may initiate binding arbitration proceedings by prompt request therefor, in writing, to the other, with copy to the labor mediation board.

HISTORY: New 1969, p. 603, Act 312, Eff. Oct. 1.

423.234 Delegates; selection; notice.

Sec. 4. Within 10 days thereafter, the employer shall choose a delegate and the employees' designated or selected exclusive collective bargaining representative, or if none, their previously designated representative in the prior mediation and fact-finding procedures, shall choose a delegate to a panel of arbitration as provided in this act. The employer and employees shall forthwith advise the other and the mediation board of their selections.

HISTORY: New 1969, p. 603, Act 312, Eff. Oct. 1.

423.235 Arbitrator; selection; failure; appointment.

Sec. 5. Within 5 days thereafter, or within such further additional periods to which they may agree, the delegates shall designate an impartial, competent and reputable person to act as an arbitrator, hereafter called the arbitrator or chairman of the panel of arbitration, and with them to constitute an arbitration panel to further consider and order a settlement of all matters. Upon their failure to agree upon and appoint the arbitrator within such time, or mutually extended time, either of them may request the chairman of the state labor mediation board to appoint the arbitrator, and the chairman of the state mediation board shall appoint, in not more than 7 days, an impartial, competent and reputable citizen as the arbitrator.

HISTORY: New 1969, p. 603, Act 312, Eff. Oct. 1.

423.236 Arbitrator; duties; hearing; intervenors; evidence; record; expenses; actions and rulings.

Sec. 6. Upon the appointment of the arbitrator, he shall proceed to act as chairman of the panel of arbitration, call a hearing, to begin within 15 days and give reasonable notice of the time and place of the hearing. The chairman shall preside over the hearing and shall take testimony. Upon application and for good cause shown, and upon such terms and conditions as are just, a person, labor organization, or governmental unit having a substantial interest therein may be granted leave to intervene by the arbitration panel. Any oral or documentary evidence and other data deemed relevant by the arbitration panel may be received in evidence. The proceedings shall be informal. Technical rules of evidence shall not apply and the competency of the evidence shall not thereby be deemed impaired. A verbatim record of the proceedings shall be made and the arbitrator shall arrange for the necessary recording service. Transcripts may be ordered at the expense of the party ordering them but the transcripts shall not be necessary for a decision by the arbitration panel. The expense of the proceedings, including a fee to the chairman, established in advance by the labor mediation board shall be borne equally by each of the parties to the dispute and the state. The delegates, if public officers or employees, shall continue on the payroll of the public employer at their usual rate of pay. The hearing conducted by the arbitration panel may be adjourned from time to time, but, unless otherwise agreed by the parties, shall be concluded within 30 days of the time of its commencement. Its majority actions and rulings shall constitute the actions and rulings of the arbitration panel.

HISTORY: New 1969, p. 603, Act 312, Eff. Oct. 1.

423.237 Oaths; subpoenas; failure to obey, contempt of court.

Sec. 7. The arbitration panel may administer oaths, require the attendance of witnesses, and the production of such books, papers, contracts, agreements and documents as may be deemed by it material to a just determination of the issues in dispute, and for such purpose may issue subpoenas. If any person refuses to obey a subpoena, or refuses to be sworn or to testify, or if any witness, party or attorney is guilty of any contempt while in attendance at any hearing, the arbitration panel may, or the attorney general if requested shall, invoke the aid of any circuit court within the jurisdiction in which the hearing is being held, which court shall issue an appropriate order. Any failure to obey the order may be punished by the court as contempt.

HISTORY: New 1969, p. 604, Act 312, Eff. Oct. 1.

423.238 Findings and orders; time; mailing.

Sec. 8. The arbitration panel, within 30 days after the conclusion of the hearing, or such further additional periods to which the parties may agree, shall make written findings of fact and promulgate a written opinion and order upon the issues presented to it and upon the record made before it, and shall mail or otherwise deliver a true copy thereof to the governing body of the public employer and to the attorney or other designated representatives of the employees of the public employer. The findings, opinions and order shall be just and reasonable and based upon the factors prescribed in sections 9 and 10.

HISTORY: New 1969, p. 604, Act 312, Eff. Oct. 1.

423.239 Findings and orders; factors considered.

Sec. 9. Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment under the proposed new or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (a) The lawful authority of the employer.
- (b) Stipulations of the parties.
- (c) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.
- (d) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities.
 - (ii) In private employment in comparable communities.
- (e) The average consumer prices for goods and services, commonly known as the cost of living.
- (f) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- (h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbi-

tration or otherwise between the parties, in the public service or in private employment.

HISTORY: New 1969, p. 604, Act 312, Eff. Oct. 1.

423.240 Decision; effect; enforcement; increases, effective date; awards, modification.

Sec. 10. A majority decision of the arbitration panel, if supported by competent, material and substantial evidence on the whole record, shall be final and binding upon the parties, and may be enforced, at the instance of either party or of the arbitration panel in the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside. The commencement of a new municipal fiscal year after the initiation of arbitration procedures under this act, but before the arbitration decision, or its enforcement, shall not be deemed to render a dispute moot, or to otherwise impair the jurisdiction or authority of the arbitration panel or its decision. Increases in rates of compensation awarded by the arbitration panel under section 10 may be effective only at the start of the fiscal year next commencing after the date of the arbitration award. If a new fiscal year has commenced since the initiation of arbitration procedures under this act, the foregoing limitation shall be inapplicable, and such awarded increases may be retroactive to the commencement of such fiscal year any other statute or charter provisions to the contrary notwithstanding. At any time the parties, by stipulation, may amend or modify an award of arbitration.

HISTORY: New 1969, p. 604, Act 312, Eff. Oct. 1.

423.241 Violation of lawful enforcement order; penalty.

Sec. 11. Where an employee organization recognized pursuant to Act No. 336 of the Public Acts of 1947, as amended, as the bargaining representative of employees subject to this act, willfully disobeys a lawful order of enforcement by a circuit court pursuant to section 10, or willfully encourages or offers resistance to such order, whether by a strike or otherwise, the punishment for each day that such contempt persists, may be a fine fixed in the discretion of the court in an amount not to exceed \$250.00 per day. Where an employer, as that term is defined by Act No. 336 of the Public Acts of 1947, as amended, willfully disobeys a lawful order of enforcement by the circuit court or willfully encourages or offers resistance to such order, the punishment for each day that such contempt persists may be a fine, fixed at the discretion of the court, an amount not to exceed \$250.00 per day to be assessed against the employer.

HISTORY: New 1969, p. 605, Act 312, Eff. Oct. 1.

423.242 Judicial review; scope; stay.

Sec. 12. Orders of the arbitration panel shall be reviewable by the circuit court for the county in which the dispute arose or in which a majority of the affected employees reside, but only for reasons that the arbitration panel was without or exceeded its jurisdiction; the order is unsupported by competent, material and substantial evidence on the whole record; or the order was procured by fraud, collusion or other similar and unlawful means. The pendency of such proceeding for review shall not automatically stay the order of the arbitration panel.

HISTORY: New 1969, p. 605, Act 312, Eff. Oct. 1.

423.243 Existing conditions; continuance, change.

Sec. 13. During the pendency of proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this act.

HISTORY: New 1969, p. 605, Act 312, Eff. Oct. 1.

423.244 Act supplementary.

Sec. 14. This act shall be deemed as supplementary to Act No. 336 of the Public Acts of 1947, as amended, being sections 423.201 to 423.216 of the Compiled Laws of 1948, and does not amend or repeal any of its provisions; but any provisions thereof requiring fact-finding procedures shall be inapplicable to disputes subject to arbitration under this act.

HISTORY: New 1969, p. 605, Act 312, Eff. Oct. 1.

423.245 Expiration of act.

Sec. 15. This act shall expire June 30, 1972. Cases pending under negotiations on June 30, 1972 shall be completed under the provisions of this act.

HISTORY: New 1969, p. 605, Act 312, Eff. Oct. 1.

423.246 Violations of act; imprisonment prohibited.

Sec. 16. No person shall be sentenced to a term of imprisonment for any violation of the provisions of this act or an order of the arbitration panel.

HISTORY: New 1969, p. 605, Act 312, Eff. Oct. 1.

423.247 Effective date.

Sec. 17. This act shall become effective on October 1, 1969.

HISTORY: New 1969, p. 605, Act 312, Eff. Oct. 1.

Act 150, 1962, p. 141; Eff. Mar. 28, 1963.

AN ACT relating to solicitations for employment; to prohibit recruitment of or advertising for employees to take the place of employees engaged in a labor dispute without stating that the employment offered is in place of employees involved in a labor dispute; to prohibit the importation of strikebreakers; and to provide penalties for violations of this act. Am. 1965, p. 29, Act 18, Eff. Mar. 31, 1966.

The People of the State of Michigan enact:

423.251 Strikes or lockouts; employment of strikebreakers prohibited.

Sec. 1. No person, partnership, firm or corporation, or officer or agent thereof, involved in a strike or lockout shall knowingly employ in place of an employee involved in the strike or lockout any person who customarily and repeatedly offers himself for employment in the place of employees involved in a strike or lockout.

HISTORY: New 1962, p. 141, Act 150, Eff. Mar. 28, 1963.

423.252 Strikes or lockouts; strikebreakers, acceptance of employment prohibited.

Sec. 2. No person who customarily and repeatedly offers himself for employment in place of employees involved in a strike or lockout shall take or offer to take the place in employment of employees involved in a strike or lockout.

HISTORY: New 1962, p. 141, Act 150, Eff. Mar. 28, 1963.

423.253 Strikes or lockouts; hiring and importing strikebreakers prohibited.

Sec. 3. No person, partnership, firm or corporation, or officer or agent thereof, involved in a lawful strike or lockout shall hire and import or contract or arrange with any other person, partnership, agency, firm or corporation to hire and import from another state or country, for the purpose of strikebreaking, persons for employment in place of employees involved in the strike or lockout.

HISTORY: New 1962, p. 141, Act 150, Eff. Mar. 28, 1963;—Am. 1965, p. 29, Act 18, Eff. Mar. 31, 1966.

423.253a Strikes or lockouts; solicitation or advertisement for employees, referrals, notice.

Sec. 3a. No person, partnership, agency, firm or corporation, or officer or agent thereof, shall recruit, solicit or advertise for employees, or refer persons to employment, in place of employees involved in a lawful strike or lockout, without adequate notice to the person, and in the advertisement, that there is a strike or lockout at the place at which employment is offered and that the employment offered is in place of employees involved in the strike or lockout.

HISTORY: Add. 1965, p. 29, Act 18, Eff. Mar. 31, 1966.

423.254 Strikes or lockouts; penalty.

Sec. 4. Any person, partnership, agency, firm or corporation violating any provision of this act is guilty of a misdemeanor.

HISTORY: New 1962, p. 141, Act 150, Eff. Mar. 28, 1963.

Act 251, 1955, p. 411; Eff. Oct. 14.

AN ACT to promote and protect the welfare of the people of this state by prevention and elimination of discriminatory employment practices and policies based upon race, color, religion, national origin or ancestry; to create a state fair employment practices commission, defining its functions, powers and duties; and for other purposes.

The People of the State of Michigan enact:

423.301 Fair employment practice act; purpose; civil right.

Sec. 1. The opportunity to obtain employment without discrimination because of race, color, religion, national origin or ancestry is hereby recognized as and declared to be a civil right.

HISTORY: New 1955, p. 411, Act 251, Eff. Oct. 14.

CITED IN OTHER SECTIONS: Sections 423.301 to 423.311 are cited in § 37.4.

423.302 Michigan state fair employment practice act; definitions.

Sec. 2. When used in this act:

(a) The term "person" includes 1 or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees, trustees in bankruptcy, receivers or other organized groups of persons.

(b) The term "employer" includes the state or any political or civil subdivision thereof, any person employing 8 or more persons within the state and any person acting in the interest of an employer, directly or indirectly.

(c) The term "employee" does not include any individual employed in the domestic service of any person.

(d) The term "labor organization" includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment, or for other mutual aid or protection in relation to employment.

(e) The term "employment agency" includes any person undertaking with or without compensation to procure opportunities to work or to procure, recruit, refer or place employees.

(f) The term "commission" means the state fair employment practices commission created by this act.

(g) The term "discriminate" includes segregate or separate.

HISTORY: New 1955, p. 411, Act 251, Eff. Oct. 14.

423.303 Unfair employment practices.

Sec. 3. It shall be an unfair employment practice:

(a) For any employer, because of the race, color, religion, national origin or ancestry of any individual, to refuse to hire or otherwise to discriminate against him with respect to hire, tenure, terms, conditions or privileges of employment, or any matter, directly or indirectly related to employment, except where based on a bona fide occupational qualification.

(b) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his race, color, religion, national origin or ancestry, or to conduct business under a name which directly or indirectly expresses or connotes any limitation, specification or discrimination as to race, creed, ancestry or national origin, except that any presently operating agency bearing a name which directly or indirectly expresses or connotes any such limitation, specification or discrimination may continue to use its present name: Provided, That it display under such name, wherever it appears, a statement to the effect that its services are rendered without limitation, specification or discrimination as to race, creed, color, ancestry or national origin.

(c) For any labor organization to discriminate against any individual or to limit, segregate or qualify its membership in any way which would tend to deprive such individual of employment opportunities, or would limit his employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, or would affect adversely his wages, hours or employment conditions, because of such individual's race, color, religion, national origin or ancestry.

(d) Except where based on a bona fide occupational qualification, for any employer, employment agency or labor organization, prior to employment or admission to membership, to: (1) Elicit any information concerning the race, color, religion, national origin or ancestry of an applicant for employment or membership; (2) make or keep a record of the race, color, religion, national origin or ancestry of any applicant for employment or membership; (3) use any form of application for employment, or personnel or membership blank seeking to elicit information regarding race, color, religion, national origin or ancestry; (4) print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination, based upon race, color, religion, national origin or ancestry; (5) establish, announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of the race, color, religion, national origin or ancestry of such group; and (6) utilize in the recruitment or hiring of individuals any employment agency, placement service, training school or center, labor organization or any other employee-referring source known by such person to discriminate against individuals because of their race, color, religion, national origin or ancestry.

(e) For any individual seeking employment to publish or cause to be published any advertisement which specifies or in any manner indicates his race, color, religion, national origin or ancestry, or expresses a limitation or preference as to the race, color, religion, national origin or ancestry of any prospective employer.

(f) For any employer, employment agency or labor organization to discriminate in any manner against any person because he has opposed or supported any practice forbidden by this act, or because he has made a charge, testifies, assisted or participated in any manner in any investigation, proceeding or hearing under this act.

(g) For any person, whether or not an employer, employment agency, labor organization or employee, to aid, abet, incite, compel or coerce the doing of any act declared by this section to be an unfair employment practice, or to obstruct or prevent any per-

son from complying with the provisions of this act or any order issued thereunder, or to attempt directly or indirectly to commit any act declared by this section to be an unfair employment practice.

HISTORY: New 1965, p. 411, Act 251, Eff. Oct. 14.

423.303a Unfair employment practices; discrimination because of age or sex.

Sec. 3a. It is an unfair employment practice:

(a) For any employer, because any individual is between the ages of 35 and 60, or because of the sex of any individual, to refuse to hire or otherwise to discriminate against him with respect to hire, tenure, terms, conditions of privileges of employment. Any such refusal to hire or discrimination shall not be an unfair employment practice if based on law, regulation, the requirements of any federal or state training or employment program or on a bona fide occupational qualification and except in selecting individuals for an apprentice program or an on-the-job training program intended to have a duration of more than 4 months.

(b) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his age, or sex, or to conduct business under a name which directly or indirectly expresses or connotes any limitation, specification or discrimination as to age, or sex, except that any presently operating agency bearing a name which directly or indirectly expresses or connotes any such limitation, specification or discrimination may continue to use its present name, if it displays under such name, wherever it appears, a statement to the effect that its services are rendered without limitation, specification or discrimination as to age or sex.

(c) For any labor organization to discriminate against any individual or to limit, segregate or qualify its membership in any way which would tend to deprive such individual of employment opportunities, or would limit his employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, or would affect adversely his wages, hours or employment conditions because of such individual's age or sex.

(d) Except as permitted by paragraph (a) of section 3a hereof, for any employer, employment agency or labor organization, prior to employment or admission to membership to: (1) print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification or discrimination, based upon age or sex; (2) establish, announce or follow a policy of denying or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of the ages or sex of members of such group; and (3) utilize in the recruitment or hiring of individuals any employment agency, placement service, training school or center, labor organization or any other employee-referring source known by such person to discriminate against individuals because of their ages or sex.

(e) Nothing contained in this section shall be construed to prevent the termination of the employment of any person who is unable to perform satisfactorily his duties, or to affect the retirement policy or system of any employer where such policy or system is not merely a subterfuge to evade the purposes of this section unless such policy or system, if established on or after July 1, 1965, provides for a mandatory retirement age of less than 65; nor shall anything in this section be deemed to preclude the varying of insurance coverages according to an employee's age.

HISTORY: Add. 1965, p. 675, Act 344, Eff. Oct. 1;—Am. 1966, p. 664, Act 349, Imd. Eff. Dec. 21.

423.304 Public contracts; nondiscrimination clauses.

Sec. 4. Every contract to which the state or any of its political or civil subdivisions is a party shall contain a provision requiring the contractor and his subcontractors not to discriminate against any employee or applicant for employment, to be employed in the performance of such contract, with respect to his hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of his race, color, religion, national origin or ancestry. Breach of this covenant may be regarded as a material breach of the contract.

HISTORY: New 1955, p. 412, Act 251, Eff. Oct. 14.

423.304a Public contracts; nondiscrimination because of age or sex; exception.

Sec. 4a. Every contract to which the state or any of its political or civil subdivisions is a party shall contain a provision requiring the contractor and his subcontractors not to discriminate against any employee or applicant for employment, to be employed in the performance of such contract, with respect to his hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of his age or sex, except where based on a bona fide occupational qualification.

HISTORY: Add. 1965, p. 676, Act 344, Eff. Oct. 1;—Am. 1966, p. 665, Act 349, Imd. Eff. Dec. 21.

423.305, 423.306 Repealed. 1963, 2nd Ex. Ses., p. 59, Act 45, Eff. Jan. 1, 1964.

Sections created fair employment practice commission and prescribed its powers and duties.

423.307 Prevention of unfair employment practices; persuasion, conciliation.

Sec. 7. (a) The commission is empowered and directed, as hereinafter provided, to prevent any person from engaging in unfair employment practices: Provided, That before instituting the formal hearing authorized by this section it shall attempt, by informal methods of persuasion and conciliation, to induce compliance with this act.

Complaint; contents.

(b) Any individual claiming to be aggrieved by an alleged unlawful employment practice may, by himself or his agent, make, sign and file with the board, within 90 days after the alleged act of discrimination, a verified complaint in writing, which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the board. Any employer whose employees, or some of whom, refuse or threaten to refuse to cooperate with the provisions of this act, may file with the board a verified complaint asking for assistance by conciliation or other remedial action.

Same; filing, investigation.

(c) After the filing of any complaint setting forth unlawful employment practice, the chairman of the board shall designate 1 of the commission members to make, with the assistance of the commission's staff, prompt investigation in connection therewith; and if such member shall determine after such investigation that probable cause exists for crediting the allegations of the complaint, he shall immediately endeavor to eliminate the unlawful employment practice complained of by conference, conciliation and persuasion. The members of the commission and its staff shall not disclose what has transpired in the course of such endeavors.

Same; service, notice of hearing.

(d) Whenever a charge has been made by any individual, hereinafter referred to as the complainant, that any employer, employment agency, labor organization or person, hereinafter referred to as the respondent, has engaged in or is engaging in any unfair employment practice, the commission shall have the power to issue and cause to be served upon such respondent a complaint stating the charges in that respect and containing a notice of hearing before the commission or a member thereof, or a hearing examiner, at a place therein fixed to be held not less than 10 days after the service of said complaint.

Same; amendment, answer.

(e) Any such complaint may be amended by the commission or a member thereof or its agents conducting the hearing, at any time prior to the issuance of an order based thereon. The respondent shall have the right to file an answer to the original and amended complaint and to appear at such hearing in person or by attorney or otherwise to examine and cross-examine witnesses and the complainant.

Same; parties, interveners.

(f) The complainant shall be a party to the proceeding and, in the discretion of a member conducting the hearing or of the commission, any person may be allowed to intervene therein.

Same; testimony, criterion for employment.

(g) The testimony taken at the hearing shall be under oath and shall be reduced to writing and filed with the commission. Thereafter, in its discretion, the commission upon notice may take further testimony or hear argument which may tend to prove the existence of a predetermined pattern of employment or membership: Provided, That nothing herein contained shall be construed to authorize or require any employer or labor organization to employ or admit applicants for employment or membership in the proportion which their race, color, religion, national origin or ancestry bears to the total population, or in accordance with any criterion other than the individual qualifications of the applicant.

Same; finding of commission, order to cease, declaratory order.

(h) If, upon the preponderance of the evidence on the record considered as a whole, the commission shall determine that the respondent has engaged in or is engaging in any unfair employment practice, the commission shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unfair employment practice and to take such further affirmative or other action as will effectuate the purposes of this act, including, but not limited to, hiring, reinstatement or upgrading of employees with or without back pay, or admission or restoration to union membership, including a requirement for reports of the manner of compliance. Upon the submission of such reports of compliance, the commission may issue a declaratory order stating that respondent has ceased to engage in unfair employment practices.

Same; order of dismissal; copies.

(i) If the commission shall find that no probable cause exists for crediting the charges or if, upon all the evidence, the commission shall find that a respondent has not engaged in any unfair employment practice, it shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent. A copy of the order shall be delivered in all cases to the attorney general and such other public officers as the commission deems proper.

Same; modification of orders.

(j) Until a transcript of the record in a case shall be filed in a court as hereinafter provided, the commission may at any time, upon reasonable notice and in such man-

ner as it shall deem proper, modify or set aside in whole or in part any findings or order made by it.

HISTORY: New 1955, p. 414, Act 251, Eff. Oct. 14.

423.308 Repealed. 1963, 2nd Ex. Ses., p. 59, Act 45, Eff. Jan. 1, 1964.

Section provided for circuit court review of final order of commission.

423.309 Posted notice of act; violation.

Sec. 9. Every employer, employment agency and labor union, subject to this act, shall post in a conspicuous place or places on his premises a notice to be prepared or approved by the commission which shall set forth excerpts of this act and such other relevant information which the commission deems necessary to explain the act. Any employer, employment agency or labor union refusing to comply with the provisions of this section shall be punished by a fine of not less than \$100.00 nor more than \$500.00.

HISTORY: New 1955, p. 417, Act 251, Eff. Oct. 14.

423.310 Repealed. 1963, 2nd Ex. Ses., p. 59, Act 45, Eff. Jan. 1, 1964.

Section provided for construction of the act.

423.311 Michigan state fair employment practices act; short title.

Sec. 11. This act may be cited as the "Michigan state fair employment practices act."

HISTORY: New 1955, p. 417, Act 251, Eff. Oct. 14.

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CHAPTER 425. MINES—LABOR CONDITIONS; INSPECTIONS; SURVEYS

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Act 177, 1913, p. 333; Eff. Aug. 14.

AN ACT to provide for the health and safety of persons employed in and about the coal mines of Michigan, for the appointment, qualifications, duties and compensation of an inspector of mines, and for the protection and preservation of property connected therewith, and to provide penalties for the violation thereof, and for the repeal of all acts and parts of acts inconsistent herewith.

The People of the State of Michigan enact:

425.1 Coal mine health and safety regulations; definitions.

Sec. 1. For the purposes of this act, the terms and definitions contained herein shall be as follows:

In this act the term "Mine" includes the shafts, slopes and drifts connected with excavations penetrating the coal stratum or strata, which excavations are ventilated by 1 general air current, or divisions thereof, and connected by 1 general system of mine railroads, over which coal may be delivered to 1 or more points outside the mine, when such is operated by 1 operator.

The term "Excavations and Workings" includes all the excavated portions of a mine, those abandoned, as well as the places actually being worked; also all underground workings and shafts, slopes, tunnels and other openings, in the course of being sunk or driven, together with all roads, appliances, machinery and material connected with the same below the surface.

The term "Shaft" means a vertical opening through the strata that is or may be used for the purpose of ventilation or drainage, or for hoisting men, coal or material, or both, in connection with the mining of coal.

The term "Slope" means an incline or opening used for the same purpose as a shaft.

The term "Operator" means any firm, corporation or individual operating any coal mine, or any part thereof.

The term "Superintendent" means the person who shall have, on behalf of the operator, immediate supervision of 1 or more mines.

The term "Mine Foreman" means the person whom the operator or superintendent shall place in charge of the inside workings of the mine and of the persons employed therein.

The term "Inspector" means the person commissioned by the commissioner of labor to have supervision of the mines as hereinafter prescribed.

The term "Mine Committee" means men employed to represent the miners.

HISTORY: CL 1915, 5516;—CL 1929, 8536;—CL 1948, 425.1.

This act probably superseded Secs. 38 to 53 of Act 285 of 1909, being CL 1915, 5359 to 5374, repealed by Act 308 of 1929, being CL 1929, 121.

APPOINTMENT OF MINE INSPECTOR.

425.2 Coal mine inspectors; appointment, qualifications, salary, expenses.

Sec. 2. An inspector of coal mines shall be appointed by the commissioner of labor, subject to the approval of the governor of the state, who shall have had at least 8 years' experience in the mine, 3 years of which he was employed in mining and loading coal, and he shall not, while in office, be interested as owner, operator, agent, director or otherwise interested in any coal mine, gas, oil or other mining interests, directly or indirectly, or in any way whatever be connected with a miners' organization during his term of office, and he must have been a resident of the state at least 5 years before his appointment to office, and shall receive as a salary for his services the sum of 1,800 dollars per annum, and in addition thereto shall be allowed an amount not exceeding 750 dollars for traveling expenses per year. The inspector shall present all bills for traveling expenses to the commissioner of labor, and the same shall be approved by him before being presented to the board of state auditors for allowance. The salary and expense of the inspector shall be paid semi-monthly from the general fund of the state upon warrants drawn by the auditor general.

HISTORY: CL 1915, 5517;—Am. 1919, p. 61, Act 34, Imd. Eff. March 28;—CL 1929, 8537;—CL 1948, 425.2.

DIRECTOR OF LABOR AND OFFICE OF INSPECTOR OF COAL MINES: See Compilers' §§ 16.476, 16.477 and 16.484.

CITED IN OTHER SECTIONS: The above section is cited in § 16.484.

POLICE POWERS OF INSPECTOR.

425.3 Coal mine inspectors; police powers; arrests, closing of mines.

Sec. 3. The inspector of mines is hereby empowered to act as police officer with full power to arrest and detain any person found violating any provisions of this act, or engaged in any attempt to violate this law or any part thereof, or against whom there is found any evidence of a previous violation of this law: Provided, however, That no such person shall be detained for any period of time longer than 24 hours without warrant or the filing of a charge against him in a court of competent jurisdiction. Such inspector shall also have the power to immediately stop the operation of any coal mine, or part thereof, in which any dangerous or unlawful condition is found: Provided, however, That where conditions exist justifying him to do so, he may grant a reasonable length of time for making necessary repairs: And Provided further, That where any stop is enforced, such inspector shall have the power to subsequently allow such mine, or part of mine to be re-opened when the dangerous or unlawful conditions have been remedied or removed, so that they no longer exist.

HISTORY: CL 1915, 5518;—CL 1929, 8538;—CL 1948, 425.3.

AUTHORITY TO ENTER.

425.4 Coal mine inspectors; authority to enter mine; reasonable inspection.

Sec. 4. It shall be lawful for the inspector of mines to enter, examine and inspect at any and all seasonable times, by day or by night, but so as not to unreasonably obstruct or hinder the working of such coal mine, and the operator of every such coal mine is hereby required to allow free access for making such examination and inspection.

HISTORY: CL 1915, 5519;—CL 1929, 8539;—CL 1948, 425.4.

POSTING NOTICES.

425.5 Coal mine inspectors; posting notices; reports; number of inspections.

Sec. 5. The result of all coal mine inspections made by the inspector of the mines, showing all his conclusions as to the condition or safety of the mines and orders given in the inspection of any coal mine, shall be posted in writing at the entrance to such mine immediately upon the conclusion of each inspection, and he shall furnish a copy of such report to the mine office, and also to the mine committee. The inspector of

mines shall make personal inspection of all coal mines in the state at least 4 times each year.

HISTORY: CL 1915, 5520;—CL 1929, 8540;—CL 1948, 425.5.

INSPECTOR OF WEIGHTS.

425.6 Coal mine inspectors; ex officio weights inspector; testing of scales.

Sec. 6. The state coal mine inspector shall be ex officio inspector of weights, measures and scales used at coal mines, and he is hereby empowered and it shall be his duty to test all the scales, correctly measure the weight of such coal, and if defects or irregularities are found in such scales, which prevent correct weights and measurements, the inspector shall call the attention of the mine owner, agent or operator to such defects, and shall direct the same to be at once properly adjusted and corrected.

HISTORY: CL 1915, 5521;—CL 1929, 8541;—CL 1948, 425.6.

TEST WEIGHTS.

425.7 Coal mine inspectors; furnished with standard weights; custody; expenses.

Sec. 7. For the purpose of carrying out the provisions of this act, the state inspector shall be furnished by the state with a complete set of standard weights, suitable for testing the accuracy of track scales and of all smaller scales at mines. Such test weights shall remain in the custody of the inspector for use at any point within the state, and for any amounts expended by him for storage, transportation or handling of the same, he shall be fully reimbursed upon making entry of the proper items in his expense voucher.

HISTORY: CL 1915, 5522;—CL 1929, 8542;—CL 1948, 425.7.

WEIGHMEN TO MAKE OATH.

425.8 Weighmen to make oath; selection.

Sec. 8. All weighmen who shall perform the duty of weighing coal shall be sworn by some one competent to administer a legal oath, that they will perform their duty accurately and impartially as between employers and employes, and that they will honestly report and record all weights of coal with which they are entrusted. The coal mine employes shall have the right to name a competent and fair check weighman, who shall be paid by the employes and be sworn by one authorized to administer oaths.

HISTORY: CL 1915, 5523;—CL 1929, 8543;—CL 1948, 425.8.

MAP OF MINES. COPIES FURNISHED MINE INSPECTOR. SURVEYS ORDERED. WHEN.

425.9 Map of mines; copies furnished mine inspector; surveys ordered; time; entry; abandoned mines; expenses.

Sec. 9. The owner, operator, lessee or person in charge of any coal mine, shall make or cause to be made an accurate map or plan of such mine, drawn to a scale of not more than 200 feet to the inch, on which shall appear the name of the state, county and township in which the mine is located, the designation of the mine, the name of the company or owner, operator, lessee or person in charge, the certificate of the mining engineer or surveyor as to the accuracy and date of the survey, the north point and the scale to which the drawing is made. Every such map or plan shall correctly show the surface, boundary lines of the coal rights pertaining to each mine, and all sections or quarter section lines or corners within the same; the lines of town lots and streets; the tracks and sidetracks of all railroads, the location of all wagon roads, rivers, streams, ponds. For the underground workings said map shall show all shafts, slopes, tunnels, or other openings to the surface or to the workings of a contiguous mine, all excavations, entries, rooms and crosscuts; the location of the escape ways, and of the

fan or other means of ventilation, and the direction of air currents and the location of permanent pumps, hauling engines, engine plans, abandoned work, fire walls and standing water. A separate and similar map drawn to the same scale in all cases, shall be made of each and every seam of coal operated in any mine in this state. A separate map shall also be made of the surface whenever the surface buildings, lines or objects are so numerous as to obscure the details of the mine workings, if drawn upon the same sheet with them, and in such case the surface map shall be drawn upon transparent cloth or paper, so that it can be laid upon the map of the underground workings and thus truly indicate the local relations of lines and objects on the surface to the excavations of the mine, together with any other principal workings of the mine. The original or true copies of all such maps shall be kept at the office of the mine, and true copies thereof shall also be furnished the state inspector of coal mines within 30 days after the completion of the same. The maps so delivered to the inspector shall be the property of the state, and shall remain in the custody of the commissioner of labor during his term of office, and be delivered to his successor in office. They shall be kept at the office of the commissioner of labor, and be open to examination of all persons interested in the same, but such examination shall be made only in the presence of the inspector, commissioner of labor, or his office assistant; no copies of the same to be made without the written consent of the operator or owner of the property, except as herein otherwise provided. An accurate extension of the last preceding survey of every mine in active operation shall be made in every 12 months prior to July first of every year, and the result of such survey, with the date thereof, shall be promptly and accurately entered upon the original map; and a true, correct and accurate copy of said extended map shall be forwarded to the inspector of coal mines so as to show all changes in plan of new work in the mine, and all extensions of old workings to the most advanced face or boundary of said workings which have been made since the last preceding survey; and the parts of the mine abandoned or worked out after the last preceding survey shall be clearly indicated and shown by colorings, which copy must be delivered to such inspector of coal mines within 30 days after the last survey is made. When any coal mine is worked out or is about to be abandoned, or indefinitely closed, the owner, operator, lessee or person in charge of the same shall make or cause to be made a complete and extended map of said mine, and the result of the same shall be duly extended on all maps of the mine and copies thereof so as to show all excavations and the most advanced workings of the mine and their exact relations to the boundary or section lines on the surface, and deliver to the inspector a copy of the completed map. The state coal mine inspector shall order a survey to be made of the workings of any mine and the result to be extended on the maps of the same, and the copies thereof, whenever in his judgment the safety of the working men, or the safety of an adjoining mine requires it; and if not made by the owner, operator, lessee or person in charge when ordered by the inspector, it shall be made or caused to be made by the inspector and paid for by the state, and the amount collected from the owner, operator, lessee or person in charge, as other debts are collected.

HISTORY: CL 1915, 5524;—CL 1929, 8544;—CL 1948, 425.9.

COMMISSIONER OF LABOR: Office abolished; powers and duties transferred to the department of labor, see Compilers' § 16.477.

ABANDONED MINES.

425.10 Abandoned mines; excavations; bore hole; sealing or ventilating; removal of timber.

Sec. 10. When approaching abandoned workings and when within not less than 60 feet of the same, the excavations in approaching the said workings shall not exceed 8 feet in width, and there shall be constantly kept 1 bore hole near the center not less

than 20 feet in advance, and 1 flank bore hole on each side, of not less than 15 feet in length.

Abandoned workings shall be sealed or ventilated. The sealing or ventilating of abandoned workings shall be governed by the law or practice where the mine is operated. Where practice is to seal abandoned workings, the sealing shall be done in a substantial manner with incombustible material. In every sealed area, 1 or more of the seals shall be fitted with a pipe and cap or valve to permit the gases behind the seals to be sampled and also to provide a means of determining any existing hydrostatic pressure.

In worked-out places where timbers are being removed, persons engaged in drawing timber shall not be permitted to work alone.

HISTORY: CL 1915, 5525;—CL 1929, 8545;—Am. 1947, p. 61, Act 56, Eff. Oct. 11;—CL 1948, 425.10.

VENTILATION.

425.11 Ventilation; air; safety lamps; percentage methane requiring employees to withdraw from mine.

Sec. 11. For the purpose of ventilation the mines shall be furnished with not less than 100 cubic feet of air per minute for each person employed in the mine, or 300 cubic feet of air per minute for each machine, mule or other draught animal in the mine, the measurements to be made at any point of the intake airways. The amount of air shall be so distributed as to give all employees air of reasonable purity to keep the working places in a healthy condition, free from noxious gases and deleterious air, and no more than 100 men to work on any split of air. In mines generating explosive gas of a sufficient quantity to be detected by an ordinary safety lamp, the quantity shall not be less than 200 cubic feet of air per minute for each person and 600 cubic feet for each machine, mule or other draught animal, and the mine shall be operated with locked safety lamps and examined by a competent person each morning before the men enter their working places. If the air immediately returning from a split contains 1.5 per cent methane, the employees shall be withdrawn from the mine or portion of the mine affected, and all power shall be cut off from said mine or portion of the mine, until such dangerous condition has been corrected.

HISTORY: CL 1915, 5526;—CL 1929, 8546;—Am. 1947, p. 62, Act 56, Eff. Oct. 11;—CL 1948, 425.11.

DOORS, BREAKTHROUGHS AND BRATTICES.

425.12 Doors, breakthroughs and brattices; owner, duties.

Sec. 12. Doors, curtains or brattices shall be placed in such places as may be designated by the mine manager. All doors set on entries, for the purpose of conducting ventilation shall be made sufficiently tight to effectually obstruct the air current. Breakthroughs shall be made every 60 feet, first breakthrough in rooms not to exceed 30 feet from entry; all breakthroughs must be not less than 5 feet wide at any point in said breakthrough. It shall be the duty of mine owners to close, or cause to be closed, all entry breakthroughs with airtight brattices with the exception of the 1 nearest the working place of the employees, or 2 if necessary, no obstruction of any kind to be placed in the breakthrough nearest the working place. Curtains shall not be permanently used on entries or airways without the written consent of the state inspector of coal mines.

HISTORY: CL 1915, 5527;—CL 1929, 8547;—CL 1948, 425.12.

PURITY OF OIL.

425.13 Purity of oils; illuminating oils; penalty.

Sec. 13. Only pure animal or vegetable oil or other means for illuminating purposes equally as safe and free from smoke or offensive odor shall be used in any coal mine in

this state; and for the purpose of determining the purity of oils the state board of health shall fix a standard of purity of the said oils and establish regulations for testing the same, and when so determined and established it shall be recognized by all of the courts of this state. And in any case when any material, substance or other means of illuminating is used for illuminating purposes, as by this act contemplated, any refuse part thereof remaining after use which gives off any gas or offensive odor shall, by the person using it, be removed from the mine at the end of his day's work. Any person, firm or corporation, either by themselves, agents or employees selling or offering to sell for illuminating purposes in any mine in this state any adulterated or impure oil, or oil not recognized by the state board of health as suitable for illuminating purposes, or other substance to be used for illuminating purposes not equally as safe and free from smoke or offensive odor as oils contemplated by this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than 25 dollars nor more than 100 dollars for each offense; and any mine owner, lessee, operator or employe thereof who shall knowingly use, or any mine owner, lessee or operator who shall knowingly permit to be used for illuminating purposes in any mine in this state, any impure or adulterated oil or any oil or other means of illuminating, the use of which is forbidden by this act, shall upon conviction thereof, be fined not less than 5 dollars nor more than 25 dollars.

HISTORY: CL 1915, 5528;—CL 1929, 8548;—CL 1948, 425.13.

STATE BOARD OF HEALTH: Abolished; powers and duties transferred to the state health commissioner, see Compilers' § 325.4.

OIL INSPECTOR: Powers and duties of state oil inspector's office have been transferred to Michigan state police, see Compilers' § 28.5.

REGULATIONS FOR OIL.

425.14 Regulations for oil; place of use; storage, amount.

Sec. 14. The oiling or greasing of cars inside of any mine is strictly prohibited, unless the place where said oil or grease is used is thoroughly cleaned at least once each working day to prevent the accumulation of waste oil or grease on the roads or in the drains at that point. Not more than 2 barrels of lubricating oil shall be permitted in any mine at 1 time, and it shall be kept in a fireproof building, cut out of solid rock, or made of masonry or concrete of sufficient thickness to insure safety in case of fire. But this shall not prevent a sufficient quantity of oil being sent in for machines.

HISTORY: CL 1915, 5529;—CL 1929, 8549;—CL 1948, 425.14.

ELECTRICITY.

425.15 Electricity; protection of wiring.

Sec. 15. In all coal mines in this state where electricity is or shall be used as a part of the system power or means of mining and securing the coal from said mine, the wiring shall be carefully and thoroughly insulated or protected, except trolley and negative wires, so that the person or animals coming in contact therewith shall not be injured thereby.

HISTORY: CL 1915, 5530;—CL 1929, 8550;—CL 1948, 425.15.

GASOLINE ENGINES, LOCATION, APPROVAL, HAND FIRE EXTINGUISHERS.

425.16 Exhaust; pumps; gasoline supply.

Sec. 16. Where gasoline engines are used in the coal mines, the exhaust must be properly cared for, and all gasoline pumps shall be placed in such position that the fumes from the pumps will not vitiate the air or injure the health of the employes. The supply of gasoline required for the operation of said pump or engine shall not exceed 1 day's supply, and shall be taken into the mine only in sealed metal tanks, so constructed that the oil supply can be changed without pouring the oil from 1 tank to another. At all hoisting shafts, air shafts, escape shafts and places of exit, boiler and en-

gine rooms, stables in mines and places where gasoline engines are used, there shall be kept ready for use at all times at least 2 good hand fire extinguishers, conveniently placed for immediate use when needed.

HISTORY: CL 1915, 5531;—CL 1929, 8551;—CL 1948, 425.16.

BOILER AND ENGINE ROOM LOCATION.

425.17 Boiler and engine rooms; location; construction materials; white-wash.

Sec. 17. All boiler and engine rooms to be located or constructed on the surface at any mine, from and after the enactment of this act, shall be constructed of non-combustible material, except rafters, roof-boards, studding and coal bins, which shall be kept whitewashed; and in no case shall the boiler room be placed within less than 60 feet of the hoisting shaft, slope or drift, and no obstruction shall be placed between the engine room or hoisting shaft, so as to obstruct the view of the engineer.

HISTORY: CL 1915, 5532;—CL 1929, 8552;—CL 1948, 425.17.

INFLAMMABLE BUILDINGS.

425.18 Inflammable buildings; fan house; storage of explosives.

Sec. 18. It shall be unlawful to erect any inflammable building within 100 feet of the fan house, and in any building erected between fan house and hoisting shaft no explosives shall be stored.

HISTORY: CL 1915, 5533;—CL 1929, 8553;—CL 1948, 425.18.

WASH HOUSES.

425.19 Wash houses; request; location; equipment.

Sec. 19. For the protection of the health of the employes hereinafter mentioned, it shall be the duty of the owner, operator, lessee, superintendent of, or other person in charge of every coal mine, at the request in writing of 20 or more employes of such mine, or in event there are less than 20 men employed, then, upon the written request of 1/3 of the number of employes employed, to provide a suitable wash room or wash house for the use of persons employed, so that they may change their clothing before beginning work and wash themselves and change their clothing after working. Said room shall be separate from the engine or boiler room, and shall be maintained in good order, be properly lighted and heated and be provided with clean, cold and warm water.

HISTORY: CL 1915, 5534;—CL 1929, 8554;—CL 1948, 425.19.

TIME FOR CONSTRUCTING ESCAPE SHAFTS OR OTHER EXITS.

425.20 Escape shafts or other exits; time for constructing, operation of mine before and after expiration of time.

Sec. 20. In all mines there shall be allowed 6 months to make escape shafts or other means of exit, as provided by law, the time to date in all cases from hoisting of coal from main shaft, slope or drift, but not more than 25 persons shall be employed in such mine at any time until the provision of the law relating to escape shafts, or other means of exit, shall have been complied with, and after the expiration of the period above mentioned, it shall not be operated until made to conform to the provisions of law with reference to the escape shaft or other means of exit.

HISTORY: CL 1915, 5535;—CL 1929, 8555;—CL 1948, 425.20.

TWO PLACES OF EGRESS.

425.21 Places of egress; unobstructed openings.

Sec. 21. The owner, operator, lessee or person in charge of any mine hereafter constructed and operated by shaft, or one having a slope or drift opening in which 5 or

more persons are employed, shall construct and maintain at least 2 distinct openings, which in mines operated by shaft shall be separated by natural strata of not less than 300 feet in breadth, and in mines operated by slope or drift, not less than 200 feet in breadth, to which ingress and egress at all times shall be unobstructed to the employes and persons having occasion to use the same as escape ways or place of exit from the mine.

HISTORY: CL 1915, 5536;—CL 1929, 8556;—CL 1948, 425.21.

ESCAPE SHAFTS EQUIPPED WITH STAIRWAY. HOW CONSTRUCTED.

425.22 Escape shafts equipped with stairway; how constructed; separation of escape and air shaft.

Sec. 22. All escape shafts hereafter constructed not provided with hoisting appliances as hereinafter provided, shall have stairs at an angle of not more than 45 degrees in ascent, nor less than 18 inches wide in the clear, with proper, safe and substantial landing at convenient and easy distances and equipped with good and substantial hand rails or banisters. If shaft be used for an escape shaft and air shaft, that part of the shaft used as an escape way shall be divided and partitioned closely with good and substantial material from the part used as an air shaft, all of which shall be kept in a safe condition as by this act provided.

HISTORY: CL 1915, 5537;—CL 1929, 8557;—CL 1948, 425.22.

ESCAPE SHAFT EQUIPPED WITH HOISTING APPARATUS.

425.23 Escape shafts equipped with hoisting apparatus; equipment.

Sec. 23. All escape shafts not provided with stairs shall be provided with suitable appliances for hoisting underground workmen, ready for use at all times, both day and night, while the workmen are at labor, which hoisting apparatus shall be separate and apart from the hoisting shaft, and the equipment shall include a depth indicator brake on the drum, steel or iron cage, safety catches on cages and covers on cages to securely protect any person while on the cage.

HISTORY: CL 1915, 5538;—CL 1929, 8558;—CL 1948, 425.23.

TRAVELING WAYS. HOW CONSTRUCTED. SIGN BOARDS.

425.24 Travelling ways; how constructed; sign boards; location; maintenance.

Sec. 24. In any mine affected by this act, and every seam of coal worked therein there shall be constructed, kept and maintained, safe and accessible traveling ways from the escape ways or place of exit to main haulage roads, which shall be maintained free from falls of roof, standing water, or other obstructions. At all points where the passage or traveling ways to the escapement shaft or place of exit intersect other road ways or entries, conspicuous sign boards shall be placed thereat, indicating the way to such place of exit.

HISTORY: CL 1915, 5539;—CL 1929, 8559;—CL 1948, 425.24.

ESCAPE WAYS KEPT FREE FROM FOUL AIR, ICE AND OBSTRUCTIONS.

425.25 Escape ways; kept free from foul air, ice and obstructions; control of steam, warm air or water.

Sec. 25. The escape way shall be ventilated and kept free from vitiated air, accumulations of ice and obstructions of every kind; nor shall steam or heated air be discharged therein during the day time, unless an attendant be kept in charge thereof and the equipment so arranged that the steam or warm air may be readily turned off at any time when required, and a conspicuous sign board placed in plain view, indicating the point where the steam or warm air may be turned off, as by this act contemplated; and all surface or other water which flows therein, shall be conducted by rings

or otherwise to receptacles for the same so as to keep the stairway reasonably free from falling water.

HISTORY: CL 1915, 5540;—CL 1929, 8560;—CL 1948, 425.25.

LIGHTS AT THE TOP AND OPENING OF SHAFT.

425.26 Escape shafts; lights at top and opening of shaft; time for use; kind.

Sec. 26. In all cases, after twilight, or when by reason of steam or other causes obscuring the plain view of the top or opening of any shaft, there shall be maintained a good and substantial light, but in no case shall an open light or torch be used.

HISTORY: CL 1915, 5541;—CL 1929, 8561;—CL 1948, 425.26.

TRAVELING WAY AROUND BOTTOM OF HOISTING SHAFT.

425.27 Travelling way around bottom of hoisting shaft; passing across bottom of shaft unlawful.

Sec. 27. At the bottom of each hoisting shaft there shall be constructed a safe and convenient traveling way around the shaft for employes and animals, and it shall be unlawful for any person to pass across the shaft bottom in any other manner or in any other way than the traveling way herein contemplated, except such employes as may be necessary to perform the work at the bottom of the shaft or those engaged in making repairs.

HISTORY: CL 1915, 5542;—CL 1929, 8562;—CL 1948, 425.27.

STABLE LOCATION. CONSTRUCTION. NOT USED FOR STORAGE PURPOSES.

425.28 Stable location; construction; not used for storage purposes; hay storage, amount; emergency.

Sec. 28. The owner, operator, lessee or person in charge of any mine shall not be allowed to locate any stable at a point in any mine where the air current supplied to the employes passes through such place. The materials used in the construction of the stables herein contemplated shall, as near as practicable, be incombustible, and such stables shall not be used as a place for storing, nor shall any inflammable material be stored therein, except such hay as may be necessary for 1 day's use, except in case of emergency.

HISTORY: CL 1915, 5543;—CL 1929, 8563;—CL 1948, 425.28.

PLACES OF REFUGE. SIGNALS. LIGHTS.

425.29 Places of refuge; signals; lights; location; size; freedom from obstruction.

Sec. 29. On all single track haulage roads where haulage is done by machinery, which roads the persons employed in the mine must use, while traveling on foot to and from their work, there shall be places of refuge on 1 side not less than 3 feet in depth from the side of the car, and not less than 5 feet long and not less than the height of the entry as driven and not more than 60 feet apart. On rope haulage roads means of signaling shall be established between the hauling engines at all points on the road. A conspicuous light must be carried on the front of every trip or train of such cars moved by machinery. On all haulage roads on which the hauling is done by draught animals whereon men are obliged to pass to and from their work, there shall be places of refuge not less than 3 feet in width from the side of the car and not less than 5 feet long and not less than the height of the entry as driven, and not more than 60 feet apart.

Refuge places shall not be required in the entries on which room necks are turned at regular intervals not exceeding 60 feet apart, which furnish required refuge places. All places of refuge must be kept clear of obstruction, except supports, and no materials shall be stored or be allowed to accumulate therein.

HISTORY: CL 1915, 5544;—CL 1929, 8504;—CL 1948, 425.29.

MEANS OF COMMUNICATIONS, SAFETY APPLIANCES, ETC.

425.30 Means of communications; safety appliances; speaking tubes; cages; hoisting apparatus; inspection.

Sec. 30. The operator or superintendent shall provide and maintain from the top to the bottom of every shaft where persons are raised or lowered, a metal tube suitably adapted to the free passage of sound, through which conversation may be held between persons at the top and bottom of said shaft, and also means of signaling from the top to the bottom thereof, and shall provide every cage used for the hoisting or lowering of persons, with a sufficient overhead covering to protect these persons when using the same, and shall provide also for each said cage a safety catch approved by the mine inspector and to be tested by drop quarterly. The said operator or superintendent shall see that flanges with sufficient clearance, when the rope is wound around the drum, to prevent the rope slipping off the drum of every engine that is used for lowering and hoisting persons to and out of the mine, are used, and also, that adequate brakes are attached to the drums: Provided, That the rope shall be left around the drum at least 1 ½ times when the cage is at the bottom of the shaft. Safety gates, to be approved by the mine superintendent, shall be so placed as to prevent persons from falling into the shaft. The ropes, chains and machinery, and all its connections used for lowering or raising the employees into or out of the mines shall be kept in a safe condition and inspected once every 24 hours by a competent person provided by the mine operator for that purpose, who shall make a daily record of such inspection in a book provided for that purpose, and such machinery and the method of its inspection shall be approved by the mine inspector.

HISTORY: CL 1915, 5545;—CL 1929, 8505;—CL 1948, 425.30.

SAFETY IN HOISTING MEN.

425.31 Safety in hoisting men; apparatus; load; speed.

Sec. 31. Hoisting and lowering men. Every cage on which persons are carried must be fitted with iron bars or rings in proper place and sufficient number to furnish a secure handhold for every person permitted to ride thereon, and not more than 10 persons shall be allowed to descend or ascend in any cage at one time, or such less number as may be fixed by the mine inspector. No person at any time shall be allowed to ride in the shaft or on any cage with a car, tools or other material or when such car, tools or material is on the opposite cage, except when absolutely necessary in the performance of work in the making of repairs; and no person shall ride upon a loaded trip while in any part of the mine, except the person or persons in charge thereof. Cages on which employees are riding shall not be lifted or lowered at a rate of speed greater than 400 feet per minute.

HISTORY: CL 1915, 5546;—CL 1929, 8506;—CL 1948, 425.31.

COMPETENT AND SOBER ENGINEERS. DUTIES.

425.32 Competent and sober engineers; duties; signals code, posting; machinery inspection.

Sec. 32. The owner, operator or lessee or any person in charge of any mine shall not place in charge of any engine in and around the mine, any but competent and sober engineers, who shall not permit any person but those designated to handle, operate, or interfere with it or any part of the machinery, except such as may be necessary in mak-

ing proper and needed repairs, and no person shall be permitted to talk to the engineer while in the performance of his duty in hoisting or lowering employes, coal or mineral. There shall be placed in plain view of the engineer while at his post of duty, at some conspicuous point, a code of signals as by this act provided, and which shall be in like manner placed at the top and bottom of the shaft, slope or drift; and it shall be the duty of the engineer at least once each day to carefully inspect all of the machinery and apparatus under his charge, and carefully note all of its parts, and if any defects appear which will endanger the life or limb of any employe in the use thereof, he shall cease operating the machinery until the defects are corrected.

HISTORY: CL 1915, 5547;—CL 1929, 8567;—CL 1948, 425.32.

CODE OF SIGNALS.

425.33 Code of signals.

Sec. 33. One bell: Hoist cage, stop cage when in motion.

Two bells: Lower cage.

Three bells: Hoist car of dirt.

Four bells: Men and cage ready to be hoisted; cage must always be stopped at landing on 4 bells.

Five bells: Hoist slowly, danger.

Notice to men at bottom coming up.—Ring 4 bells. After engineer gives 1 blast with whistle, get on cage and ring 1 bell to be hoisted. Engineer wanting cage while at bottom will give 4 blasts with whistle before moving cage.

HISTORY: CL 1915, 5548;—CL 1929, 8568;—CL 1948, 425.33.

CONVEYING OF EXPLOSIVES.

425.34 Conveying of explosives; insulation.

Sec. 34. Blasting powder or explosives must not be taken into or out of a coal mine, or moved from place to place in a coal mine along any entry or haulway, where there are electric wires, while the power is on such wires, except when such powder or explosive is conveyed in insulated cars or packages.

HISTORY: CL 1915, 5549;—CL 1929, 8569;—CL 1948, 425.34.

ANNUAL REPORT. REPORT OF ACCIDENTS.

425.35 Annual report; report of accidents; form, time, contents.

Sec. 35. The owner, lessee, operator or person in charge of any mine shall on or before the first day of August in each year, send to the office of the inspector, upon blanks furnished by the state, a correct return with respect to the year ending July first of each year, the quantity of coal mined and the number of persons ordinarily employed in, at and around such mine, designating the number of persons below and above ground. In all cases the owner, operator, lessee or person in charge of any coal mine in this state, upon the happening of any accident by which injury occurs to any of the employes above or below ground, shall immediately report the same to the mine inspector, which report shall contain a detailed statement of the extent of the accident, and the manner in which it occurred, which report shall conform to the standard form of reports as provided by the mine inspector in such cases.

HISTORY: CL 1915, 5550;—CL 1929, 8570;—CL 1948, 425.35.

WORKMEN'S COMPENSATION LAW: Report of accidents required by, see Compilers' § 418.805.

STRETCHERS, BLANKETS AND BANDAGES.

425.36 First aid; stretchers, blankets, and bandages.

Sec. 36. The owner, operator, lessee or person in charge of any mine shall at all times keep in readiness for use in case of accident and at the mine at some convenient place, 1 good and substantial stretcher for each 100 employes engaged in the opera-

tion of the mine, and proper and sufficient woolen blankets for each stretcher, together with a sufficient and reasonable supply of bandages.

HISTORY: CL 1915, 5551;—CL 1929, 8571;—CL 1948, 425.36.

CAPS, TIMBER AND PROPS.

425.37 Caps, timber and props; supply on hand; delivery to miner.

Sec. 37. The owner, agent or operator of any and all coal mines shall keep a supply of timber constantly on hand of sufficient length to be used as props and cap pieces, and the same shall be promptly delivered to the miner at his respective place of work, as he may designate in writing, on blanks to be furnished by the operator.

HISTORY: CL 1915, 5552;—CL 1929, 8572;—CL 1948, 425.37.

DUTIES OF MINE FOREMAN, OR PIT BOSS.

425.38 Mine foreman or pit boss; duties; inspection; reports; notice of defects; identification and record of persons in mine.

Sec. 38. It shall be the duty of the mine foreman, or pit boss in charge of any mine or part thereof, to make careful inspection of the working places in the mine 2 times each week by himself or assistant, and at any such other time as in his judgment may be required. He shall give such directions and formulate such rules for the guidance of the men employed in the mine, as skillful and safe operation of the mine may require. He shall see that the miners are supplied with props, when ordered by the miner, of proper length, caps and other timbers necessary to securely prop the roof of such mine and the rooms wherein the men are employed, and such material shall be delivered to their working places. He shall keep a careful watch over the ventilating apparatus and air ways, together with all of the stoppings, doors and other means of directing the air current. He shall examine the escape shaft, man-way, the traveling ways leading thereto from the main entries, or cause them to be examined by a competent person, once each day, and a written report of the conditions of such shaft, man-way and traveling ways shall be made and filed in the office at that mine, which shall be open for examination at all reasonable times to the representatives of the employees and such other persons entitled thereto. A copy of such report shall be sent each month to the mine inspector. If he finds the conditions of the escape shaft, man-way or traveling ways impassable or dangerous, he shall immediately upon the discovery of the defect, place such instructions at the defective place as may be reasonably necessary to apprise the employees of the danger.

Each mine shall have a check-in and check-out system that will provide positive identification upon the person of every individual underground. An accurate record of the men in the mine, which shall consist of a written record, a check board, or a time-clock record, shall be kept on the surface in a place that will not be affected in the event of an explosion. Said record shall bear a number identical to the identification check carried by the person underground.

HISTORY: CL 1915, 5553;—CL 1929, 8573;—Am. 1947, p. 62, Act 56, Eff. Oct. 11;—CL 1948, 425.38.

CAUTION AS TO PROPERTY. DOORS, ETC.

425.39 Caution as to property, doors; forbidden wilful acts.

Sec. 39. No workman or other person shall knowingly injure a water-gauge, barometer, air-course, brattice, equipment or machinery, obstruct or throw open any air way, disturb any part of the machinery connected with the mine; open a door of a mine and neglect to close it, endanger the mine or those working therein; disobey any order given in pursuance of law, or do a wilful act whereby the life of persons working therein or the security of the mine or the machinery connected therewith may be endangered; and it shall be unlawful for any workman or person to place any refuse ma-

terial or any obstruction in any part of the air-course or any part of the breakthrough, entries or rooms other than as by this act provided.

HISTORY: CL 1915, 5554;—CL 1929, 8574;—CL 1948, 425.39.

BLASTING IN MINES.

425.40 Blasting in mines; warning.

Sec. 40. When the time for blasting arrives, blasting shall be in rotation, beginning at the innermost working place in each entry. Immediately upon lighting blast, miners must notify the succeeding miners by shouting the word "fire."

HISTORY: CL 1915, 5555;—CL 1929, 8575;—CL 1948, 425.40.

RIDING LOADED CARS.

425.41 Riding loaded cars; unlawfulness.

Sec. 41. It shall be unlawful for any employee, except employees in charge of such trip, to ride on any loaded trip of cars.

HISTORY: CL 1915, 5556;—CL 1929, 8576;—CL 1948, 425.41.

INTOXICANTS.

425.42 Intoxicants; liquor; intoxicated persons refused entry; possession forbidden.

Sec. 42. No person shall go into, at, or around a mine, or the buildings, tracks or machinery connected therewith, while under the influence of intoxicants. No person shall use, carry or have in his possession, at, in, or around a mine, or the buildings, tracks or machinery connected therewith, any intoxicants.

HISTORY: CL 1915, 5557;—CL 1929, 8577;—CL 1948, 425.42.

LIQUOR LAW: See Compilers' § 436.1 et seq.

SHALL PROP ROOF, ETC.

425.43 Miners; duty to prop roof.

Sec. 43. Each miner, or other person employed in the mine, shall securely prop the roof of the working place therein under his control, and shall obey any reasonable order, or orders, given by the superintendent or mine foreman relating to the security of the mine in the part thereof where he is at work. Such miner or other person, shall not be held to have violated the provisions of this clause if the owner, lessee or agent fails to supply the necessary props, caps and timbers as provided for in this act.

HISTORY: CL 1915, 5558;—CL 1929, 8578;—CL 1948, 425.43.

SHALL NOT WASTE PROPS, ETC.

425.44 Unused materials; disposition.

Sec. 44. Each miner, or other person shall avoid waste of props, caps, timber or other material. When he has props, caps, timber or other material unsuited for his purpose, he shall not cover up or destroy same, but shall place it near the track where it can be readily seen, and it must immediately be removed by the operator upon request of the miner.

HISTORY: CL 1915, 5559;—CL 1929, 8579;—CL 1948, 425.44.

INTENT TO DEFRAUD.

425.45 Intent to defraud; alteration of mark; stamp.

Sec. 45. No person shall erase or change a mark of reference or monument made in connection with measurements; change the checks or cars; wrongfully check a car, or do any act with intent to defraud, and operator shall place stamp mark at end of each measurement in narrow work.

HISTORY: CL 1915, 5560;—CL 1929, 8580;—CL 1948, 425.45.

SANITARY CONDITIONS.

425.46 Sanitary conditions; water closet, location.

Sec. 46. For the purpose of observing the best sanitary conditions possible in the mines of this state, no employe therein shall use any portion of the mine excavations as a water closet that is not at least 25 feet from any air current.

HISTORY: CL 1915, 5561;—CL 1929, 8581;—CL 1948, 425.46.

PENALTY.

425.47 Violation of act; penalty.

Sec. 47. Any person, firm or corporation violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction shall be fined not less than 10 dollars nor more than 100 dollars, or be imprisoned in the county jail not exceeding 30 days, or both at the discretion of the court.

HISTORY: CL 1915, 5562;—CL 1929, 8582;—CL 1948, 425.47.

Sec. 48. (This was a repeal section.)

HISTORY: CL 1915, 5563;—CL 1929, 8583;—Rep. 1945, p. 404, Act 267, Imd. Eff. May 25.

Act 163, 1911, p. 263; Eff. Aug. 1.

AN ACT to provide for the election of inspectors of mines in certain cases and the appointment of their deputies, for the appointment of such inspectors of mines and their deputies until the election and qualification of the first inspectors of mines, to prescribe their powers and duties and to provide for their compensation, and to repeal Act No. 213 of the Public Acts of 1887.

The People of the State of Michigan enact:

425.101 Mine inspectors; election, terms, qualifications, eligibility.

Sec. 1. There shall be elected at the general election in the year 1968, and at the general election held every fourth year thereafter an inspector of mines for the term of 4 years in any county within this state where there are iron or copper mines situated and working, some suitable person who is a citizen of this state, who can read and write the English language, and who has had at least 10 years' actual experience in mining, timbering and general underground work, or a person holding the degree of mining engineer, or an equivalent degree, and who shall have practiced his profession as such engineer for at least 2 years. Inspectors of mines shall not, during their term of office, accept employment or be employed by any mining company or any subsidiary or affiliate thereof. No person elected to any other public office shall be eligible for election as an inspector of mines, nor for appointment as a deputy inspector.

HISTORY: CL 1915, 5502;—CL 1929, 8522;—CL 1948, 425.101;—Am. 1952, p. 473, Act 279, Imd. Eff. Jun. 21;—Am. 1967, p. 53, Act 33, Eff. Nov. 2.

CITED IN OTHER SECTIONS: Sections 425.101 to 425.113 are cited in § 406.803.

425.102 Inspectors prior to election; appointment, duties.

Sec. 2. Until the election and qualification of the first inspector of mines to be elected as provided by this act, the inspector of mines and the deputy inspectors heretofore appointed by any board of supervisors shall continue to serve until their terms of office have expired, and such board of supervisors where there are iron or copper mines situated and working is hereby authorized and directed to appoint their successors and to remove the same or any one thereof whenever in its judgment the best interests of owners and employes may so require, and to fill vacancies arising from any other cause than removal, but no such inspectors of mines or deputy inspectors appointed by or serving under any appointment of any board of supervisors shall hold of-

fice beyond the first day of January succeeding the election of the first inspectors of mines to be elected as provided by this act. Such inspectors of mines and deputy inspectors heretofore appointed or to be appointed by any board of supervisors, shall perform all of the duties of inspector of mines and deputy inspectors of mines until the election and qualification of the first inspectors of mines to be elected as herein provided.

HISTORY: CL 1915, 5503;—CL 1929, 8523;—CL 1948, 425.102.

425.103 Inspectors; terms of office, commencement.

Sec. 3. The regular terms of office of the inspectors of mines to be so elected shall commence on the first day of January succeeding their election.

HISTORY: CL 1915, 5504;—CL 1929, 8524;—CL 1948, 425.103.

425.104 Repealed. 1967, p. 53, Act 33, Eff. Nov. 2.

Section related to vacancies in office of inspector of mines.

425.105 Inspectors; bonds.

Sec. 5. The inspector of mines when so elected shall give bonds in the sum of 5,000 dollars, with good and sufficient sureties to be approved by the circuit judge or judge of probate of the county in which such inspector shall be elected for the faithful performance of his duties, which said bond shall be payable to the people of this state and shall be filed with the clerk of the county where he is so elected.

HISTORY: CL 1915, 5506;—CL 1929, 8526;—CL 1948, 425.105.

425.106 Deputies; appointment, duties.

Sec. 6. The inspector of mines when so elected may appoint 1 or more deputy inspectors, not exceeding 3, as in his judgment may be necessary for the purpose of discharging the duties hereinafter prescribed, and may revoke such appointments at his pleasure. Any and all such deputy inspectors in any county shall be under the supervision of the inspector of mines, and their duties shall be prescribed by him.

HISTORY: CL 1915, 5507;—CL 1929, 8527;—CL 1948, 425.106.

425.107 Inspectors and deputies; compensation, limit.

Sec. 7. The board of supervisors in each county where an inspector of mines is so elected or appointed shall fix the compensation of such inspector and his deputy or deputies, and provide for the payment of the same: Provided, That the compensation of the inspector of mines shall not be less than \$15.00 per day, and that of the deputy inspectors shall not be less than \$10.00 per day for each day actually employed in the performance of their official duties: Provided further, That the compensation of inspectors and deputy inspectors shall not be paid more than 5 days in any week.

HISTORY: CL 1915, 5508;—CL 1929, 8528;—CL 1948, 425.107;—Am. 1952, p. 473, Act 279, Imd. Eff. Jun. 21.

425.108 Inspectors; powers and duties; abandoned mines, fencing; expenses, audit, payment, assessment.

Sec. 8. The duties of the mine inspector shall be to visit all the working mines of his county once in every 60 days, and oftener if in his judgment necessary, and closely inspect the mines so visited, and condemn all such places where he shall find that the employes are in danger from any cause, whether resulting from careless mining or defective machinery or appliances or improper or unsafe methods of any nature; he shall compel the erection of a partition between all shafts where hoisting of ore is performed and where there are ladder ways, where men must ascend and descend going to and from their work. In case the mine inspector shall find that a place is dangerous from any cause as aforesaid, it shall be his duty immediately to order the men engaged in work at the said place to quit work, and he shall notify the superintendent, agent or person in charge to secure the place from the existing danger, which said notification or order shall be in writing and shall clearly define the limits of the dangerous place

and specify the work to be done or change to be made to render the same secure, ordinary mine risks excepted. It shall also be the duty of the mine inspector to command the person, persons or corporation working any mine, or the agent, superintendent, foreman or other person having immediate charge of the working of any mine, to furnish all shafts and open pits of such mine with some secure safeguard at the top of the shaft or open pit so as to guard against accident by persons falling therein or by material falling down the same, also a covering on all the carriages on which persons ascend or descend up and down the shaft, if in his judgment it shall be practicable and necessary for the purpose of safety: Provided, That when any mine is idle or abandoned it shall be the duty of the mine inspector to notify the person, persons or corporation owning the land on which any such mine is situated, or the agent of such owner or owners, to erect and maintain around all the shafts and open pits of such mine a fence or railing suitable to prevent persons or domestic animals from accidentally falling into said shafts or open pits. Said notice shall be in writing and shall be served upon such owner, owners or agent, personally or by leaving a copy at the residence of any such owner or agent, if they or any of them reside in the county where such mine is situated, and if such owner, owners or agents are none of them residents of the county such notice may be given by publishing the same in 1 or more newspapers printed and circulated in said county if there be one, and by registered letter, and if no newspaper be published in said county then in a newspaper published in some adjoining county for a period of 3 consecutive weeks. If such owner, owners or agent shall not, within 30 days after receiving such notice or within 30 days after the completion of said publication, erect such suitable fences or railings as above provided, it shall be the duty of the mine inspector to cause such suitable fences or railings to be erected and to make a return of his doings in the case, with the description of the land or lands on which such shafts and open pits are located, together with an itemized statement of the actual expenses incurred in such case on each description of land, to the county clerk of the county, which return and statement shall be verified by the affidavit of the mine inspector. All expenses incurred under the provisions of this section shall be audited by the board of supervisors of the county, and all sums allowed by such board for such expenses shall be paid from the general fund of the county. The county clerk shall certify to the board of supervisors at its annual meeting in each year the amount of expense incurred under the provisions of this section during the preceding year and the amount belonging to each and every description of land on which any such mines are situated, and said amount shall be certified to the supervisors of the proper townships in the same manner as county taxes are certified to said supervisors, and the amount of the expense incurred as above on each description shall be assessed by said supervisors upon the said description upon their assessment rolls for that year in a separate column, and shall be collected in the same manner as county taxes, and when so collected paid into the general fund of the county.

HISTORY: CL 1915, 5509;—CL 1929, 8529;—CL 1948, 425.108.

425.108a Inspection; certificate of safety; unlawful entry of mine, penalty.

Sec. 8a. It shall be the duty of the mine inspector to inspect any mine before the mine is re-opened and to issue a certificate of safety before any employee or person is permitted to enter the mine. The owner of any mine, who shall direct or permit any person to enter a mine in violation of the provisions of this section, shall be punished by a fine of not less than \$100.00 nor more than \$500.00 for each and every offense.

HISTORY: Add. 1952, p. 473, Act 279, Imd. Eff. Jan. 21.

425.109 Accidents; liability.

Sec. 9. If any man or men are allowed to continue work in any place condemned by the mine inspector, except to do the work required to be done to insure safety before

said place has received the necessary changes to secure the safety, ordinary risks of mining excepted, of the laborers engaged therein, the person, persons or corporation operating said mine shall be liable for all accidents causing injuries or death to employes working in or about such place, until the order referred to in the preceding section shall have been complied with or revoked.

HISTORY: CL 1915, 5510;—CL 1929, 8530;—CL 1948, 425.108.

425.110 Co-operation from mine officials; penalty for refusal.

Sec. 10. It shall be the duty of the person, persons or corporation, or the superintendents or agents of the same, when the mine inspector arrives at any mine on his official business, to furnish for his inspection all maps, drawings and plans of the mine, together with plans of all contemplated changes in the manner of working the mine or any part thereof; to furnish him with such suitable person or persons as he may desire to accompany him through the mine or any part thereof; and also to furnish him with suitable ladders and other necessary appliances to make a proper inspection; and should they or any of them neglect or refuse to comply with any of the provisions of this section, such refusal or neglect shall be punished by a fine of not less than 100 nor more than 500 dollars for each and every offense.

HISTORY: CL 1915, 5511;—CL 1929, 8531;—CL 1948, 425.110.

425.111 Inspectors and assistants; salaries and mileage.

Sec. 11. The salaries for the mine inspector, and the assistants so elected shall be paid out of the treasury of the county in which they serve on vouchers similar to those used by other county officials, and in addition thereto they shall be entitled to mileage at such rate as shall be determined by the board of supervisors for the actual distance traveled while on official business.

HISTORY: Am. 1913, p. 276, Act 158, Eff. Aug. 14;—CL 1915, 5512;—CL 1929, 8532;—CL 1948, 425.111;—Am. 1952, p. 474, Act 279, Imd. Eff. Jan. 21.

425.112 Notice to inspect; privilege, penalty for divulging name of informant.

Sec. 12. When any person working in any mine or place where mining is done shall notify the mine inspector or deputy inspector either verbally or in writing that the services of the mine inspector are needed, he shall immediately make inspection, or send any one of his assistants to do so. Such notice shall be forever privileged in any court either civil or criminal. Any inspector or deputy inspector who shall divulge the name of any person or persons giving any such notice shall be punished by a fine of not less than 100 nor more than 500 dollars.

HISTORY: CL 1915, 5513;—CL 1929, 8533;—CL 1948, 425.112.

425.113 Annual report; time, contents.

Sec. 13. It shall be the duty of each of the inspectors of mines appointed or elected under this act to make and file with the clerk of the county for which he was appointed or elected, at least 10 days before the time fixed by law for the annual autumn meeting of the board of supervisors, an annual report with a duplicate copy to the commissioner of labor of his acts and proceedings under this act, specifying among other things the number of mine accidents occurring during the preceding year causing either death or injury to persons, giving the name of the mine where and the circumstances surrounding said accidents, and so classifying said accidents to show what occurred through the fault or negligence of employers and those occurring through the fault or negligence of employes, and giving the results of inquests if any have been held in case of accidents causing death.

HISTORY: CL 1915, 5514;—CL 1929, 8534;—CL 1948, 425.113.

COMMISSIONER OF LABOR: Abolished; powers and duties transferred to the department of labor, see Compilers' § 16.477.

Sec. 14. (This was a repeal section.)

HISTORY: CL 1915, 5515;—CL 1939, 8535;—Rep. 1945, p. 404, Act 267, Imd. Eff. May 25.
ACT REPEALED: Act 213, 1887, CL 1887, 5492-5499, as amended by Act 123, 1897.

Act 264, 1967, p. 501; Imd. Eff. Jul. 19.

AN ACT to provide for the inspection of mines; to provide for the health and safety of persons employed in and about mines; to provide for the appointment, qualification, duties and compensation of mine inspectors; to create a mine safety board in the department of labor and prescribe its powers and duties; and to provide penalties for violations.

The People of the State of Michigan enact:

425.131 Mine safety act of 1967; short title.

Sec. 1. This act shall be known and may be cited as the "mine safety act of 1967".

HISTORY: New 1967, p. 501, Act 264, Imd. Eff. Jul. 19.

425.132 Mine safety act; definitions.

Sec. 2. As used in this act:

(a) "Mine" means an area of land from which minerals are extracted in solid form. The term is used in the broad sense to include milling, crushing, screening, washing, flotation, pelletizing, smelting and other preparation needed to render the minerals marketable. Exploration and development of mineral properties are included. Fabricating plants are specifically excluded.

(b) "Director" means the director of the department of labor.

(c) "Operator" means any person, persons, partnership, copartnership, lessee, agent or corporation engaged in the operation of a mine.

(d) "Department" means the state department of labor.

(e) "Board" means the mine safety board.

HISTORY: New 1967, p. 501, Act 264, Imd. Eff. Jul. 19.

425.133 Mine safety board; creation; members.

Sec. 3. The mine safety board is created within the department of labor to consist of 5 members. Of the members of the board, 2 shall be representatives of the mining industry, 2 members shall represent labor, both of whom shall represent organizations concerned with mining; 1 member shall be the head of the department of mining engineering of Michigan technological university. The director of the department of labor and the director of the state department of public health shall be ex officio members of the board without vote.

HISTORY: New 1967, p. 502, Act 264, Imd. Eff. Jul. 19.

425.134 Mine safety board; members, appointment, terms; vacancies.

Sec. 4. Members of the board shall be appointed by the governor with the advice and consent of the senate for terms of 4 years and until their successors are appointed and qualified, except in the first instance, 1 member shall be appointed for a term of 1 year, 1 for 2 years, 1 for 3 years and 2 for 4 years. Vacancies in the board shall be filled for the unexpired term.

HISTORY: New 1967, p. 502, Act 264, Imd. Eff. Jul. 19.

425.135 Mine safety board; election of officers; meeting; quorum; per diem or expenses.

Sec. 5. The board shall elect a chairman and such other officers as it deems necessary to perform its duties between meetings. A majority of the 5 members constitutes a quorum. The board shall meet at least twice yearly and at the request of the chairman

or by written request of at least 3 members. No members of the board shall receive per diem or expenses.

HISTORY: New 1967, p. 502, Act 264, Imd. Eff. Jul. 19.

425.136 Mine safety board; health and safety rules and standards, adoption; reports; advisory committees.

Sec. 6. (1) The board shall formulate definitions and rules for the protection of life, promotion of health and safety and the prevention of accidents in mines subject to this act. The rules shall be substantially as effective for such purposes as the mandatory standards designated under section 6(b) of the federal metal and nonmetallic mine safety act. The rules provided for in this section shall be adopted by the board within 1 year from the effective date of this act. In addition the board shall designate the director to submit reports as required by the secretary of the United States department of the interior.

(2) The board may establish advisory committees to assist in the development of health and safety standards for mines which are subject to this act and to advise the board on other matters relating to health and safety in such mines. The advisory committee shall include among its members an equal number of persons qualified by experience and affiliation to present the viewpoint of operators of such mines and of persons similarly qualified to present the viewpoint of workers in such mines, as well as 1 or more representatives of mine inspection or safety agencies of the state.

HISTORY: New 1967, p. 502, Act 264, Imd. Eff. Jul. 19.

425.137 Promulgation of rules.

Sec. 7. The rules shall be promulgated in accordance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

HISTORY: New 1967, p. 502, Act 264, Imd. Eff. Jul. 19.

425.138 Schedules of annual mine inspections.

Sec. 8. The board shall determine a schedule of inspections of mines and shall provide that all mines, other than quarries and sand and gravel pits, shall be inspected at least once each calendar year.

HISTORY: New 1967, p. 502, Act 264, Imd. Eff. Jul. 19.

425.139 Abandoned mines; public safety rules.

Sec. 9. The board shall establish rules determining the procedures and other necessary measures to be followed in securing the public's safety from harm in cases where a mine is idle or abandoned.

HISTORY: New 1967, p. 502, Act 264, Imd. Eff. Jul. 19.

425.140 Chief mine safety inspector; qualifications; assignment.

Sec. 10. The department shall hire a chief mine safety inspector with at least 5 years' experience in the mining industry. Mine inspectors who have not attained the age of 65, possessing educational, occupational and physical qualifications meeting the requirements prescribed by the board shall be employed by the department to inspect mines and shall be subject to the civil service laws. In the assignment of mine inspectors to the inspection and investigation of individual mines, due consideration shall be given to their previous practical experience in the area and in the particular type of mining operation where such inspections are to be made.

HISTORY: New 1967, p. 503, Act 264, Imd. Eff. Jul. 19.

425.141 Temporary cessation of mine operations when hazardous or unsafe; resumption of operations.

Sec. 11. The chief mine safety inspector or any mine inspector may order in writing a temporary cessation of operation of any mine if it has been deemed after inspection to be hazardous or unsafe. The chief mine safety inspector or inspectors shall be empowered to condemn the property and shall immediately order the men engaged in work to vacate the work area in question. Operations shall not resume until such unsafe conditions are corrected to the satisfaction of the chief mine safety inspector.

HISTORY: New 1967, p. 503, Act 264, Imd. Eff. Jul. 19.

425.142 Modification of rules; application; procedure; conditions; record.

Sec. 12. If there are practical difficulties or unnecessary hardships for an operator to comply with the rules under this act, the director, with the approval of the board, may modify the application of such rules to such a situation, if the spirit of the provisions shall be observed and the safety of the public and employees is secured. Any operator may make a written request to the board stating his grounds and applying for such modification. Any authorization by the director and the board shall be in writing and shall describe the conditions under which the modification is permitted. A record of all modifications shall be kept in the department.

HISTORY: New 1967, p. 503, Act 264, Imd. Eff. Jul. 19.

425.143 Appeals; revocation or modification of order.

Sec. 13. Any person who considers himself aggrieved by an order or determination of any inspector of mines may appeal the order or determination to the state mine safety board. The appeal shall be made in writing and a copy served upon the chief mine safety inspector. Upon receipt of the appeal the board shall take immediate action and forthwith proceed to conduct an investigation and hearing of the matters contained in the order or determination, and within 7 days from date of appeal, shall sustain, revoke or modify the order or determination as it deems necessary.

HISTORY: New 1967, p. 503, Act 264, Imd. Eff. Jul. 19.

425.144 Violations of act; penalty.

Sec. 14. (1) Any operator, official or employee who violates any provisions of this act or any rule promulgated by the board in accordance with the provisions of this act is guilty of a misdemeanor. Any operator, official or employee who interferes with, impedes or obstructs in any manner the chief mine safety inspector, any inspectors, the director or his authorized representative or any board member in the performance of his duties is guilty of a misdemeanor.

HISTORY: New 1967, p. 503, Act 264, Imd. Eff. Jul. 19.

425.145 Appropriations by legislature for expenditures.

Sec. 15. No expenditures shall be made to carry out the provisions of this act unless appropriated by the legislature.

HISTORY: New 1967, p. 503, Act 264, Imd. Eff. Jul. 19.

Act 91, 1967, p. 110; Eff. Nov. 2.

AN ACT to prohibit the destruction, breaking, cutting or damaging of mine shaft barriers or barricades and to impose a penalty.

The People of the State of Michigan enact:

425.161 Mine shaft barriers; wilful destruction; penalty.

Sec. 1. Any person who wilfully destroys, breaks down, cuts or damages any fence, barrier or barricade erected for the purpose of protecting the public from dangers arising from past or present mining operations is guilty of a misdemeanor.

HISTORY: New 1967, p. 110, Act 91, Eff. Nov. 2.

Act 314, 1968, p. 551; Imd. Eff. Jul. 3.

AN ACT to assist and encourage the acquisition of surface land areas and rights required for water quality control and other purposes in connection with mining and beneficiating low grade iron ore and the beneficiating and agglomerating of underground iron ore; and to provide adequate compensation therefor.

The People of the State of Michigan enact:

425.171 Iron ore mining; public interest; acquisition of property; conditions.

Sec. 1. The business of mining and beneficiating low grade iron ore, as defined in Act No. 77 of the Public Acts of 1951, as amended, being sections 211.621 to 211.625 of the Compiled Laws of 1948, and the business of beneficiating and agglomerating of underground iron ore as defined in Act No. 68 of the Public Acts of 1963, being sections 207.271 to 207.279 of the Compiled Laws of 1948, are declared to be in the public interest and necessary to the public welfare, and the acquisition of private property for development of an adequate water supply, the necessary storage, processing and treatment of liquid and solid wastes or other non-marketable products resulting from such business is declared to be for a public purpose. The department of conservation is authorized to acquire by condemnation parcels of land that are needed for the establishment of areas, settling ponds and basins for such storage, processing and treatment, together with the necessary appurtenant canals, pipelines, power lines, sluiceways, roadways, dams and dikes, and shall lease, convey or exchange such parcels of land to any person, corporation or association engaged in or proposing to engage in the business of mining and beneficiating low grade iron ore or the beneficiating and agglomerating of underground iron ore or both, upon a showing to the satisfaction of the department that such person, corporation or association has acquired at least 75% of the necessary land and that it has been unable to purchase the remaining necessary parcels at a fair market value, and upon the further showing to the satisfaction of the department that such remaining parcels are necessary for the development and operation of such water supply areas, settling ponds and basins in order to prevent the unlawful pollution of waters of the state or to comply with the requirements of other public agencies of the state. Nothing in this act shall be construed as authorizing the taking of any property owned by a political subdivision of the state or devoted to or used for a public or railroad purpose or of any private property lying within the limits of any incorporated city or village or lands within a recorded plat in an unincorporated village.

HISTORY: New 1968, p. 551, Act 314, Imd. Eff. Jul. 3.

425.172 Condemnation of land; compensation to owners.

Sec. 2. The department shall provide adequate compensation for any owner-occupied residences of owner-occupied or operated farmland that it condemns pursuant to this act to enable the owners of such property to purchase like property suitable to their needs and in standard condition from the proceeds of such compensation,

which shall as a minimum be equal to the valuation of such housing or agricultural land as of the date when proceedings for the condemnation thereof were initiated by the department.

HISTORY: New 1968, p. 552, Act 314, Imd. Eff. Jul. 3.

425.173 Lease or conveyance of land; conditions for issuance.

Sec. 3. The department shall require as a condition for the issuance of any lease or conveyance authorized by this act the payment by the lessee of the full amount of compensation made or to be made by the department for the lands it has condemned. Such lease shall contain provisions which will protect the ownership of any materials which are deposited upon such lands.

HISTORY: New 1968, p. 552, Act 314, Imd. Eff. Jul. 3.

Act 92, 1970, p. 268; Imd. Eff. Jul. 20.

AN ACT to provide for reclamation of lands subjected to the mining of metallic minerals; to control possible adverse environmental effects of mining; to preserve the natural resources; to encourage the planning of future land use; and to promote the orderly development of mining, the encouragement of good mining practices, and the recognition and identification of the beneficial aspects of mining.

The People of the State of Michigan enact:

425.181 Reclamation of metallic mining lands; definitions.

Sec. 1. As used in this act:

- (a) "Department" means the department of natural resources.
- (b) "Mining area" or "area subjected to mining" means an area of land from which material is hereafter removed in connection with the production or extraction of metallic minerals by open pit mining methods, the lands on which material from such mining is hereafter deposited, the lands on which beneficiating plants and auxiliary facilities are hereafter located, the lands on which the water reservoirs used in the mining process are hereafter located, and auxiliary lands which are hereafter used.
- (c) "Operator" means an owner or lessee of mineral rights engaged in or preparing to engage in mining operations with respect thereto for the production of mineral products.
- (d) "Person" means an individual, corporation, company, association, joint venture, partnership, receiver, trustee, guardian, executor, administrator, personal representative or private organization.
- (e) "Stockpile" means material, including but not limited to, surface overburden, rock or lean ore, which in the process of mining and beneficiation has been removed from the earth and stored on the surface thereof, but excluding therefrom materials which are in the course of being treated in the production of mineral products and the mineral product which has been produced by such operation.
- (f) "Supervisor" means the chief of the geological survey division of the department of natural resources.
- (g) "Tailings basin" means land on which is hereafter deposited by hydraulic means the material which is separated from the mineral product in the beneficiation of metallic minerals including any surrounding dikes constructed to contain the material.

HISTORY: New 1970, p. 268, Act 92, Imd. Eff. Jul. 20.

425.182 Survey of mining areas; factors considered.

Sec. 2. The supervisor shall conduct a comprehensive study and survey in order to determine, consistent with the intent of this act, the extent and type of regulation of

mining areas necessary in the public interest. The supervisor shall consider the effects of mining upon: (a) environment, (b) future use of the land upon completion of mining, and (c) wise use and protection of the natural resources, including but not limited to, the control of erosion, the prevention of land or rock slides and air and water pollution. The supervisor also shall consider (a) future and economic effect of such regulations upon mine operators and landowners, the surrounding communities and this state, (b) effect on employment in this state, (c) effect on the future mining and development of metallic minerals, and (d) practical problems of mine operators and mineral owners.

HISTORY: New 1970, p. 269, Act 92, Imd. Eff. Jul. 20.

425.183 Mining rules; promulgation; purposes.

Sec. 3. On completion of the study and survey, the supervisor may promulgate rules pertaining to mining operations conducted subsequent to their effective date and subject to the provisions of any rights existing pursuant to any permit, license, lease or other valid existing authorization issued by a governmental entity, and subject to applicable mine safety laws or rules for the following purposes:

(a) The sloping, terracing or other practical treatment of stockpiles and tailings basins where erosion is occurring or is likely to occur which results or may result in injury or damage to fish and wildlife, the pollution of public waters, or which is causing or might cause injury to the property or person of others.

(b) The vegetation or other practical treatment of tailings basins and stockpiles upon becoming permanently inactive where substantial natural vegetation is not expected within 5 years and where research reveals that vegetation can reasonably be accomplished within practical limitations.

(c) The stabilization of the surface overburden banks of open pits in rock and the entire bank of open pits in unconsolidated materials upon their abandonment.

(d) The cleanup of plantsite and mining areas and the removal of debris therefrom on termination of the mining operation.

HISTORY: New 1970, p. 269, Act 92, Imd. Eff. Jul. 20.

425.184 Mining rules; manner of promulgation; variance or modification.

Sec. 4. (1) The rules shall be promulgated in accordance with and subject to the provisions of Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.313 of the Compiled Laws of 1948.

(2) The supervisor, on application by the landowner or operator, may modify or permit variance from the rules promulgated hereunder if he determines that such modification or variance is not contrary to the public interest.

HISTORY: New 1970, p. 269, Act 92, Imd. Eff. Jul. 20.

425.185 Administration of act and mining rules; supervisor, powers and duties.

Sec. 5. The supervisor shall administer and enforce this act and the rules promulgated pursuant hereto. He may (a) consult with and obtain the assistance of the other divisions of the department, (b) enter on the mining areas in connection with any investigation and inspection without liability to the operator or landowner if reasonable prior notice of his intention to do so has been given the operator or landowner, and (c) conduct such research or enter into contracts related to mining areas and the reclamation thereof as may be necessary to carry out the provisions of section 2 to section 5.

HISTORY: New 1970, p. 269, Act 92, Imd. Eff. Jul. 20.

425.186 Plan maps; filing by operator, contents; annual changes; long-range plans.

Sec. 6. For the purpose of information and to assist the supervisor in proper enforcement of such rules an operator, within 120 days after the effective date of the act, shall file with the supervisor a plan map in the form determined by the supervisor showing all existing mining areas or areas subjected to mining by the operator. Annually thereafter, on or before March 15, the operator shall file a plan map in similar form showing any changes made during the preceding calendar year and the mining area which he anticipates will be subjected to mining during the current calendar year. The supervisor periodically shall ascertain the long-range land environment plans of the operator.

HISTORY: New 1970, p. 269, Act 92, Imd. Eff. Jul. 20.

425.187 Performance bond, security or assurance of operator; requirement.

Sec. 7. The supervisor, if he has reasonable doubts as to an operator's financial ability to comply with the rules as to actions to be taken after completion of mining operations or any phase thereof, may require an operator to furnish a performance bond or other security or assurance satisfactory to the supervisor. The supervisor may postpone furnishing of the bond, security or assurance depending upon the life of the mining operation.

HISTORY: New 1970, p. 270, Act 92, Imd. Eff. Jul. 20.

425.188 Injunctive relief to prevent violation of rules.

Sec. 8. At the request of the supervisor, the attorney general may institute an action in a circuit court of the county in which the mining operation affected is conducted for a restraining order or injunction or other appropriate remedy to prevent or preclude a violation of the terms and conditions of any rule promulgated hereunder.

HISTORY: New 1970, p. 270, Act 92, Imd. Eff. Jul. 20.

Act 78, 1879, p. 74; Imd. Eff. May 20.

AN ACT to authorize certain persons to enter upon land being mined for coal in the state of Michigan, and to enter the mine thereon, and make an examination and survey, and to provide for the collection of damages of certain persons, corporations or companies, for obstructing or not permitting such an examination and survey, as provided for in this act.

The People of the State of Michigan enact:

425.201 Entry and examination of mine; authority of adjacent landowners.

Sec. 1. That any person owning and possessing land in this state, adjoining land being mined for coal by any person or persons, corporation or company, on making application to such person or persons, corporation or company so mining coal, or to other agents, managers or officers of said corporation or company, or to any 1 of them, for permission to enter upon the land so mined for coal, and enter the mine on said land, as often as said applicant may deem it necessary, to make an examination and survey of the same, for the purposes set forth in this act, shall have the right, and shall be permitted and authorized either in person or by such persons as said applicant shall employ for that purpose, to enter upon the land so being mined for coal, by such person or persons, corporation or company, and to enter said mine thereon, and make an underground examination and survey, and also make a surface survey of said land so being mined, so far as it may be necessary to ascertain and determine whether such person or persons, corporation or company have made any encroachments upon the

applicants adjoining land, and are mining or have mined and taken coal from the land of the person making such application, and to what extent.

HISTORY: How. 4122;—CL 1897, 7111;—CL 1915, 9079;—CL 1929, 8933;—CL 1948, 425.201.

COAL MINES: General provisions, see Compilers' § 425.1 et seq.

425.202 Entry and examination of mine; authority of certain lessors.

Sec. 2. Any person who has leased land in this state, to any person or persons, corporation or company, for the mining of coal, or who may hereafter lease land in this state for that purpose, by which lease the said person or persons, corporation or company agree to pay to the lessor a certain sum of money per ton, for the coal mined in pursuance of said lease, and such person or persons, corporation or company, are mining and taking coal from said land, *lessor, his heirs or assigns, on making application to the person or persons, corporation or company so mining coal on said leased land, or their agents, managers or officers of such corporation or company, or to any 1 of them, for permission to enter the mine of said lessees, to make an underground examination and survey of the same, for the purposes set forth in this act, shall have the right, and shall be permitted and authorized, either in person or by such persons as said applicant shall employ, and as often as said applicant may deem it necessary, for that purpose, to enter the mine of said lessees or other assigns, and make an underground examination and survey, and also a surface survey of said coal mine, so far as said lessor may deem it necessary to ascertain and determine the quantity of coal mined and taken from said land so leased and being mined by said lessees, or any person or persons acting under or by virtue of said lease.

HISTORY: How. 4123;—CL 1897, 7112;—CL 1915, 9080;—CL 1929, 8934;—CL 1948, 425.202.

*NOTE: The compilers believe that through error the word "such" was omitted.

425.203 Entry and examination of mine; duty to permit; damages for injury to property.

Sec. 3. The person or persons, corporation or company, their agents, officers or managers of said coal mine, or any 1 of them to whom application shall be made for an examination and survey, as provided for in this act, shall permit the person so applying, or such persons as said applicant shall employ for that purpose, to enter upon the land so being mined for coal, and to enter the coal mine and make an examination and survey, as authorized by this act, and shall permit them to enter said coal mine and to come out of the same as often as it may be necessary to make and complete said examination and survey, and in the usual way and manner the workmen of said mine enter said mine and come out of the same: Provided, That such examination and survey shall not be made oftener than once in 20 days: And provided further, That said applicant shall be liable to pay necessary and actual damages for injuries to the property of said person or persons, corporation or company, in making said examination and survey: Provided Said damages or injuries do not result from the fault or misconduct of said persons, corporation or company.

HISTORY: How. 4124;—CL 1897, 7113;—CL 1915, 9081;—CL 1929, 8935;—CL 1948, 425.203.

425.204 Obstruction of examination; action for damages.

Sec. 4. If said person or persons, corporation or company, or other agents, officers or managers, or employees, after an application has been made to enter the coal mine as provided for in this act, shall remove the supports sustaining the roof of their said mine, before said examination and survey can be reasonably made, and cause the said roof to fall, or do any other act or thing whereby such examination and survey shall be obstructed and cannot well be made, as provided for in this act, the said person or per-

sons, corporation or company so mining coal shall be liable to the said person making such application, his heirs or assigns to pay the sum of 500 dollars damages to be recovered by said applicant or his heirs or assigns in an action on the case with costs of suit.

HISTORY: How. 4125;—CL 1897, 7114;—CL 1915, 9062;—CL 1929, 8936;—CL 1948, 425.204.

425.205 Refusal to permit entry; action for damages.

Sec. 5. If said person or persons, corporation or company, or their agents, officers or managers, or any 1 of them shall refuse to permit the applicant or the persons he may employ, to enter upon the land so being mined, or to enter the said coal mine for an examination and survey, as provided for in this act, such person or persons, corporation or company, for each day's actual neglect and refusal to permit such entry for such examination and survey, shall be liable to the said person making such application, his heirs or assigns, to pay the sum of 100 dollars damages to be recovered by said applicant or his heirs or assigns in an action on the case with costs of suit.

HISTORY: How. 4126;—CL 1897, 7115;—CL 1915, 9063;—CL 1929, 8937;—CL 1948, 425.205.

CHAPTER 426. FOREST PRODUCTS

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Act 229, 1887, p. 279; Imd. Eff. Jun. 24.

AN ACT establishing a lien for labor and services upon lumber, shingles, logs, timber, cedar posts, telegraph poles, railroad ties, bark, shingle-bolts, stavebolts, staves, cord-wood, pulp-wood, hop-poles, hoop-poles, veneering wood and all other forest products, and to repeal Act No. 145 of the Session Laws of 1881, entitled "An act establishing a lien for labor and services upon logs, timber, cedar posts, telegraph poles, railroad ties, tanbark, shingle-bolts and staves, and to repeal Act No. 185 of the Session Laws of 1873, entitled 'An act establishing a lien for labor and services upon logs and timber, as amended by Act No. 253 of the Public Acts of 1879.'"

The People of the State of Michigan enact:

426.1 Lien for labor and services; precedence; person, definition.

Sec. 1. Any person or persons who perform any labor or services in manufacturing lumber or shingles in or about any lumber or shingle mill, or in cutting, skidding, falling, hauling, scaling, banking, driving, running, rafting, or booming any logs, timber, cedar posts, telegraph poles, railroad ties, bark, shingle bolts, stave bolts, staves, cord

wood, pulp wood, hop poles, hoop poles, veneering wood or any other forest products in this state, or his or her assignee, shall have a lien thereon for the amount due for such labor or services, and the same shall take precedence of all other claims or liens thereon. The words "person or persons" in this section shall be interpreted to include cooks, blacksmiths, artisans and all others usually employed in performing such labor and services.

HISTORY: How. 8427a;—CL 1897, 10756;—Am. 1901, p. 33, Act 18, Imd. Eff. March 15;—Am. 1913, p. 237, Act 136, Eff. Aug. 14;—CL 1915, 14843;—CL 1929, 8728;—CL 1948, 426.1.

FORMER ACTS: Act 185, 1873, amended by Act 253, 1879.

OTHER LIENS: See Compilers' § 570.1 et seq.

RIVER IMPROVEMENT COMPANIES: Incorporation and powers as to logs and floatables, see Compilers' § 485.101 et seq.

426.2 Statement of lien; filing.

Sec. 2. No such debt, demand or claim shall remain a lien on any of the above mentioned products unless a statement thereof in writing, made under oath by the claimant, or his or her assignee, or some one in his or her behalf, or for and on behalf of his or her assignee, shall be filed in the office of the clerk of the county in which such labor or services were performed: Provided, When a lien is claimed for work and labor performed in running or driving said logs, timber, cedar posts, telegraph poles, railroad ties, tan bark, shingle bolts, stave bolts, staves, cord wood, pulp wood, hop poles, hoop poles or veneering wood, then said statement shall be filed in the office of the clerk of the county where the drive terminates.

HISTORY: How. 8427b;—CL 1897, 10757;—Am. 1913, p. 237, Act 136, Eff. Aug. 14;—CL 1915, 14844;—CL 1929, 8729;—CL 1948, 426.2.

426.3 Statement of lien; form.

Sec. 3. Such statement shall briefly set forth and state the nature of such debt, demand or claim, the amount due claimant as near as may be, over and above all legal set-offs, and a description of the product or property upon or against which the lien is claimed; and such statement may be in the following form:

The statement of lien made under oath of for work and labor performed by in manufacturing, cutting, skidding, hauling, banking, scaling, running, driving, rafting or booming (as the case may be), the following described property, to-wit: (here insert the description of the product or property upon which a lien is claimed); that the last day's work of said labor was done on the day of, 18....; and said labor was performed in the county of, and that said described property, or a portion of the same, is now situated in the county of, state of Michigan, and that there is now due claimant for said work, and labor, over and above all legal set-offs, the sum of, as near as may be, for which said sum a lien is claimed upon said described property.

Subscribed and sworn to before me this day of, 18.....

.....
Claimant

HISTORY: How. 8427c;—CL 1897, 10758;—CL 1915, 14845;—CL 1929, 8730;—CL 1948, 426.3.

426.4 Statement of lien; time for filing; sale of property.

Sec. 4. The statement of lien shall be filed within 30 days after the completion or last day of such labor or services: Provided, That any sale or transfer of the products upon which the lien is claimed during the time limited for the filing of such statement of lien and previous to the filing thereof, or during the time limited for the enforcement of the same shall in no way affect such lien, but such lien shall remain and be enforced against such product in whosoever possession the same shall be found.

HISTORY: How. 8427d;—CL 1897, 10759;—CL 1915, 14846;—CL 1929, 8731;—CL 1948, 426.4.

426.5 Attachment; enforcement of lien.

Sec. 5. Any person or persons, or the assignee of any person or persons, having a lien upon or against any of the said products may enforce the same by attachment against any of such products in the circuit and justice courts of the county in which said products, or any portion of the same, may be situated at the time of commencement of suit, and such suit may be commenced to enforce such liens, if the same be due, immediately after the filing of such statement, and such lien claim shall cease to be a lien upon the property named in such statement unless suit be commenced within 3 months after the filing of such statement. In all such suits the person, company or corporation liable for the payment of such debt or claim shall be made the party defendant.

HISTORY: How. 8427e;—CL 1887, 10760;—Am. 1913, p. 238, Act 136, Eff. Aug. 14;—CL 1915, 14847;—CL 1929, 8732;—CL 1948, 426.5.

426.6 Attachment; service; seizure of property; release of property on bond.

Sec. 6. The attachment shall require the sheriff or other proper officer to attach and safely keep the property or products described in the writ or so much thereof as is necessary to satisfy the claim of the plaintiff, with all costs and disbursements, charges and expenses, and said attachment shall also require the said sheriff or other proper officer, to summons the defendant therein named to appear before said court at the time and place therein specified, the same as ordinary writs of attachment in circuit and justice's courts, and any such attachment or other process issued out of said courts of this state in pursuance of the provisions of this act, may be served in any county of this state, and if the defendant in said attachment is not the owner of the property or products described in said writ, then the officer executing said writ shall serve or cause to be served a copy of said attachment on or before the return day mentioned in said writ upon the owner of said products, or any of them, their proper agent or attorney, if such owner, agent or attorney be known to him, and residing in this state: Provided, That no sheriff or other officer shall seize upon and detain any such property or products when in transit from the place where banked or deposited for shipment on the railroad, or for floatage in the stream or streams, or for transportation on the waters of this state, when such place of destination is within this state, but in case such products are in transit, or are in possession of any booming company, or other person or corporation for the purpose of being driven or sorted and delivered to the owners, or to satisfy any statutory lien, then levy an attachment of said property or products may be made by serving a copy of said attachment upon the person or corporation driving or holding the same, who shall, from the time of such service, be deemed to hold the same both on their own behalf and in behalf of said sheriff or other officer, to the extent of said attachment lien, until the same can be driven and sorted out; and when driven or sorted out, and sheriff or other officer may receive said products from said person or corporation, and the statutory lien of said person or corporation shall not be released by the holding of said sheriff or other officer; and in case of sale by the sheriff or other officer on execution, and when the proceeds of sale shall not be sufficient to satisfy all liens in full, then such proceeds shall be distributed pro rata to all parties in interest, under the special order and direction of the court having jurisdiction in said attachment: Provided, further, If the owner of said products or any person in their behalf shall make, execute and file with the clerk of the circuit court or before the justice of the peace where said attachment is pending a good and sufficient bond in a sum double the amount claimed in said writ, signed by 2 freeholders and approved by said clerk or by said justice of the peace, running to the plaintiff in said writ and conditioned for the payment of all damages, costs, charges, disbursements and expenses that may be recovered by said plaintiff against defendant that may be found to

be a lien upon or against the products described in said writ, and upon the approval and filing of said bond, the said clerk or justice, as the case may be, shall issue an order to the officer having in charge such products, directing their release, and upon the service of a copy of said order upon said officer he shall release the same.

HISTORY: How. 84271;—CL 1897, 10761;—CL 1915, 14848;—CL 1929, 8733;—CL 1948, 426.6.

426.7 Attachment; claim, amount; joinder of several claims; form of unit.

Sec. 7. No attachment shall be issued under the provisions of this act in any of the circuit courts of this state unless the amount claimed in said writ and affidavit for said work or labor over and above all legal set-offs, shall be the sum of 100 dollars and upwards; but in case 2 or more persons shall have claims for labor and services against any products in less sums than 100 dollars each, and when such claims shall have accrued against the same person or persons, it shall be lawful for 2 or more persons claiming such lien to unite their claims either before or after filing statement of liens, and designate 1 of their number their agent or attorney for prosecuting such lien, or any suit necessary to enforce the same, and claims when thus united shall be received and be treated as 1 lien, and suit or attachment may be brought as for 1 claim and concluded as 1 cause or suit, and the person so designated as such agent or attorney shall be named in such suit or attachment as plaintiff, and when said suit or attachment shall be commenced in the circuit courts of this state, the writ of attachment may be in the following form:

In the name of the people of the state of Michigan; to the sheriff of the county of, we command you to attach the following goods and chattels, to wit: (here insert a description of the property upon which a lien is claimed), or so much thereof as shall be sufficient to satisfy the sum of, with interest, costs, disbursements, charges, and expenses of suit, in whosoever possession the same may be found, and so provide that the same so attached may be subject to further proceedings as the law requires; and also summon, defendant, if he be found in this state, to appear before the circuit court of county, at on the day of (same day on which writs in personal actions may be returnable), to answer, to his damage of dollars; and in case the above named defendant is not the owner of said described products, you are then also commanded to serve, or cause to be served a copy of this writ on or before the return day above mentioned, upon the owner of said products, or his proper agent or attorney, if such owner, agent, or attorney be known to you and residing in this state.

Witness, etc.

HISTORY: How. 8427g;—CL 1897, 10762;—CL 1915, 14849;—CL 1929, 8734;—CL 1948, 426.7.

426.8 Affidavit; annexation to writ; form.

Sec. 8. Such writ when issued out of said circuit court shall not be executed unless the plaintiff or some one in his behalf shall make and annex thereto an affidavit, stating that the defendant named therein is indebted to the plaintiff in said writ, specifying the amount of such indebtedness, as near as may be over and above all legal set-offs, and such affidavit shall also show that such indebtedness is due for and on account of such labor and services on such products mentioned in said writ, as entitles the plaintiff to a lien thereon, and that a statement of lien as by this act required has been duly filed. Said affidavit may be in the following form:

STATE OF MICHIGAN, }
County of } ss.

..... being duly sworn says that defendant in the annexed writ is indebted to, the plaintiff named in said writ, in the sum of as near as may be over

and above all legal set-offs, and the same is now due for work and labor performed by, in manufacturing, cutting, hauling, banking, driving, running, rafting or booming (as the case may be), the property mentioned in the annexed writ. That the last day's work of said labor was done on the day of, 18...., and that the said property described in the annexed writ (or a portion of it) is now situated in the county of, state of Michigan, and that a statement of lien required by law was on the day of, 18...., duly filed with the clerk of the county of, where said labor was performed.

.....
 "Subscribed and sworn to," etc.

HISTORY: How. 8427h;—CL 1897, 10763;—CL 1915, 14850;—CL 1929, 8735;—CL 1948, 426.8.

426.9 Jurisdiction of justices; form of writ.

Sec. 9. Justices of the peace within their respective counties shall have cognizance and jurisdiction of all persons found within their respective counties regardless of their place of residence and their jurisdiction shall not be limited by the provisions of section 707 of the Compiled Laws of 1897 of the state of Michigan; and shall have jurisdiction of all cases arising under this act when the amount claimed over and above all legal set-offs does not exceed 300 dollars and any person and persons having such lien shall be entitled to proceed by attachment in justice courts against the property on which he, she or they may have such lien for the enforcement of the same and the writ of attachment issued by any justice of the peace may be in the following form:

STATE OF MICHIGAN, }
 County of } ss.

To any constable in said county, greeting: In the name of the people of the state of Michigan you are commanded to attach the following goods and chattels (here insert a description of the property described in the required affidavit), or so much thereof as shall be sufficient to satisfy the sum of with interest, costs, disbursements, charges and expenses of suit in whosoever possession the same may be found and so provide that the same so attached may be subject to further proceedings as the law requires; and also summon, if he be found in this state, to be and appear before me at my office in said, on the day of, 190..., at o'clock in the noon, to answer to to his damages of 300 dollars or under and in case the above named defendant is not the owner of the said described logs, timber, posts, ties, poles, bolts, bark or staves you are then also commanded to serve or cause to be served a copy of this writ on or before the return day above mentioned upon the owners of said products or his proper agent or attorney if such owner, agent or attorney be known to you and residing in this state.

Given under my hand at the of county aforesaid, the day of, 190....

..... ,
 Justice of the Peace.

HISTORY: How. 8427i;—CL 1897, 10764;—Am. 1901, p. 135, Act 94, Eff. Sept. 5;—CL 1915, 14851;—CL 1929, 8736;—CL 1948, 426.9.

NOTE: Sec. 707 of CL 1897, above referred to, is superseded by Compilers' repealed § 606.10. See § 600.6645.

426.10 Affidavit; filing before issuance of writ, form.

Sec. 10. Before any justice of the peace shall issue any such writ of attachment, the plaintiff or person claiming such lien, or some one in his behalf, shall make and file with such justice of the peace an affidavit stating that the defendant, or person owing the debt or claim, is indebted to plaintiff, specifying the amount of such indebtedness, as near as may be, over and above all legal set-offs and that such indebtedness is due

for and on account of such labor or services on such products as entitle plaintiff to lien thereon, describing as particularly as may be the property on which such lien is claimed, and also stating that plaintiff has filed his statement of lien as herein required. Upon the filing of such affidavit with said justice of the peace, said writ of attachment shall issue, and no further or other affidavit shall be necessary, and no bond shall be required. Such affidavit may be in the following form:

STATE OF MICHIGAN, }
County of } ss.

..... being duly sworn, says that, defendant is indebted to plaintiff in the sum of, as near as may be, over and above all legal set-offs, for work and labor performed by in manufacturing, cutting, hauling, skidding, falling, scaling, banking, driving, running, rafting or booming (as the case may be), the following named property (here insert a description of the products upon which a lien is claimed); that the last day's work of said labor was done on the day of, 18...., in the county of, and the said described property, or a part of it, is now situated in the county of, state of Michigan, and that a statement of lien required by law was on the day of 18...., duly filed with the clerk of the county of, where said labor was performed.

"Subscribed and sworn to," etc.

HISTORY: How. 8427;—CL 1897, 10765;—CL 1915, 14852;—CL 1929, 8737;—CL 1948, 426.10.

AFFIDAVIT: See Compilers' § 426.8.

426.11 Writ of attachment; service, return; form of declaration.

Sec. 11. All writs of attachment issued under the provisions of this act by any of the circuit or justice courts of this state shall be served and returned as ordinary writs of attachment are served and returned in said courts respectively, except as herein otherwise provided; and the pleadings and all subsequent proceedings shall be the same as in other cases of attachment, except as herein otherwise provided. The declaration in all suits brought under this act may be in the following form:

TITLE OF COURT AND CAUSE

County of, ss.

Whereas,, the defendant herein, has been duly summoned to appear in this cause to answer the plaintiff herein in an action of assumpsit for labor and services done and performed by plaintiff for said defendant, in manufacturing, cutting, skidding, scaling, falling, hauling, banking, driving, running, rafting or booming (as the case may be) the following described property to wit: (here insert the same description of property as set forth in writ) for which said labor and services there is now due said plaintiff the sum of, for which said amount a claim of lien has been duly filed with the clerk of the county of, being the county in which said labor was performed, and the said defendant on the day of, 18...., in consideration of the premises undertook and promised the plaintiff to pay him the said sums of money on request; yet the said defendant has neglected so to do, or any part thereof, to the plaintiff's damage of and therefore he brings suit, etc., and claims a lien upon said described property for said amount.

HISTORY: How. 8427;—CL 1897, 10766;—CL 1915, 14853;—CL 1929, 8738;—CL 1948, 426.11.

ATTACHMENT: Courts of record, see Compilers' § 600.4021 et seq.; justice courts, see Compilers' § 600.7401 et seq.

426.12 Findings; court or jury, form; judgment; costs.

Sec. 12. In all suits on attachments prosecuted under the provisions of this act, the court, jury, or justice of the peace who shall try the same or make an assessment of damages therein, or make an inquest therein, shall in addition to finding the sum due

the plaintiff, also find that the same is due for labor and services performed upon the products described in the declaration, and is a lien upon the same, and the court or justice of the peace, as the case may be, shall render judgment in accordance with such finding, and execution shall issue therefor, and such execution, in addition to the commands in ordinary executions, shall command that the said products, or so much thereof as shall be necessary for that purpose, be sold to satisfy such judgment and all costs, charges and disbursements: Provided however, That if the court, jury, or justice of the peace shall find that the amount due the plaintiff is not a lien upon the property described in the declaration, the plaintiff shall not be non-suited thereby, but shall be entitled to judgment as in other civil actions; but in such case said plaintiff shall not recover or tax any costs arising from the filing of the statement of lien, nor for officers' fees, or expenses arising from the service of said writ of attachment, or expenses incurred relative to the property seized; and in those cases where the amount due is found to be a lien upon the property (or any portion of it) mentioned in plaintiff's declaration, the finding or verdict may be in the following form:

(the court, justice or jurors, as the case may be) say that there is due the plaintiff the sum of dollars from said defendant, and that the same is due for work and labor performed by in manufacturing, cutting, skidding, scaling, driving, running, hauling, banking, rafting or booming (as the case may be) the property mentioned in plaintiff's declaration (or a portion of it, specifying the same) and the plaintiff has a lien upon said described property for said amount.

HISTORY: How. 8427-1;—CL 1897, 10767;—CL 1915, 14854;—CL 1929, 8739;—CL 1948, 426.12.

426.13 Claimant of seized products; appearance; construction of act.

Sec. 13. Any person owning or claiming any of said products, and not a party to said suit, may upon application show such ownership or interest at any time before verdict in said suit, and may appear and defend the same as if made parties originally to said cause; and the proceedings for the enforcement of the lien provided for in this act are intended as an additional remedy, and do not prevent the collection of the claim by the ordinary common law provisions, and no action or lien under the provisions of this act shall be defeated by the taking of a note or other evidence of indebtedness, unless it is expressly taken in discharge of the account due and the lien.

HISTORY: How. 8427m;—CL 1897, 10768;—CL 1915, 14855;—CL 1929, 8740;—CL 1948, 426.13.

426.14 Boomage and storage; taxation as costs.

Sec. 14. The officer making the attachment may pay the boomage or storage on such products during the time that he shall have the custody thereof by virtue of such writ of attachment, not exceeding the usual or going rate per 1,000 feet on the quantity actually attached by him, and return the amounts so paid on the writ, which shall be included and taxed in the bill of costs or disbursements, but if paid after judgment then the officer may charge and collect the same out of the property, as other costs or disbursements.

HISTORY: How. 8427n;—CL 1897, 10769;—CL 1915, 14856;—CL 1929, 8741;—CL 1948, 426.14.

426.15 Forest products lien; county clerk, fee for filing statement; certified copies.

Sec. 15. The clerk of the proper county shall receive and file all applications or statements of lien authorized by this act, for which he shall receive \$1.00 per page, and when demanded shall give a certified copy thereof; for making and certifying said copy he shall be entitled to the same compensation per page as is allowed registers of deeds for making copies of records, and any such certified copy shall be received in evidence in the courts of this state the same as the originals.

HISTORY: How. 8427o;—CL 1897, 10770;—CL 1915, 14857;—CL 1929, 8742;—CL 1948, 426.15;—Am. 1963, p. 45, Act 44, Eff. Sep. 6.

Sec. 16. (This was a repeal section.)

HISTORY: CL 1915, 14858;—CL 1929, 8743;—Rep. 1945, p. 403, Act 267, Imd. Eff. May 25.
ACTS REPEALED: Act 145, 1881;—Act 185, 1873.

Act 263, 1861, p. 557; Eff. Jun. 15.

AN ACT to provide for the floating of logs and timber in the streams of this state.

The People of the State of Michigan enact:

426.51 Removal of forest products obstructing streams; liability of owner; lien on such products.

Sec. 1. If any person or persons shall put or cause to be put into any lake, river, creek or stream of this state any logs, lumber, timber, cedar poles or other forest products, for the purpose of floating the same to market or a place of manufacture, whether such lake, river, creek or stream in its natural condition is navigable, or is made navigable for logs, timber and other forest products by dams or other artificial means, and shall not make adequate provisions, and put on a sufficient force of men for breaking jams of such logs, timber, lumber, cedar poles or other forest products in or upon such lake, river, creek or stream, or for running, driving or clearing the same from the banks or shores of such lake, river, creek or stream and shall thereby hinder or delay the removal of any logs, timber, lumber or other forest products from the banks or shores of such waters, or by putting of the same afloat therein, or shall thereby obstruct the navigation of such lake, river, creek or stream, or hinder or delay the running of any logs, timber, lumber, cedar poles or other forest products in such waters, it shall be lawful for any other person, company or corporation, engaged in floating logs, timber, lumber, cedar poles or other forest products in such lake, river, creek or stream so obstructed, to cause such jams to be broken and such logs, timber, lumber, cedar poles or other forest products to be run, driven and cleared from the banks of such lake, river, creek or stream at the cost and expense of the person or persons, company or corporation owning the same; and such owner or owners shall be liable to the person or persons, company or corporation doing or causing such work to be done, for such costs and expenses; and the person or persons, company or corporation breaking such jams or causing the same to be broken, or running or driving such logs, timber, lumber, cedar poles or other forest products, or clearing the banks or shores of such waters thereof, shall have a lien on such logs, timber, lumber, cedar poles or other forest products for his or their reasonable charges and expenses for breaking such jams and for running and driving logs, timber, lumber, cedar poles and other forest products, and for clearing the banks or shores of such waters of the same, and shall be entitled to take and retain possession of such logs, timber, lumber, cedar poles or other forest products wherever the same may be found, or so much thereof as may be necessary to pay and satisfy the amount of such charges and expenses, and all cost thereon until the same shall be determined, paid and satisfied in the manner hereinafter provided.

HISTORY: This act appears here as it was amended and revised in 1863, p. 374, Act 221, Eff. June 22.

CL 1871, 1080;—Am. 1879, p. 83, Act 85, Imd. Eff. May 20;—How. 2035;—Am. 1887, p. 70, Act 66, Imd. Eff. April 13;—CL 1897, 5075;—CL 1915, 6650;—CL 1929, 8744;—CL 1948, 426.51.

RIVER IMPROVEMENT COMPANIES: Incorporation and powers as to logs and floatables, see Compilers' § 485.101 et seq.

426.52 Lien; discharge by bond.

Sec. 2. If any person claiming such logs, timber or lumber for himself or another, shall execute and deliver a bond to the party claiming such lien in a penal sum to be not less than double the sum claimed, or such other sum not less than the value of the property taken, as the circuit judge or the circuit court commissioner approving such

bond, shall direct, conditioned for the payment to the party claiming such lien, such sum as any court of competent jurisdiction shall find and determine to be due for such charges and expenses in breaking such jams, and running, driving and clearing such logs, timber or lumber as aforesaid, and providing for the care and safety of the same, with sufficient sureties to be approved by any circuit judge or circuit court commissioner; unless such approval shall be waived by the claimant of such lien such lien shall thereupon be discharged.

HISTORY: CL 1871, 1881;—How. 3038;—CL 1897, 5076;—CL 1915, 6651;—CL 1929, 8745;—CL 1948, 426.52.

426.53 Lien; remedy of assumpsit for claimant; jurisdiction, procedure.

Sec. 3. Any person, company or corporation, claiming any lien as aforesaid, may bring an action of assumpsit against the owner of such property, to determine and satisfy the amount of such lien. If the amount claimed shall not exceed 300 dollars, the action shall be commenced before any justice of the peace of the county in which the property, or any part thereof, may be situated; and if the amount claimed shall exceed 300 dollars, then the action shall be brought in the circuit court for such county. The proceedings in such action shall be in accordance with the practice of the courts in which such action is commenced, in actions of assumpsit; and the property so held may be levied upon and sold to satisfy any judgment which may be rendered against such owner, together with all costs of such suit, including the costs and expenses of providing for the care and safety of such property.

HISTORY: CL 1871, 1882;—How. 3037;—CL 1897, 5077;—CL 1915, 6652;—CL 1929, 8746;—CL 1948, 426.53.

426.54 Lien; remedy against property; procedure.

Sec. 4. If the owner of such logs, timber and [or] lumber cannot be ascertained, or is without the jurisdiction of the court, the proceeding to ascertain and determine the amount of such lien may be against the property, and commenced by filing the petition of the person, company or corporation claiming such lien, in the proper court, which shall contain a statement of the nature and amount of the claim, and a description of the property seized, and that the owner of such property is unknown, or is without the jurisdiction of the court, and praying for a judgment against such property, for the amount of such claim, which petition shall be verified by the oath of the party filing the same, his agent or attorney. The plaintiff shall, thereupon, and before any trial shall be had or judgment rendered in such proceeding, cause a notice to be published for 4 successive weeks, at least once in each week, in some newspaper printed and circulated in such county, or if none is printed and circulated in such county, then in such other newspaper published in this state, as such court shall direct, which notice shall state the title of the court, the name of the plaintiff, the name of the owner of the property taken, if known, the nature and amount of the claim, and a description of the property upon which the lien is sought to be enforced. The owner of such property shall have the right to appear and defend in such proceeding, at any time before judgment, upon such terms as the court shall direct; and in case of his appearance, an issue shall thereupon be formed, as in actions of assumpsit, and all subsequent proceedings, in such case, shall be in accordance with the practice of such court in actions of assumpsit. If the owner shall fail to appear in such proceeding, the court may proceed ex parte, to hear, try and determine the facts alleged in such petition, and render such judgment thereon as justice may require. If judgment shall be rendered in favor of such plaintiff, the court shall thereupon order that the property covered by such lien, or so much thereof as may be necessary, be sold to satisfy the amount of such judgment, with costs.

HISTORY: CL 1871, 1883;—How. 3038;—CL 1897, 5078;—CL 1915, 6653;—CL 1929, 8747;—CL 1948, 426.54.

426.55 Obstruction of streams; injury to booms; penalty.

Sec. 5. Every person who shall willfully dam up any rivers, creeks or streams in this state, or obstruct the navigation thereof, except for the purpose of milling, or the use of machinery, with intent to hinder or obstruct any person in the use thereof, as provided in this act, or who shall willfully cut, untie, loosen or cast off any rope, chain, pole, timber or pile, or other fastening by which any boom containing any logs, or timber, shall be secured, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail of the proper county, not exceeding 60 days, or by a fine not exceeding 100 dollars, or both, at the discretion of the court before whom he is tried.

HISTORY: CL 1871, 1864;—How. 2039;—CL 1897, 5079;—CL 1915, 6654;—CL 1929, 8748;—CL 1948, 426.55.

426.56 Obstruction; civil liability.

Sec. 6. Any person injured by any obstruction or injury to a boom, as provided in the foregoing section, shall be entitled to recover his damages of the person or persons causing such injury or obstructions, in an action of trespass.

HISTORY: CL 1871, 1865;—How. 2040;—CL 1897, 5080;—CL 1915, 6655;—CL 1929, 8749;—CL 1948, 426.56.

426.57 Booms on navigable streams; channels.

Sec. 7. It shall be lawful for any person or persons having logs or timber in any stream navigable for licensed watercraft, to boom such logs or timber along the shore, and to secure the booms by means of piles driven in the stream, or by chains, ropes, timbers, or traverse poles, made fast at points along the shore: Provided, That there shall be at all times sufficient channel left clear to allow of navigation by any craft or rafts usually navigating such stream.

HISTORY: CL 1871, 1866;—How. 2041;—CL 1897, 5081;—CL 1915, 6656;—CL 1929, 8750;—CL 1948, 426.57.

Act 202, 1867, p. 280; Eff. Jun. 27.

AN ACT to protect the title of the owners of floating logs and lumber.

The People of the State of Michigan enact:

426.101 Marking of logs and timber.

Sec. 1. That every person, copartnership or corporation who shall put any logs or timber into any river, stream or water in this state for the purpose of rafting or floating the same to any other place, shall have some mark or marks previously selected, approved and recorded in the manner hereinafter specified, impressed in a conspicuous place or places upon the end or surface of each of said logs or sticks of timber so put into any of the aforesaid waters.

HISTORY: CL 1871, 1867;—Am. 1879, p. 122, Act 196, Imd. Eff. May 31;—How. 2042;—CL 1897, 5082;—CL 1915, 6657;—CL 1929, 8751;—CL 1948, 426.101.

This act supersedes Act 218 of 1859, providing for recording with clerks of Newaygo and Muskegon counties of marks put on logs in Muskegon river.

426.102 Marking of logs; recording and notice.

Sec. 2. Before any such mark or marks shall be used it shall be the duty of every such person, copartnership or corporation intending to use the same, to cause a diagram and a full and complete written description thereof signed by such person, copartnership or corporation to be recorded in the office of the clerk of each county through which any river, stream or water may run, wherein is to be floated any logs or timber upon which said mark or marks are to be placed, and shall also give notice in writing to each log running or booming company doing business on any waters on which the logs or timber are floated or run. The diagram and description to be recorded as aforesaid must be different from any description already recorded in said of-

fice claimed by any other person, firm or corporations; said person, copartnership or corporation shall thereupon cause said diagram and description to be recorded in the office of the clerk of each county through which any river, stream or water may run, wherein is to be floated any logs or timber upon which said mark or marks are to be placed. The recording of any diagram and description shall have no force and effect unless approved by the president and secretary of the booming company or companies as aforesaid.

HISTORY: Am. 1869, p. 167, Act 100, Eff. July 5;—CL 1871, 1668;—Am. 1879, p. 122, Act 126, Imd. Eff. May 31;—How. 2043;—CL 1897, 5083;—CL 1915, 6656;—CL 1929, 8752;—CL 1948, 426.102.

426.103 Records of county clerk; inspection, fees.

Sec. 3. It shall be the duty of any such clerk to record in a book to be kept by him for that purpose, all marks and descriptions furnished to him for that purpose and which have been approved as aforesaid and which are different from any other mark or description there recorded, which book shall be, at all reasonable hours, open to the inspection and examination of any person requiring it, and each of said clerks shall be entitled to receive for his fees for each mark and description recorded, 25 cents to be paid in advance by the party having the same recorded.

HISTORY: CL 1871, 1669;—Am. 1879, p. 122, Act 126, Imd. Eff. May 31;—How. 2044;—CL 1897, 5084;—CL 1915, 6659;—CL 1929, 8753;—CL 1948, 426.103.

426.104 Presumption of title.

Sec. 4. Any logs or timber having any such recorded mark or marks impressed thereon shall be presumed to belong to the party or parties in whose name said mark or marks shall have been recorded.

HISTORY: CL 1871, 1670;—Am. 1879, p. 122, Act 126, Imd. Eff. May 31;—How. 2045;—CL 1897, 5085;—CL 1915, 6660;—CL 1929, 8754;—CL 1948, 426.104.

426.105 Marks; effect of neglect to record; streams covered by act.

Sec. 5. Every person, corporation or copartnership who shall neglect to have his or their mark or marks recorded, as required in the second section of this act, shall be debarred from all the benefits arising from the due recording of such mark or marks, and the vendee or assignee of such logs or timber shall be subject to the same regulations and restrictions: Provided, The provisions of this act shall apply only to the streams running into Lake Michigan except the Kalamazoo river.

HISTORY: CL 1871, 1671;—Am. 1879, p. 123, Act 126, Imd. Eff. May 31;—How. 2046;—CL 1897, 5086;—CL 1915, 6661;—CL 1929, 8755;—CL 1948, 426.105.

426.106 Marks; penalty for forging.

Sec. 6. If any person shall falsely make, forge or counterfeit such mark and use the same in marking logs or timber, knowing the same to be the mark of another person, and with intent to defraud, shall be deemed guilty of felony, and shall be punished by imprisonment at hard labor in the state prison not to exceed 5 years or by fine of not less than 100 dollars, nor more than 2,000 dollars.

HISTORY: Add. 1869, p. 168, Act 100, Eff. July 5;—CL 1871, 1672;—Am. 1879, p. 123, Act 126, Imd. Eff. May 31;—How. 2047;—CL 1897, 5087;—CL 1915, 6662;—CL 1929, 8756;—CL 1948, 426.106.

426.107 Marks; discontinuance, alteration.

Sec. 7. The board or boards of directors of any log running or *boom company doing business on any river, stream or water in this state included in the provisions of this act are hereby authorized, whenever it shall be made to appear to said board or boards, that any similar or unsuitable mark or marks are or have been placed upon any logs or timber floated or intended to be floated in any river, stream or water upon which said booming company is doing business, to notify and request the person, copartnership, or corporation using or intending to use said similar or unsuitable mark or marks, and who were the last to adopt and record the same, to alter or to discontinue the use thereof. And in case the owner or owners of such defective mark or marks shall

neglect or fail to comply with said notice and request within 30 days after service thereof upon such owner or owners, the board of directors may thereupon make a description of such defective mark or marks, attach an affidavit thereto setting forth the time and manner of service of said notice and request and file the same in the clerk's office in which such defective mark or marks are recorded. Said defective mark or marks shall have no force and effect for any purpose from and after the first day of November next thereafter. All marks altered or amended shall be approved and recorded in the same manner as new or original marks.

HISTORY: Add. 1879, p. 123, Act 126, Imd. Eff. May 31;—How. 2048;—CL 1897, 5088;—CL 1915, 6663;—CL 1929, 8757;—CL 1948, 426.107.

*NOTE: It is evident the word "boom" should be "booming".

Act 238, 1879, p. 214; Eff. Aug. 30.

AN ACT to protect logs, lumber and timber, while floating upon the waters in this state, or lying upon the banks or shores thereof, and to repeal consecutive sections number 2009, 2010, 2011, 7627 and 7628 of the Compiled Laws of 1871, relating to the same subject.

The People of the State of Michigan enact:

426.151 Logs; unlawful moving.

Sec. 1. That it shall be unlawful for any person other than the owner thereof, or some person by him employed, whether such owner be known or unknown, to take possession of, drive or run, or in any manner dispose of any log, spar, boomstick, spile, shinglebolt, timber, railroad tie, fence-post or lumber floating upon, lying or being in any river, stream, lake, pond, bay inlet or bayou or any waters in this state or in any boom therein, or on or near the shores or banks thereof.

HISTORY: How. 2049;—CL 1897, 5089;—CL 1915, 6664;—CL 1929, 8758;—CL 1948, 426.151.
FORMER ACTS: Secs. 1-3 of R. S. 1846, Ch. 46, being CL 1871, 2009-2011; and Act 27 of 1871.

426.152 Logs; unlawful destruction or alteration of marks.

Sec. 2. It shall be unlawful for any person other than the owner thereof, or by his consent, to cut off, cut out, alter, deface or destroy any mark made upon any log, spar, boomstick, spile, shinglebolt, timber, railroad tie, post or lumber that shall be floating upon, lying or being in any river, stream, lake, pond, bay, inlet or bayou or any waters in this state or in any boom therein, or on or near the shores or banks thereof.

HISTORY: How. 2050;—CL 1897, 5090;—CL 1915, 6665;—CL 1929, 8759;—CL 1948, 426.152.

426.153 Logs; unlawful marking.

Sec. 3. It shall be unlawful for any person other than the owner thereof, or by his consent, to make or place, or cause to be made or placed, any mark upon any log, spar, spile, boomstick, railroad tie, post, shinglebolt, timber or lumber floating upon or lying in any river, stream, lake, pond, bay, inlet or bayou or any other waters within this state or in any boom therein or on or near the shores or banks thereof.

HISTORY: How. 2051;—CL 1897, 5091;—CL 1915, 6666;—CL 1929, 8760;—CL 1948, 426.153.

426.154 Violation of act; penalty.

Sec. 4. Any person who shall knowingly do any act or thing declared unlawful in any of the sections of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding 200 dollars or by imprisonment in the county jail not exceeding 1 year, or by both such fine and imprisonment in the discretion of the court, and upon a second conviction, for a like misdemeanor, he shall be punished by a fine not exceeding 500 dollars or by imprisonment in the county jail for a term not exceeding 1 year and the court may enforce the payment of any fine

imposed under the provisions of this act, by imprisonment in the county jail for a term not exceeding 1 year.

HISTORY: How. 2052;—CL 1897, 5082;—CL 1915, 6667;—CL 1929, 8761;—CL 1948, 426.154.

426.155 Reception into booms or manufacture of logs without consent of owner; misdemeanor.

Sec. 5. If any person having the possession or control of any boom, in any of the waters of this state shall, knowingly run, turn, admit or receive into such boom, or cause to be run, turned, admitted or received into such boom any log, spar, boomstick, shinglebolt, railroad tie or fence post not his own, without the consent of the owner thereof; or if any person being in the possession or having the control of any saw-mill, shingle-mill or any structure made for the purpose of manufacturing lumber, shingles or timber shall knowingly manufacture into lumber, shingles, timber pickets or posts any log, spar, or shinglebolt not his own, without the consent of the owner thereof, shall be deemed guilty of a misdemeanor and punished as provided in section 4 of this act.

HISTORY: How. 2053;—CL 1897, 5083;—CL 1915, 6668;—CL 1929, 8762;—CL 1948, 426.155.

426.156 Booming, manufacture, destruction or insertion of marks without consent of owner; civil liability.

Sec. 6. Any person who, by himself or by another in his employ, shall without the consent of the owner thereof take, boom or manufacture any log, spar, spile, boomstick, railroad tie, post, shinglebolt, timber or lumber not his own, floating upon, lying or being in any river, stream, lake, pond, bay, inlet, bayou or any other water in this state, or in any boom therein or on or near the bank or shores thereof, or who shall cut off, cut out, deface or destroy any mark upon any log, spar, spile, boomstick, shinglebolt, timber, railroad tie, post or lumber lying or being as aforesaid, or who shall mark, or place any mark upon any log, spar, spile, boomstick, shinglebolt, timber, railroad tie, post or lumber lying or being as aforesaid, or who shall mark or place any mark upon any log, spar, spile, boomstick, shinglebolt, railroad tie, post, timber or lumber lying or being as aforesaid, shall be liable to pay the owner thereof, by way of damages, 3 times the value of said log, spar, spile, boomstick, shinglebolt, timber, railroad tie, post or lumber to be recovered in an action of trespass on the case by the owner thereof or his assignee.

HISTORY: How. 2054;—CL 1897, 5084;—CL 1915, 6669;—CL 1929, 8763;—CL 1948, 426.156.

426.157 Prosecutions; allegations, evidence.

Sec. 7. In any prosecution under the provisions of this act, it shall be sufficient to allege, in any complaint or information, the ownership of property in the actual owner thereof, or in any person, copartnership or corporation lawfully in possession thereof and, on the trial, proof of such ownership or possession shall be sufficient evidence of title and, on any such trial, or in any suit brought for damages for any of the acts herein declared to be unlawful, proof that any such log, spar, spile, boomstick, railroad tie, post, timber or lumber taken or disposed of; or the mark upon which has been cut off, cut out, defaced or destroyed, or which shall have been boomed or manufactured, as aforesaid, shall be found in the possession of the party charged, or against whom such suit is brought, shall be prima facie evidence of guilt.

HISTORY: How. 2055;—CL 1897, 5085;—CL 1915, 6670;—CL 1929, 8764;—CL 1948, 426.157.

426.158 Right to search for and examine logs; penalty for obstruction.

Sec. 8. It shall be lawful for any person owning any logs, spars, spiles, boomstick, shinglebolt, timber, railroad ties, posts or lumber floating, lying or being in any of the streams or waters in this state, his servants and employes, and for any corporation entitled to the possession thereof and its employes, to search and examine any and all rafts of logs, and all spiles, railroad ties, posts, logs whether in rafts or booms or wherever

situate in said waters or on the banks, or shores thereof, and all mills engaged in manufacturing logs into lumber, timber or shingles, situated upon or near such waters, to ascertain whether any log, spar, boomstick, shinglebolt, timber or lumber belonging to such person, or to which such corporation is entitled, may be there found; and any person who shall willfully obstruct or hinder any person engaged in such search or examination, shall be punished by a fine not more than 50 dollars, or by imprisonment in the county jail not exceeding 6 months, or by both such fine and imprisonment in the discretion of the court.

HISTORY: How. 2056;—CL 1897, 5086;—CL 1915, 6671;—CL 1929, 8765;—CL 1948, 426.158.

426.159 Inapplicability of act.

Sec. 9. The provisions of this act shall not apply to the taking and running of logs, authorized by the statutes of this state, nor to unmarked cedar to be used for fence posts, nor to the taking of the possession of the same by virtue of any legal process issued from any of the courts of this state.

HISTORY: How. 2057;—CL 1897, 5087;—CL 1915, 6672;—CL 1929, 8766;—CL 1948, 426.159.

426.160 Removal of logs drifted on banks; procedure for fixing and recovery of damages, arbitration, lien.

Sec. 10. Whenever any logs, timber, boards, planks, spars, boomsticks, spiles, shinglebolts, railroad ties, or fence posts, in rafts or otherwise shall be drifted or float upon any island in any of the waters or streams in this state, or upon the banks or shores of such waters or lands adjacent thereto, the owner of such logs, timber, boards, planks, spars, boomsticks, spiles, shinglebolts, railroad ties, or fence posts, or any person or corporation entitled to the possession thereof, may at any time within 18 months remove the same upon paying or tendering to the owner or occupant of such bank, shore, or lands, such reasonable damages as may have been caused by such occupancy and removal, but if the amount of such damages can not be agreed upon by the owner or occupant of such bank, shore or land, and such owner, person or corporation entitled to such logs, timber, boards, planks, spars, boomsticks, spiles, shinglebolts, railroad ties, or fence posts, either of them may elect to have the amount of said damages left to arbitration in the manner following: The party or parties so electing, or their authorized agent or attorney, shall serve a written notice by mail or otherwise, upon such other party or parties, reciting the fact that they elect to have such damages left to arbitration, and that they will meet such persons, their agents or attorneys, at the office of some 1 of the justices of the peace of the township, where such island, bank, shore, or land is situated, at a time in said notice mentioned, not less than 6 days nor more than 20 days from the time of the service of said notice, at which time and place such parties or their authorized agents or attorneys shall meet to choose such arbitrators as aforesaid; in the manner following: The party giving notice, or his, her, or their authorized agent or attorney shall select 1 person to act as 1 of said arbitrators, and the party so notified, his, her, or their authorized agent or attorney, shall choose another, and these 2 thus chosen shall select a third. Provided, That all persons chosen under the provisions of this act, shall be chosen from among the freeholders residing in the township, or an adjoining township where such island, bank, shore, or land is situated. And if said parties, his, her, or their authorized agents or attorneys cannot agree upon the selection of said persons as arbitrators, then either or any of such parties may certify such fact or facts, to 1 of the justices of the peace of such township as aforesaid who shall upon the receipt of such certificate proceed at once to make a list of the names of 18 freeholders who shall be, either residents of such township, or of such township and adjoining townships, and the parties aforesaid shall strike out, alternately, the plaintiff first striking out, 1 name from the said list, until only 3 names remain, and the freeholders whose names so remain upon the list shall act as such arbitrators. Said justice

of the peace shall notify said persons so selected, who shall appear before such justice at a day set by him, at a time not less than 3 nor more than 10 days from the service of said notice. At such time so set for the meeting of said arbitrators, they shall appear and be sworn or affirmed to justly and equitably try all matters in relation to such damages, and shall proceed to hear testimony and decide the amount of said damages. The said arbitrators shall have the right to view the said island, bank, shore, or land, the occupancy of which is in controversy. The said arbitrators shall have all the powers usual to arbitrators. When the said arbitrators shall have determined the amount of damages, they shall, if chosen by the interested parties as first provided in this section, certify the same to 1 of the justices of the peace in the township where the said island, bank, shore, or land is situated, who shall thereupon enter a judgment in his docket for such award against such owner, person, or corporation entitled to such logs, timber, boards, planks or floatables, and execution shall issue thereon, as in other cases in justices courts. But if the arbitrators shall have been designated from any list of names as provided in this section, they shall certify the amount of damages to the justice of the peace making such list, and he shall in like manner enter judgment, and execution shall issue thereon the same as in other cases in justices courts. Should either party complain of such award such party may appeal to the circuit court of the county where such island, bank, shore, or land is situated, by giving bonds for the amount of such award and costs, but such appeal shall not be allowed except for reasons as set forth in sections 9 and 10, chapter 292 of Howells annotated statutes. If such logs, timber, boards, planks, spars, boomsticks, spiles, shinglebolts, railroad ties or fence posts shall not be removed within said 18 months under the provisions of this section, the owner thereof shall be deemed to have forfeited all right thereto, and such owner or occupant of said lands may make out a sworn statement containing a description of the lands on which said logs, timber, boards, planks, or floatables are lying, the number of logs, and the amount of timber, boards, plank, spars, boomsticks, spiles, shinglebolts, railroad ties or fence posts as nearly as may be, and the marks thereon if any, and the length of time the same have remained on said land, and upon delivering such statement to any sheriff, deputy sheriff, or constable, such officer shall proceed and make sale of such logs, timber, boards, planks, spars, boomsticks, spiles, shinglebolts, railroad ties or fence posts, at public auction, at some convenient and public place in the vicinity thereof. Immediately on making such sale, such officer shall pay over to the owner or occupant of such lands, the proceeds of such sale, less his fees for making the same, which fee shall be the same as upon levy and sale upon execution: Provided, That no sale shall be made without giving 10 days' notice to the owner of such logs, if known; and if not known, then such officer shall give like notice as he would be required to give on sale of personal property on execution, and when such sale shall have been made he shall thereupon make his certificate, stating the time and place of sale the number or amount of logs, timber, boards, planks, spars, boomsticks, spiles, shinglebolts, railroad ties, or fence posts, sold and the marks thereon, if any, and the name of the purchaser or purchasers, the amount paid and the disposition of the same. He shall at once annex such sworn statement to said certificate and file the same in the office of the county clerk of the county in which the sale was made. Provided, further, That when the property mentioned in section 1 of this act, shall be or lie upon any improved farming lands of this state, adjoining any of the waters mentioned in said section 1, if the owner or occupant of such lands shall make the affidavit hereinbefore required, and shall cause a copy of said affidavit to be personally served on the owner or agent of the owner of the property mentioned in said affidavit, if said agent or owner be known to the owner or occupant of said lands, but if not known to said owner or occupant, then he shall cause a copy of said affidavit to be published in 1 or more newspapers in said county in which said land is situated for 3 successive weeks, if

there be one, but if not, in 1 of an adjoining county, and a copy of the same shall be sent to the office of the booming or log-running company having such property in charge or doing business on such streams if known by said owner or occupant, said notice to be sent by mail or otherwise, which said notice shall require said owner or agent to remove said property mentioned in the said affidavit, within 30 days after the receipt of said notice. If said owner shall neglect or refuse to remove the said property, and pay all reasonable damages and charges thereon then said owner or occupant may remove the same to the adjoining stream, or to the banks thereof, and if the same is not claimed by the owner thereof within 6 months thereafter, and all reasonable charges and damages are not paid, the owner or occupant of said land is empowered to sell the same at public auction to the highest bidder by giving the same notice as required by law in sales of personal property by sheriffs and constables; said sale to be conducted as hereinbefore provided for the sale of logs, timber, boards, planks, spars, boomsticks, spiles, shinglebolts, railroad ties or fence posts, having lain for 18 months upon such land and the proceeds applied in the same way as provided in case of the sale of such logs, timber, boards, planks, spars, boomsticks, spiles, shinglebolts, railroad ties or fence posts; And provided further, That all reasonable damages and expenses incurred and suffered by the owner or occupant of such lands shall be a lien upon such logs, timber, boards, plank spars boomsticks, spiles, shinglebolts, railroad ties, or fence posts until paid.

HISTORY: How. 2058;—Am. 1885, p. 159, Act 142, Eff. Sept. 19;—CL 1897, 5096;—CL 1915, 6673;—CL 1929, 8767;—CL 1948, 426.160.

NOTE: Sections 9 and 10 of Chap. 292 of How., above referred to, are superseded by Compilers' repealed §§ 645.9 and 645.10. See GCR 1963, 769.

Sec. 11. (This was a repealed section.)

HISTORY: How. 2059;—CL 1897, 5096n;—CL 1915, 6674;—CL 1929, 8768;—Rep. 1945, p. 403, Act 267, Imd. Eff. May 25.

ACTS REPEALED: Part of Ch. 46, R.S. 1846, CL 1871, 2009-2011; Act 27, 1871, CL 1871, 7627-7628.

R.S. 1846, Ch. 46.

CONVERSION OF LOGS

Secs. 1-3.

HISTORY: CL 1857, 1599-1601;—CL 1871, 2009-2011;—Rep. 1879, p. 217, Act 238, Eff. Aug. 30, being CL 1929, 8768.

426.174 Conversion of logs; civil liability.

Sec. 4. Whoever shall convert to his own use, without the consent of the owner thereof, any logs, timber, boards, or planks floating in any of the waters of this state, or lying on the banks or shores of such waters, or on any island where the same may have drifted, except as in this chapter provided for, shall be liable to the owner thereof in treble the amount of damages.

HISTORY: CL 1857, 1602;—CL 1871, 2012;—How. 2060;—CL 1897, 5099;—CL 1915, 6675;—CL 1929, 8769;—CL 1948, 426.174.

TREBLE DAMAGES: See Compilers' § 426.156.

CHAPTER 427. HOTELS AND BOARDING HOUSES

HOTELS, INNS AND LODGING HOUSES

Act 188 of 1913

- 427.1 Hotel; definition.
- 427.2 Hotels; fire escape equipment, ways of egress and notices in buildings over two stories in height.
- 427.3 Hotels; fire extinguishers.
- 427.4 Hotels; rope equipment and notices in two story buildings.
- 427.5 Hotels; sanitation, water closets.
- 427.6 Hotels; towels, bedding.
- 427.7 Violation of act; penalty.
- 427.8 Commission; membership, powers.
- 427.9 Hotel inspectors; appointment, deputies.
- 427.10 Hotel inspectors; duty.
- 427.11 Hotel inspectors; power to enter hotels.
- 427.12 Certificate of compliance with law; display.
- 427.13 Certificate of compliance with law; fraudulent issuance by inspector, penalty.
- 427.14 Hindrance of inspector; penalty.
- 427.15 Prosecutions; duties of inspector and prosecutors.

DUTIES AND LIABILITIES

Act 42 of 1905

- 427.101 Liability of innkeeper; loss or injury to ordinary personalty, limits.
- 427.102 Liability of innkeeper; jewelry, money, valuable papers.

RIGHT OF LIEN

Act 145 of 1897

- 427.201 Lien of hotel, boarding, lodging, or apartment house keeper.
- 427.202 Unclaimed property; sale, notice.
- 427.203 Sale of unclaimed property; publication and service of notice, time.
- 427.204 Sale of unclaimed property; surplus proceeds refunded.
- 427.205 Sale of unclaimed property; balance, when paid to county treasurer; affidavit.
- 427.206 Sale of unclaimed property; balance, when paid to county treasurer; ultimate disposition of surplus.
- 427.207 Sale of unclaimed property; certain rights not barred.

Act 188, 1913, p. 378; Eff. Aug. 14.

AN ACT relating to the conduct of hotels, inns and public lodging houses.

The People of the State of Michigan enact:

427.1 Hotel; definition.

Sec. 1. Every building or structure kept, used or maintained as, or held out to the public to be an inn, hotel or public lodging house, shall, for the purpose of this act, be defined as a hotel, and wherever the word "hotel" shall occur in this act it shall be construed to mean every such structure as is described in this section.

HISTORY: CL 1915, 6932;—CL 1929, 8906;—CL 1948, 427.1.

HOUSING LAW: See Compilers' §§ 125.401 to 125.497 and 125.521 to 125.537.

427.2 Hotels; fire escape equipment, ways of egress and notices in buildings over two stories in height.

Sec. 2. Every hotel that is more than 2 stories high shall be equipped with an iron fire escape on the outside of the building connecting on each floor, above the first with at least 2 openings, which shall be well fastened and secured with landings not less than 6 feet in length and 3 feet in width, guarded by an iron railing not less than 3 feet in height. Such landings shall be connected by iron stairs not less than 2 feet wide and with steps of not less than 6 inch tread and not more than 8 inch rise, placed at an angle of not more than 45 degrees and protected by a well secured hand rail on both sides and reaching to within 12 feet of the ground, with a drop ladder 18 inches wide reaching from the lower platform to the ground. Such fire escapes shall be sufficient if a perpendicular ladder shall be used instead of the stairs provided such iron ladder is placed at the extreme outside of the platform and at least 3 feet away from the wall of the building, and provided said ladder is equipped with round iron rounds not more than 15 inches apart, except that fireproof buildings may have inside fire escapes placed in a well, shaft, or opening which shall be built of fire-proof material and shut

off from the remainder of the building by fire-proof, tight doors. The way of egress to such fire escape shall at all times be kept free and clear of all obstruction of any and every nature. Storm windows and storm doors shall be considered an obstruction for the purpose of this act, and such way of egress shall at all times be kept unlocked. There shall be posted and maintained in a conspicuous place in each hall and each guest room, except the halls and rooms on the ground floor, of such hotel, a printed notice in characters not less than 2 inches high calling attention to and directing the way to such fire escape.

HISTORY: CL 1915, 6933;—CL 1929, 8807;—CL 1948, 427.2.
HOTEL FIRE ESCAPES: See also Compilers' §§ 29.20 and 406.860.

427.3 Hotels; fire extinguishers.

Sec. 3. Each and every hotel shall be provided with at least 1 sufficient chemical fire extinguisher for every 2,500 square feet or less of floor area, which such extinguisher or extinguishers shall be placed in a convenient location in a public hallway outside of the sleeping rooms, and shall always be in condition for use.

HISTORY: CL 1915, 6934;—CL 1929, 8808;—CL 1948, 427.3.

427.4 Hotels; rope equipment and notices in two story buildings.

Sec. 4. Every hotel that is not over 2 stories in height and which is not provided with such fire escape as is described in section 2 hereof, shall provide in every bedroom or sleeping apartment on the second floor a manila rope at least 5/8 of an inch in diameter and knotted every 18 inches, and of sufficient strength to sustain a weight and strain of at least 500 pounds, and of sufficient length to reach the ground. Such rope shall be securely fastened to the joists or studdings of the building as near the windows as practicable, and shall be kept coiled in plain sight at all times, nor shall such rope be covered by curtains or other obstruction. Every such hotel shall provide and maintain in a conspicuous place in every bedroom or sleeping apartment above the ground floors, a printed notice calling attention to such rope and giving directions for its use.

HISTORY: CL 1915, 6935;—CL 1929, 8809;—CL 1948, 427.4.

427.5 Hotels; sanitation, water closets.

Sec. 5. Every hotel shall be well drained and maintained according to established sanitary principles; shall be kept clean and in a sanitary condition and free from effluvia arising from any sewer, drain, privy or other source within the control of the owner, manager, agent or other person in charge, shall be provided with water closets or privies properly screened for the separate use of males and females, which water closets or privies shall be disinfected as often as may be necessary to keep them at all times in a sanitary condition.

HISTORY: CL 1915, 6936;—CL 1929, 8810;—CL 1948, 427.5.
WASH ROOMS: For employees, see Compilers' § 406.67.

427.6 Hotels; towels, bedding.

Sec. 6. Every hotel shall have and provide all toilet rooms, bath rooms and sleeping rooms with individual textile towels. Every hotel shall have and provide all beds with regulation sheets, not less than 90 inches in length. Such beds shall also be provided with sufficient number of regulation size blankets or quilts that are kept in a sanitary condition.

HISTORY: CL 1915, 6937;—CL 1929, 8811;—CL 1948, 427.6.

427.7 Violation of act; penalty.

Sec. 7. Every owner, manager, agent or person in charge of a hotel, who shall fail to comply with any of the provisions of this act, shall be deemed guilty of a misdemeanor, and shall be fined not less than 25 dollars nor more than 50 dollars, or shall be imprisoned in the county jail for not less than 30 days nor more than 60 days, or both, and

every day that such a hotel is carried on in violation of this act shall constitute a separate offense.

HISTORY: CL 1915, 6636;—CL 1929, 8812;—CL 1948, 427.7.

427.8 Commission; membership, powers.

Sec. 8. The labor commissioner, dairy and food commissioner, insurance commissioner and the executive officer of the state board of health shall constitute a commission for the purpose of carrying into effect the provisions of this act, and same shall be delegated with the power to adopt such rules and regulations as conditions may require.

HISTORY: CL 1915, 6639;—CL 1929, 8813;—CL 1948, 427.8.

MEMBERS OF COMMISSION: Powers and duties of the director of labor, see Compilers' § 16.476.

The powers and duties of the dairy and food commissioner are now vested in the department of agriculture, see Compilers' § 285.1 et seq.

The powers and duties of the insurance commissioner were transferred to the department of insurance; see Compilers' § 540.200 et seq.

The powers and duties of the board of health are now vested in the state health commissioner; see Compilers' § 325.1 et seq.

427.9 Hotel inspectors; appointment, deputies.

Sec. 9. Such commission shall delegate and confer the title of hotel inspector or deputy inspectors upon such men now operating under the supervision of the several departments constituting this commission, and in such number as the lawful enforcement of this act shall justify.

HISTORY: CL 1915, 6640;—CL 1929, 8814;—CL 1948, 427.9.

427.10 Hotel inspectors; duty.

Sec. 10. It shall be the duty of the inspector and his deputies to see that all of the provisions of this act are complied with, and said inspector or the deputy for the district shall personally inspect at least once each year and at such other times as in the best judgment of the commission or the deputy the occasion demands as defined by this act.

HISTORY: CL 1915, 6641;—CL 1929, 8815;—CL 1948, 427.10.

427.11 Hotel inspectors; power to enter hotels.

Sec. 11. Said inspector and his deputies are hereby granted police power to enter any hotel at reasonable hours to determine whether the provisions of this act are being complied with.

HISTORY: CL 1915, 6642;—CL 1929, 8816;—CL 1948, 427.11.

427.12 Certificate of compliance with law; display.

Sec. 12. If the inspector or deputy shall find after examination of any hotel that this law has been fully complied with, he shall issue a certificate to that effect to the person operating the same, and said certificate shall be kept posted up in a conspicuous place in said inspected building. Such certificate shall be prepared in blank by said commission.

HISTORY: CL 1915, 6643;—CL 1929, 8817;—CL 1948, 427.12.

427.13 Certificate of compliance with law; fraudulent issuance by inspector, penalty.

Sec. 13. Any inspector who shall wilfully certify falsely regarding any building inspected by him, and who shall issue a certificate to any person operating in any hotel when such person has not complied with the provisions of this act, shall on conviction thereof be fined not less than 50 dollars nor to exceed 100 dollars, and may be imprisoned not to exceed 90 days in the county jail, or both at the discretion of the court, and upon conviction shall be forever disqualified to hold said office.

HISTORY: CL 1915, 6644;—CL 1929, 8818;—CL 1948, 427.13.

427.14 Hindrance of inspector; penalty.

Sec. 14. Any owner, manager, agent or person in charge of a hotel, who shall obstruct or hinder an inspector in the proper discharge of his duties under this act, shall

be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than 25 dollars nor more than 50 dollars, or shall be imprisoned in the county jail not less than 30 days nor more than 60 days, or both.

HISTORY: CL 1915, 6645;—CL 1929, 8819;—CL 1948, 427.14.

427.15 Prosecutions; duties of inspector and prosecutors.

Sec. 15. It shall be the duty of the inspector, upon ascertaining by inspection or otherwise, that after 60 days from the time this act takes effect, any hotel is being carried on contrary to its provisions, to make complaint and cause the arrest of the person so violating the same; and it shall be the duty of the prosecuting attorney in such cases to prepare all necessary papers and conduct such prosecutions.

HISTORY: CL 1915, 6646;—CL 1929, 8820;—CL 1948, 427.15.

Act 42, 1905, p. 61; Imd. Eff. Apr. 5.

AN ACT to define the duties and liabilities of hotel keepers and innkeepers with relation to the personal property of their guests, and to provide for the protection of inn and hotel keepers, and to repeal Act No. 227 of the Public Acts of 1897, and Act No. 15 of the Public Acts of 1875.

The People of the State of Michigan enact:

427.101 Liability of innkeeper; loss or injury to ordinary personalty, limits.

Sec. 1. The liability of the keeper of any inn, whether individual, partnership or corporation, for loss of or injury to personal property of his guest, shall be that of a depository for hire: Provided, however, That in no case shall such liability exceed the sum of 250 dollars; and in case of the loss of a trunk or chest, and its contents, it shall not exceed the sum of 150 dollars; in case of the loss of a valise, portmanteau, grip, telescope or dress suit case, and contents, it shall not exceed the sum of 50 dollars; and in case of the loss of a box, bundle or package, and contents, it shall not exceed the sum of 10 dollars: And provided further, That nothing in this act shall prohibit an innkeeper from assuming a greater liability than the sum of 250 dollars for the personal effects of his guest: Provided, Said undertaking and agreement shall be in writing, stating the kind of personal property received and the value thereof, the kind and extent of the liability of said innkeeper, which said agreement shall be signed by said guests and said innkeeper or his clerk: And provided further, That nothing contained in this section shall preclude any remedy now existing for the enforcement of the hotel keeper's or innkeeper's lien.

HISTORY: CL 1915, 6629;—CL 1929, 8803;—CL 1948, 427.101.

FORMER ACTS: Act 15 of 1875, being CL 1897, 5316; Act 227 of 1897, being CL 1897, 5315.

427.102 Liability of innkeeper; jewelry, money, valuable papers.

Sec. 2. No innkeeper, whether individual, partnership or corporation, who constantly has in his inn a metal safe or suitable vault in good order, and fit for the custody of money, bank notes, jewelry, articles of gold and silver manufacture, precious stones, personal ornaments, railroad mileage books or tickets, negotiable or valuable papers and bullion, and who keeps on the doors of the sleeping rooms used by his guests suitable locks and bolts, and on the transoms and windows of said rooms suitable fastenings, and who keeps a copy of this section printed in distinct type constantly and conspicuously suspended in the office and in the ladies' parlor or sitting room, bar-room, wash-room and in 5 other conspicuous places in said inn, or in not less than 10 conspicuous places in all in said inn, shall be liable for the loss of or injury to any such property belonging to any guest, unless such guest has offered to deliver the same to such innkeeper for custody in such metal safe or vault, and such innkeeper has

refused or omitted to take it and deposit it in such safe or vault for custody, and to give such guest a receipt therefor: Provided, however, That the keeper of any inn shall not be obliged to receive from any 1 guest for deposit in such safe or vault any property hereinbefore described exceeding a total value of 250 dollars, except under special agreement as hereinbefore provided, and shall not be liable for any excess of such property whether received or not, but every innkeeper shall be liable for any loss of the above enumerated articles of a guest in his inn, caused by the theft or negligence of the innkeeper or any of his servants.

HISTORY: CL 1915, 6930;—CL 1929, 6804;—CL 1948, 427.102.

Sec. 3. (This was a repeal section.)

HISTORY: CL 1915, 6931;—CL 1929, 6805;—Rep. 1945, p. 404, Act 267, Imd. Eff. May 25.

ACTS REPEALED: Act 227, 1897; Act 15, 1875.

Act 145, 1897, p. 177; Eff. Aug. 30.

AN ACT for the protection of the keepers of hotels, inns, boarding houses, lodging houses, and furnished apartments. Am. 1931, p. 153, Act 95, Eff. Sep. 18.

The People of the State of Michigan enact:

427.201 Lien of hotel, boarding, lodging, or apartment house keeper.

Sec. 1. Whenever the keeper of any hotel, inn, boarding house, lodging house or furnished apartment shall receive into his hotel, inn, boarding house, lodging house or furnished apartment any person, guest, boarder, lodger or tenant, he shall have a lien upon and right to detain the goods, baggage and effects of such guest, boarder, lodger or tenant to secure and compel the payment of his customary charges for the food and lodging furnished such guest, boarder, lodger or tenant, and such lien may be enforced in the manner hereinafter prescribed.

HISTORY: CL 1897, 5317;—CL 1915, 6947;—CL 1929, 6791;—Am. 1931, p. 153, Act 95, Eff. Sept. 18;—CL 1948, 427.201.

OTHER LIENS: See Compilers' § 570.1 et seq.

427.202 Unclaimed property; sale, notice.

Sec. 2. Any keeper of a hotel, inn, boarding house, lodging house or furnished apartment who shall have a lien for fare, accommodations or board upon any goods, baggage or other chattel property, and which being in his possession for 3 months at least after the departure of said guest, boarder, lodger or tenant leaving the same; or who for a period of 6 months shall have in his custody any unclaimed trunk, box, valise, package, parcel or other chattel property whatsoever, may proceed to sell the same at public auction after first having given notice to the county treasurer of such intended sale, and out of the proceeds of such sale may, in case of lien, retain the amount thereof, and the expense of advertisement and sale, and in case of unclaimed property the expense of storage, advertisement and sale thereof: Provided, In all instances, the notice specified in the next section be first given as therein directed.

HISTORY: CL 1897, 5318;—CL 1915, 6948;—CL 1929, 6792;—Am. 1931, p. 154, Act 95, Eff. Sept. 18;—CL 1948, 427.202.

UNCLAIMED PROPERTY: Disposition, see also Compilers' § 434.151 et seq.

427.203 Sale of unclaimed property; publication and service of notice, time.

Sec. 3. A notice shall be published, at least, 15 days prior to the time of the sale. Said notice shall designate the time and place of holding such sale and contain a brief description of the baggage, articles and chattels to be sold, and said notice shall be published in a newspaper of general circulation, published in the city or town in which such hotel, inn, boarding house, lodging house or furnished apartment is situated; but if there be none, then in such newspaper published nearest said city or town; and shall also be served upon said guest, boarder, lodger, tenant or owner of such chattel arti-

cles or property, if he resides or can be found within the county where said hotel, inn, boarding house, lodging house or furnished apartment is situated, by delivering the same to him personally or leaving it at his place of residence with a person of suitable age in charge thereof. But if such guest, boarder, lodger, tenant, or owner does not reside or cannot be found in said county, then said notice shall be deposited in the postoffice of said city or town with the postage prepaid thereon, 15 days prior to said sale, and addressed to said guest, boarder, lodger, tenant, or owner at his place of residence, if his address be known to the keeper of said hotel, inn, boarding house, lodging house or furnished apartment. The sale shall take place between the hours of 10 o'clock in the forenoon and 4 o'clock in the afternoon, and all articles sold shall be to the highest bidder for cash.

HISTORY: CL 1897, 5319;—CL 1915, 6649;—CL 1929, 8793;—Am. 1931, p. 154, Act 95, Eff. Sept. 18;—CL 1948, 427.203.

427.204 Sale of unclaimed property; surplus proceeds refunded.

Sec. 4. Such keeper of a hotel, inn, boarding house, lodging house, or furnished apartment shall make an entry of the articles sold and the balance of the proceeds of the sale, if any, and within 10 days from such sale, shall, upon demand, refund such balance and surplus to such guest, boarder or person leaving the articles sold.

HISTORY: CL 1897, 5320;—CL 1915, 6650;—CL 1929, 8794;—Am. 1931, p. 154, Act 95, Eff. Sept. 18;—CL 1948, 427.204.

427.205 Sale of unclaimed property; balance, when paid to county treasurer; affidavit.

Sec. 5. In case such balance shall not be demanded and paid as specified in the last section within said 10 days, then within 5 days thereafter said keeper of a hotel, inn, boarding house, lodging house, or furnished apartment shall pay said balance to the treasurer of the county in which such hotel, inn, boarding house, lodging house, or furnished apartment shall be situated, and shall at the same time file with said treasurer an affidavit made by him, in which shall be stated the name and place of residence, so far as they are known to him, of the guest, boarder or person, whose goods, baggage or chattel articles were sold, the articles sold and the price at which they were sold, the name and residence of the auctioneer making the sale, and a copy of the notice published and how served, whether by personal service or by mailing, and if not so served and the reason thereof.

HISTORY: CL 1897, 5321;—CL 1915, 6651;—CL 1929, 8795;—Am. 1931, p. 154, Act 95, Eff. Sept. 18;—CL 1948, 427.205.

427.206 Sale of unclaimed property; balance, when paid to county treasurer; ultimate disposition of surplus.

Sec. 6. Said treasurer shall keep said surplus and moneys for, and credit the same to the person named in said affidavit as said guest, boarder, or person leaving the articles sold, and shall pay the same to said person, his or her agent or attorney, executors or administrators, upon demand and evidence satisfactory to said treasurer furnished of their identity: Provided, That if said amount be not claimed within 2 years from the date of sale, it shall be placed in and become a part of the contingent fund of the county.

HISTORY: CL 1897, 5322;—CL 1915, 6652;—CL 1929, 8796;—CL 1948, 427.206.

427.207 Sale of unclaimed property; certain rights not barred.

Sec. 7. Nothing herein contained shall preclude any other remedy now existing for the enforcement of lien by keepers of hotels, inns, boarding houses, lodging houses, or furnished apartments, nor bar their right to recover for so much of the debt as shall not be paid through said sale.

Nothing contained in this act shall apply to leases for 2 months or more.

HISTORY: CL 1897, 5323;—CL 1915, 6653;—CL 1929, 8797;—Am. 1931, p. 155, Act 95, Eff. Sept. 18;—CL 1948, 427.207.

CHAPTER 429. BRANDS AND LABELS

CONTAINERS

Act 164 of 1905

429.1-429.5 Repealed.

TRADEMARKS

Act 258 of 1955

429.11-429.24 Repealed.

TRADEMARKS AND SERVICE MARKS

Act 242 of 1969

- 429.31 Registration of trademarks and service marks; definitions.
- 429.32 Nonregisterable marks.
- 429.33 Application for registration; contents; facsimiles; fee.
- 429.34 Certificate of registration; contents; refusal, notice; evidence.
- 429.35 Registration; term; renewal, fee; notice to registrant; existing registrations.
- 429.36 Assignment of marks; fee; recording.
- 429.37 Records; public inspection.
- 429.38 Registration; cancellation, grounds.
- 429.39 Petition for cancellation; fee; notice; hearing; rules.
- 429.40 Classes of goods and services; amendment.
- 429.41 Fraudulent procurement of registration; civil liability.
- 429.42 Improper use, reproduction or imitation; damages.
- 429.43 Injunctions; damages; prosecution; exceptions.
- 429.44 Common law rights.
- 429.45 Repeal.
- 429.46 Effective date.

COUNTERFEITING AND FRAUD

Act 41 of 1891

429.51-429.56 Repealed.

MICHIGAN WHEAT

Act 141 of 1875

- 429.103 Fraudulent wheat sale; civil liability.
- 429.104 Inapplicability of act.

LIQUEFIED PETROLEUM OR CARBONIC GAS CONTAINERS

Act 241 of 1959

- 429.111 Liquefied petroleum or carbonic gas containers; definitions.
- 429.112 Liquefied petroleum or carbonic gas containers; filling, use; marking.
- 429.113 Violation of act; penalty.

ARMY OR NAVY SURPLUS MERCHANDISE

Act 75 of 1964

- 429.131 Army or navy surplus merchandise; marking.
- 429.132 Army or navy surplus merchandise; illegal sale.
- 429.133 Violation of act; penalty.

LAUNDERED ARTICLES, SUPPLYING

Act 19 of 1923

- 429.201 Laundered articles for hire; mark or device; filing, publication, fee.
- 429.202 Sale of business; filing of certificate; publication.
- 429.203 Unlawful use of articles or destruction of mark or device; use by hotel or restaurant; possession of junk dealer as evidence of violation.
- 429.204 Unlawful laundering of articles.
- 429.205 Effect of deposit of security by user of articles.
- 429.206 Violation of act; penalty.

MATTRESSES AND COMFORTS

Act 54 of 1917

- 429.301 Misbranded mattress or comfort; manufacture and sale.
- 429.302 Brand; requirement.
- 429.303 Brand; language, contents.
- 429.304 Brand; form.
- 429.305 Brand; location.
- 429.306 Mattress or comfort; unlawful possession; destruction of brand.
- 429.307 Mattress or comfort; clean materials.
- 429.308 Mattress or comfort; definition.
- 429.309 Felt or felted cotton; definition.
- 429.310 Violation of act; penalty.
- 429.311 Violation of act; prosecution.

429.1-429.5 Repealed. 1955, p. 453, Act 258, Eff. Oct. 14.

Sections provided for filing of names, marks or devices on containers used to hold manufactured articles or beverages and prohibited unauthorized use by others.

429.11-429.24 Repealed. 1969, p. 473, Act 242, Eff. Jan. 1, 1970.

Sections related to trade mark registration act.

Act 242, 1969, p. 468; Eff. Jan. 1, 1970.

AN ACT to provide for the registration of trademarks and service marks; to prescribe the powers and duties of the secretary of state; to prescribe remedies; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

429.31 Registration of trademarks and service marks; definitions.

Sec. 1. As used in this act:

(a) "Trademark" means any word, name, symbol or device, or any combination thereof, other than a trade name in its entirety, adopted and used by a person to identify goods made or sold by him and to distinguish them from similar goods made or sold by others.

(b) "Person" means any individual, firm, partnership, corporation, association, union or other organization.

(c) "Applicant" means the person filing an application for registration of a trademark or service mark under this act, his legal representatives, successors or assigns.

(d) "Registrant" means the person to whom the registration of a trademark or service mark under this act is issued, his legal representatives, successors or assigns.

(e) "Service mark" means any word, name, symbol or device, or any combination thereof, other than a trade name in its entirety, adopted and used by a person in the sale or advertising of services to identify his services and distinguish them from the similar services of others.

(f) "Mark" includes any trademark or service mark.

(g) "Trade name" means a word or group of words used by any person to identify a sole proprietorship, firm, partnership, corporation, association, union or other organization.

(h) A mark is "used" in this state on goods when it is placed in any manner on the goods or their containers or on the tags or labels affixed thereto and such goods are sold or otherwise distributed in this state, and on services when it is used or displayed in this state in the sale or advertising of services and the services are rendered in this state.

(i) A mark is "abandoned" when its use has been discontinued with intent not to resume. Intent not to resume may be inferred from circumstances. Nonuse for 2 consecutive years shall be prima facie abandonment.

HISTORY: New 1969, p. 466, Act 242, Eff. Jan. 1, 1970.

429.32 Nonregisterable marks.

Sec. 2. A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(a) Consists of or comprises immoral, deceptive or scandalous matter.

(b) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs or national symbols, or bring them into contempt or disrepute.

(c) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof.

(d) Consists of or comprises the name, signature or portrait of any living individual, except with his written consent.

(e) Consists of a mark which, when applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them, or when applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or is primarily merely a surname. Nothing in this subsection shall prevent the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods or services. The secretary of state may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of continuous use thereof as a mark by the applicant in this

state or elsewhere for the 5 years next preceding the date of the filing of the application for registration.

(f) Consists of or comprises a mark which so resembles a mark registered in this state or a mark or trade name previously used in this state by another and not abandoned as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive.

HISTORY: New 1969, p. 468, Act 242, Eff. Jan. 1, 1970.

429.33 Application for registration; contents; facsimiles; fee.

Sec. 3. (1) Subject to the limitations set forth in this act, any person who adopts and uses a mark in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth, but not limited to, the following information:

(a) The name and business address of the person applying for such registration, any trade name employed by such person, and if a corporation, the state of incorporation. No corporation not registered or in good standing in this state shall register any mark, service mark or trade name.

(b) The goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall.

(c) The date when and the place where the mark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in title.

(d) A statement that the applicant is the owner of the mark and that no other person has the right to use such mark in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

(2) The application shall be signed, verified and sworn to by the applicant if an individual, or by a member of the firm or an officer of the corporation, association or union, or by a member of the copartnership applying.

(3) The application shall be accompanied by 2 specimens or facsimiles of the mark as used at the time of applying for registration of the mark.

(4) The application for registration shall be accompanied by a filing fee of \$50.00, payable to the state.

HISTORY: New 1969, p. 469, Act 242, Eff. Jan. 1, 1970.

429.34 Certificate of registration; contents; refusal; notice; evidence.

Sec. 4. (1) Upon compliance by the applicant with the requirements of this act, the secretary of state shall issue a certificate of registration to the registrant. The certificate of registration shall be issued under the signature of the secretary of state and the seal of the state, and shall set forth the name and address of the registrant, the description or a reproduction of the mark and the general class of goods or services to which appropriated, a description of the goods or services on which the mark is used, the date claimed for first use of the mark anywhere and the date claimed for the first use of the mark in this state, the registration date and term of the registration.

(2) If the secretary of state refuses to register a mark the applicant shall be notified and the reason for the refusal stated in writing.

(3) Any certificate of registration issued by the secretary of state, or a copy thereof duly certified by the secretary of state, shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any action or judicial proceedings in any court of this state and shall be evidence of registrant's right to use the mark throughout this state in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated therein, but shall not preclude an

opposing party from proving any legal or equitable defense or defect which might have been asserted if such mark had not been registered.

HISTORY: New 1969, p. 469, Act 242, Eff. Jan. 1, 1970.

429.35 Registration; term; renewal, fee; notice to registrant; existing registrations.

Sec. 5. (1) Registration of a mark shall be effective for a term of 10 years from the date of registration, and may be renewed for successive terms of 10 years upon application filed within 6 months prior to the expiration of each term, on a form to be furnished by the secretary of state. A renewal fee of \$25.00, payable to the state, shall accompany the application for renewal of the registration.

(2) The secretary of state shall notify registrants of marks of the necessity of renewal within the year next preceding the expiration of the 10 years from the date of registration by writing to the last known address of the registrants.

(3) Any registration in force on the date on which this act becomes effective shall expire 10 years from the date of the registration or of the last renewal thereof or 1 year after the effective date of this act, whichever is later, and may be renewed by filing an application with the secretary of state, on a form furnished by him, and paying the renewal fee therefor within 6 months prior to the expiration of the registration.

(4) An application for renewal shall include a statement by the applicant setting forth the goods or services on or in connection with which the mark is still in use in this state, or if not still in use sufficient facts must be recited to show that nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

HISTORY: New 1969, p. 469, Act 242, Eff. Jan. 1, 1970.

429.36 Assignment of marks; fee; recording.

Sec. 6. Any mark and its registration shall be assignable with the goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be recorded with the secretary of state upon the payment of a fee of \$15.00, payable to the state, who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this act is void as against any subsequent purchaser for valuable consideration without notice, unless it is recorded with the secretary of state within 3 months after the date thereof or prior to the subsequent purchase.

HISTORY: New 1969, p. 470, Act 242, Eff. Jan. 1, 1970.

429.37 Records; public inspection.

Sec. 7. The secretary of state shall keep for public examination a record of all marks registered or renewed under this act.

HISTORY: New 1969, p. 470, Act 242, Eff. Jan. 1, 1970.

429.38 Registration; cancellation, grounds.

Sec. 8. The secretary of state shall cancel from the register:

(a) All registrations under this and prior acts which are more than 10 years old and not renewed in accordance with this act.

(b) Any registration concerning which the secretary of state receives a voluntary request for cancellation thereof from the registrant or the assignee of record.

(c) Any registration concerning which a court of competent jurisdiction of record finds:

(1) That the registered mark has been abandoned.

- (2) That the registrant is not the owner of the mark.
- (3) That the registration was granted improperly.
- (4) That the registration was obtained fraudulently.
- (d) Any registration ordered cancelled on any ground by a court of competent jurisdiction of record.
- (e) Any registration in the following circumstances:
 - (1) Where an applicant, by affidavits and other good and sufficient evidence, proves to the satisfaction of the secretary of state that he is entitled by virtue of prior adoption and use to registration of any mark previously registered in this state.
 - (2) In the case of a corporation having filed articles of dissolution or a decree of dissolution, any person, at any time at least 3 years thereafter, may present a petition under proper affidavit to the secretary of state setting forth such fact.
 - (3) In the case of a person, copartnership or corporation not having filed articles of dissolution or a decree of dissolution, but having discontinued or gone out of the business to which such registration is pertinent.
 - (4) When a registered mark has been abandoned or discontinued for a period of at least 2 years subsequent to registration and the abandonment and nonuser still persists.

HISTORY: New 1968, p. 470, Act 242, Eff. Jan. 1, 1970.

429.39 Petition for cancellation; fee; notice; hearing; rules.

Sec. 9. (1) In all circumstances enumerated in subsection (e) of section 8, any person may present his petition for cancellation, in writing and supported by proper affidavit, to the secretary of state accompanied with a fee of \$25.00.

(2) The petition shall set forth the pertinent facts relative thereto, and shall contain proof of service of notice of such petition on the person, firm, copartnership, corporation, association, union or other organization in whose name the registration is recorded, and ask that the registration be cancelled. The secretary of state shall fix a time to hear the parties concerned in the matter, and shall send a notice thereof to the parties. If, after hearing, the secretary of state is satisfied of the truth of the facts alleged in the petition in accordance with the provisions of this section, he shall cancel the registration. The rules and regulations promulgated by the secretary of state shall be subject to the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

HISTORY: New 1968, p. 471, Act 242, Eff. Jan. 1, 1970.

429.40 Classes of goods and services; amendment.

Sec. 10. (1) The following general classes of goods and services are established for the purpose of administering this act. The secretary of state may amend, by rule or regulation, the classification hereinafter established, but not in any way to limit or extend the applicant's or registrant's rights. An application for registration of a mark shall be limited to a single general class of goods or services. Nothing in this act shall be construed as limiting the registration of a mark to 1 general class.

- (2) The classes are as follows:
 - (a) Goods:
 - (1) Raw or partly prepared materials.
 - (2) Receptacles.
 - (3) Baggage, animal equipments, portfolios and pocketbooks.
 - (4) Abrasives and polishing materials.

- (5) Adhesives.
- (6) Chemicals and chemical compositions.
- (7) Cordage.
- (8) Smokers' articles, not including tobacco products.
- (9) Explosives, firearms, equipment and projectiles.
- (10) Fertilizers.
- (11) Inks and inking materials.
- (12) Construction materials.
- (13) Hardware and plumbing and steam-fitting supplies.
- (14) Metals and metal castings and forgings.
- (15) Oils and greases.
- (16) Paints and painters' materials.
- (17) Tobacco products.
- (18) Medicines and pharmaceutical preparations.
- (19) Vehicles.
- (20) Linoleum and oiled cloth.
- (21) Electrical apparatus, machines and supplies.
- (22) Games, toys and sporting goods.
- (23) Cutlery, machinery and tools, and parts thereof.
- (24) Laundry appliances and machines.
- (25) Locks and safes.
- (26) Measuring and scientific appliances.
- (27) Horological instruments.
- (28) Jewelry and precious-metal ware.
- (29) Brooms, brushes and dusters.
- (30) Crockery, earthenware and porcelain.
- (31) Filters and refrigerators.
- (32) Furniture and upholstery.
- (33) Glassware.
- (34) Heating, lighting and ventilation apparatus.
- (35) Belting, hose, machinery packing, and nonmetallic tires.
- (36) Musical instruments and supplies.
- (37) Paper and stationery.
- (38) Prints and publications.
- (39) Clothing.
- (40) Fancy goods, furnishings and notions.
- (41) Canes, parasols and umbrellas.
- (42) Knitted, netted and textile fabrics, and substitutes therefor.
- (43) Thread and yarn.
- (44) Dental, medical and surgical appliances.
- (45) Soft drinks and carbonated waters.
- (46) Foods and ingredients of foods.
- (47) Wines.
- (48) Malt beverages and liquors.
- (49) Distilled alcoholic liquors.
- (50) Merchandise not otherwise classified.
- (51) Cosmetics and toilet preparations.

- (52) Detergents and soaps.
- (b) Services:
- (100) Miscellaneous.
- (101) Advertising and business.
- (102) Insurance and financial.
- (103) Construction and repair.
- (104) Communication.
- (105) Transportation and storage.
- (106) Material treatment.
- (107) Education and entertainment.

HISTORY: New 1969, p. 471, Act 242, Eff. Jan. 1, 1970.

429.41 Fraudulent procurement of registration; civil liability.

Sec. 11. Any person who for himself, or on behalf of any other person, procures the filing or registration of any mark in the office of the secretary of state, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of the filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction of record.

HISTORY: New 1969, p. 472, Act 242, Eff. Jan. 1, 1970.

429.42 Improper use, reproduction or imitation; damages.

Sec. 12. Subject to the provisions of section 14, any person who shall:

(a) Use, without the consent of the registrant, any reproduction, counterfeit, copy or colorable imitation of a mark registered under this act in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods or services; or

(b) Reproduce, counterfeit, copy or colorably imitate any such registered mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements intended to be used upon or in connection with the sale or other distribution in this state of such goods or services; is liable to a civil action by the owner of the registered mark for any or all of the remedies provided in section 13, except that under subdivision (b) of this section the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that the mark is intended to be used to cause confusion or mistake or to deceive.

HISTORY: New 1969, p. 472, Act 242, Eff. Jan. 1, 1970.

429.43 Injunctions; damages; prosecution; exceptions.

Sec. 13. (1) Any owner of a mark registered under this act may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction of record may grant injunctions to restrain such manufacture, use, display or sale as by the court may be deemed just and reasonable, and may require the defendants to pay to the owner all profits derived from or all damages suffered by reason of such wrongful manufacture, use, display, or sale, or both; and the court may also order that any counterfeits or imitations in the possession or under the control of any defendant in the case be delivered to an officer of the court, or to the complainant, to be destroyed.

(2) The enumeration of any right of remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.

(3) Notwithstanding any other provision of this act, the remedies given to the owner of the right infringed shall be limited as follows: (a) where an infringer is engaged

solely in the business of printing the mark for others and establishes that he was an innocent infringer, the owner of the right infringed shall be entitled as against the infringer only to an injunction against future printing; (b) where the infringement complained of is contained in or is part of paid advertising matter in a newspaper, magazine, or other similar periodical the remedies of the owner of the right infringed as against the publisher or distributor of the newspaper, magazine, or other similar periodical shall be confined to an injunction against the presentation of such advertising matter in future issues of the newspapers, magazines, or other similar periodicals. These limitations shall apply only to innocent infringers; (c) injunction relief shall not be available to the owner of the right infringed in respect of an issue of a newspaper, magazine, or other similar periodical containing infringing matter when restraining the dissemination of such infringing matter in any particular issue of such periodical would delay the delivery of the issue after the regular time therefor, and the delay would be due to the method by which publication and distribution of the periodical is customarily conducted in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such infringing matter.

HISTORY: New 1969, p. 473, Act 242, Eff. Jan. 1, 1970.

429.44 Common law rights.

Sec. 14. Nothing contained in this act shall adversely affect the rights or the enforcement of rights in marks acquired in good faith at any time at common law.

HISTORY: New 1969, p. 473, Act 242, Eff. Jan. 1, 1970.

429.45 Repeal.

Sec. 15. Act No. 258 of the Public Acts of 1955, being sections 429.11 to 429.24 of the Compiled Laws of 1948, is repealed.

HISTORY: New 1969, p. 473, Act 242, Eff. Jan. 1, 1970.

429.46 Effective date.

Sec. 16. This act shall take effect January 1, 1970.

HISTORY: New 1969, p. 473, Act 242, Eff. Jan. 1, 1970.

429.51-429.56 Repealed. 1955, p. 453, Act 258, Eff. Oct. 14.

Sections protected unions and others in their labels, trade marks, and forms of advertisement; punished any counterfeiting and fraudulent use of such items.

Act 141, 1875, p. 176; Eff. Aug. 3.

AN ACT to regulate the sale of wheat, and to prevent the sale or offering for sale of wheat not grown in Michigan as Michigan wheat, and to prevent the mixing of foreign wheat with the Michigan product.

The People of the State of Michigan enact:

Sec. 1-2.

HISTORY: How. 2240-2241;—CL 1897, 5462-5463;—CL 1915, 7146-7147;—CL 1929, 8938-8939;—Rep. 1931, p. 737, Act 328, Eff. Sept. 18.

These sections provided penalties for fraud in sale of wheat not grown in and wheat grown in Michigan.

429.103 Fraudulent wheat sale; civil liability.

Sec. 3. Any person or persons who shall sell to another any wheat as Michigan wheat or the product of this state, knowing the same to be in whole or in part the product of any other state or country, shall be liable to the person or persons to whom the same is so sold in an action on this statute for double the amount of damages which he shall have sustained by reason of any breach in the contract of sale.

HISTORY: How. 2242;—CL 1897, 5464;—CL 1915, 7148;—CL 1929, 8940;—CL 1948, 429.103.

429.104 Inapplicability of act.

Sec. 4. The provisions of the foregoing section of this act shall not apply in cases where wheat is brought to market in this state by teams from adjoining localities in other states.

HISTORY: How. 2243;—CL 1897, 5465;—CL 1915, 7149;—CL 1929, 8941;—CL 1948, 429.104.

Act 241, 1959, p. 356; Eff. Mar. 19, 1960.

AN ACT relating to the marking of containers used for liquefied petroleum or carbonic gas; to prohibit the defacing, erasing or other removal of such mark, and the filling, refilling, trafficking in or use of such containers without the authority of the owner; and to provide a penalty for the violation thereof.

The People of the State of Michigan enact:

429.111 Liquefied petroleum or carbonic gas containers; definitions.

Sec. 1. As used in this act:

(a) "Liquefied petroleum gas" means any material which is composed predominantly of any of the following hydrocarbons or mixtures of the same: Propane, propylene, butanes (normal butane and isobutane), and butylenes.

(b) "Carbonic gas" means carbon dioxide.

HISTORY: New 1959, p. 356, Act 241, Eff. Mar. 19, 1960.

429.112 Liquefied petroleum or carbonic gas containers; filling, use; marking.

Sec. 2. No person except the owner thereof or persons authorized in writing by the owner shall fill or refill with liquefied petroleum or carbonic gas, or any other gas or compound, a liquefied petroleum or carbonic gas container; or buy, sell, offer for sale, give, take, loan, deliver or permit to be delivered, or otherwise dispose of or traffic in a liquefied petroleum or carbonic gas container or containers unless the container shall bear upon the surface thereof in plainly legible characters the name, initials, mark or other device of the owner; nor shall any person, other than the owner of a liquefied petroleum or carbonic gas container or a person authorized in writing by the owner, deface, erase, obliterate, cover up or otherwise remove or conceal any name, mark, initial or device thereon.

HISTORY: New 1959, p. 356, Act 241, Eff. Mar. 19, 1960.

429.113 Violation of act; penalty.

Sec. 3. Any person who shall fail to comply with any of the foregoing provisions of this act shall be deemed guilty of a misdemeanor. Each container possessed shall be considered a separate offense.

HISTORY: New 1959, p. 356, Act 241, Eff. Mar. 19, 1960.

Act 75, 1964, p. 78; Eff. Aug. 28.

AN ACT to require all army or navy surplus merchandise sold to the public to be marked; and to provide a penalty for violation.

The People of the State of Michigan enact:

429.131 Army or navy surplus merchandise; marking.

Sec. 1. Any wholesaler or retailer distributing or selling any article of merchandise advertised or sold as army or navy surplus merchandise shall have such article of merchandise plainly marked or stamped as such.

HISTORY: New 1964, p. 79, Act 75, Eff. Aug. 28.

429.132 Army or navy surplus merchandise; illegal sale.

Sec. 2. It shall be illegal for any wholesaler or retailer to distribute or sell any article of merchandise as army or navy surplus unless the article of merchandise is in fact army or navy surplus and so marked or stamped as provided in section 1.

HISTORY: New 1964, p. 79, Act 75, Eff. Aug. 28.

429.133 Violation of act; penalty.

Sec. 3. Any wholesaler or retailer violating any provision of this act shall be guilty of a misdemeanor.

HISTORY: New 1964, p. 79, Act 75, Eff. Aug. 28.

Act 19, 1923, p. 38; Eff. Aug. 30.

AN ACT to provide for the regulation of the business of furnishing laundered articles for hire.

The People of the State of Michigan enact:

429.201 Laundered articles for hire; mark or device; filing, publication, fee.

Sec. 1. Any person, firm or corporation engaged in the business of supplying towels, coats, aprons, toilet devices, or other kindred articles or supplies, for hire or compensation, used for the purpose of providing cleanliness and sanitation which are, shall, or may have a name, or trade mark or device branded, stamped, marked, sewed or otherwise impressed thereon, may file in the office of the clerk of the county in which the principal place of business is situated, a description of such name, mark or device, and cause such description to be printed once in each week for 3 weeks successively in a newspaper published in such county. If the principal place of business of any such person, firm or corporation is in another state, the filing of such description shall be made in the office of the county clerk in any county of this state in which business is done, and printed for 3 weeks successively in any newspaper published in such county. When any such person, firm or corporation shall have complied with the provisions of this section, he shall thereupon be deemed the proprietor of such name, mark or device, and of every such towel, apron, coat, toilet cabinet or toilet device, so used, upon which the mark may be branded, stamped, marked, sewed, or otherwise impressed or produced thereon, upon the filing with the county clerk, such name, mark or device, and there shall be paid to the county clerk \$3.00 for each such name, mark or device so filed.

HISTORY: CL 1929, 8821;—CL 1948, 429.201;—Am. 1963, p. 154, Act 114, Eff. Sep. 6.

429.202 Sale of business; filing of certificate; publication.

Sec. 2. When any person, firm or corporation having complied with the provisions of the preceding section of this act, assigns by sale or otherwise, the business of supplying towels, coats, aprons, toilet cabinets, towel devices, or any other kindred articles of supplies used for the purpose of cleanliness and sanitation, such assignee shall, upon such assignment, file in the office of the clerk of the county in which his or its principal place of business is situated, a certificate of said assignment, and cause such certificate to be printed once each week for 3 weeks successively in a newspaper published

in such county. If the principal place of business of such assignee is in another state, the filing of such certificate of assignment shall be made in the office of the county clerk in any county of this state in which business is done and printed once each week for 3 weeks successively in a newspaper published in such county.

HISTORY: CL 1929, 8822;—CL 1948, 429.202.

429.203 Unlawful use of articles or destruction of mark or device; use by hotel or restaurant; possession of junk dealer as evidence of violation.

Sec. 3. No person, firm or corporation other than provided in section 1 hereof, shall use any towels, coats, aprons, toilet cabinets, towel devices, or any other articles or supplies used for the purpose of cleanliness and sanitation, by supplying, furnishing, selling, transferring or renting the same for hire or compensation, or otherwise, or shall deface, erase, obliterate, cover up, or otherwise remove or conceal said mark or device thereon, or shall give, take or otherwise dispose of such towels, coats, aprons, toilet cabinets or other toilet devices, so branded and marked, as herein provided for without the written consent of the owner or owners, whose mark or device shall be or have been upon such article or articles as provided in section 1 hereof: Provided, however, That the use of such article or articles at the place where the same are placed or delivered by the owner or owners under an agreement, lease, or license from such owner, shall not be unlawful: And provided further, That nothing herein contained shall make it unlawful for any bona fide hotel, restaurant, cafe, or other public hostelry, to permit and allow the use of such towels, coats, aprons or other toilet device to any guest, boarder, or any regularly hired employe thereof, during the period of any lease, renting or hiring agreement of said supplies with the owner thereof. The possession by any junk dealer or dealers in rags or second-hand articles, or person, firm or corporation other than by the owner, lessee or sub-lessee thereof as herein provided, of any such marked or distinguished article or articles without such written consent shall be presumptive evidence of traffic in such goods and a violation of this section.

HISTORY: CL 1929, 8823;—CL 1948, 429.203.

429.204 Unlawful laundering of articles.

Sec. 4. No person, firm or corporation, other than the owner or owners shall launder, wash, clean, renovate or cause to have laundered, washed, cleaned, or renovated, any towels, coats, aprons, toilet devices or other supplies used for the purpose of cleanliness and sanitation, which is so marked, named or distinguished, as aforesaid, the possession of which is claimed by lease, or rental from the owner thereof as herein provided, except by the written consent of the owner or owners thereof.

HISTORY: CL 1929, 8824;—CL 1948, 429.204.

429.205 Effect of deposit of security by user of articles.

Sec. 5. Whenever the owner or owners of towels, coats, aprons, toilet cabinets, towel devices, or any other articles or supplies used for the purpose of cleanliness and sanitation, shall require taking, or accepting of any sum of money as a deposit for security for the safe-keeping and return of such article or articles, it shall not constitute a sale of such property either optional or otherwise.

HISTORY: CL 1929, 8825;—CL 1948, 429.205.

429.206 Violation of act; penalty.

Sec. 6. Any person, firm or corporation violating any of the provisions of this act shall be punished by a fine of not more than 50 dollars, or by imprisonment in the county jail not more than 90 days, or by both such fine and imprisonment, in the discretion of the court.

HISTORY: CL 1929, 8826;—CL 1948, 429.206.

Act 54, 1917, p. 95; Eff. Aug. 10.

AN ACT to provide for the branding and labeling of mattresses and comforts, and to provide against the use of insanitary, unhealthy, old or second-hand material in the manufacture of mattresses and comforts, and to provide against the sale of mattresses or comforts containing such insanitary, unhealthy, old or second-hand materials.

The People of the State of Michigan enact:

429.301 Misbranded mattress or comfort; manufacture and sale.

Sec. 1. No person, corporation or firm, shall within the state, manufacture for sale, knowingly offer for sale, sell, deliver, or have in his possession with intent to sell or deliver, any mattresses or comforts which are misbranded or mislabeled, within the meaning of this act.

HISTORY: CL 1929, 8827;—CL 1948, 429.301.

429.302 Brand; requirement.

Sec. 2. Mattresses and comforts shall be branded or labeled, as hereinafter provided, before being exposed for sale, and shall not be exposed without such brand or label.

HISTORY: CL 1929, 8828;—CL 1948, 429.302.

429.303 Brand; language, contents.

Sec. 3. The brand or label required by the next preceding section shall contain in plain English lettering, a statement of the materials used in the manufacture of such mattresses or comforts, giving the total weight and the percentage of each material used in all cottons, felt, wool, kapock, and hair mattresses. Percentage of each material used must be given on other mattresses. Such brand or label shall be placed upon each mattress or comfort.

HISTORY: CL 1929, 8829;—CL 1948, 429.303.

429.304 Brand; form.

Sec. 4. Such label shall be in the form of cloth or cloth-lined tag, to be sewed or otherwise securely attached to each article and placed securely upon the bale, box or crate in which such mattresses and comforts are packed, shipped or exposed for sale.

HISTORY: CL 1929, 8830;—CL 1948, 429.304.

429.305 Brand; location.

Sec. 5. Such brand or label shall be placed outside of and upon the most conspicuous part of the finished article and its box, crate or covering.

HISTORY: CL 1929, 8831;—CL 1948, 429.305.

429.306 Mattress or comfort; unlawful possession; destruction of brand.

Sec. 6. A person dealing in mattresses or comforts as described in this act, shall not have them in possession for the purpose of sale, or offer them for sale, without the brand or label required by this act, or remove, conceal or deface the brand or label thereon.

HISTORY: CL 1929, 8832;—CL 1948, 429.306.

429.307 Mattress or comfort; clean materials.

Sec. 7. No person within this state, shall use, either in whole or in part, in the manufacture of mattresses or comforts, any cotton, or other materials which have been used for any purpose whatever, unless the same shall have been so cleaned, sterilized or renovated as to become thoroughly safe and healthful, nor shall any person within this state sell, offer for sale or give away, any such mattresses or comforts.

HISTORY: CL 1929, 8833;—CL 1948, 429.307.

429.308 Mattress or comfort; definition.

Sec. 8. A mattress or comfort within the meaning of this act, shall include any quilted bed or pad, tufted or not tufted, stitched or otherwise finished bed or pad, stuffed with excelsior, cotton, jute, hair, husks, sea moss, bamboo, wool, fibre, kapock, felted cotton, felt, shoddy, African fibre, Louisiana tree moss, or other material used for this purpose, sterilized feathers excepted.

HISTORY: CL 1929, 8834;—CL 1948, 429.308.

429.309 Felt or felted cotton; definition.

Sec. 9. If labeled felt or felted cotton, it is understood that the cotton or material has all been carded in layers or sheets by a garnett or cotton felting machine.

HISTORY: CL 1929, 8835;—CL 1948, 429.309.

429.310 Violation of act; penalty.

Sec. 10. A person, corporation or firm, who sells, offers for sale, gives away, manufactures, or causes to be manufactured with intent to sell, any mattresses or comforts which are not branded or labeled, pursuant to the provisions of this act, or who falsely brands or labels any mattresses or comforts, or who knowingly fails or neglects to state the true and actual quantity and quality of the materials used in any mattress or comfort, or otherwise violates any provisions of this act, shall upon conviction thereof be fined not less than 25 dollars nor more than 500 dollars or imprisonment in the county jail not more than 6 months, or both.

HISTORY: CL 1929, 8836;—CL 1948, 429.310.

429.311 Violation of act; prosecution.

Sec. 11. When any peace officer, inspector, health officer or any other person has reason to believe that any of the provisions of this act are being violated, or that used material has been used again without being so cleaned, sterilized or renovated as to become thoroughly safe and healthful, he shall fully advise the prosecuting attorney of the district and said prosecutor shall without delay proceed to enforce this act.

HISTORY: CL 1929, 8837;—CL 1948, 429.311.

Sec. 12. (This was a repeal section.)

HISTORY: CL 1929, 8838;—Rep. 1945, p. 405, Act 267, Imd. Eff. May 25.

CHAPTER 430. NAMES AND EMBLEMS

NAME AND INSIGNIA OF CERTAIN ORGANIZATIONS			
Act 281 of 1927		430.54	Violation of act; injunction.
430.1	Registration of name and insignia of certain organizations.	430.55	Violation of act; penalty.
430.2	Registration of name and insignia of certain organizations; application, blanks.		Act 304 of 1919
430.3	Registration of name and insignia of certain organizations; record.	430.101	Name or insignia of certain organizations; protection, priority.
430.4	Registration of name and insignia of certain organizations; disallowance.	430.102	Name or insignia of organizations; prohibited use or exhibition.
430.5	Registration of name and insignia of certain organizations; certificate.	430.103	Certain advertisements without consent prohibited.
430.6	Wilful unauthorized use of insignia; penalty.	430.104	Violation of act; injunction.
430.7	Fees; disposition.	430.105	Violation of act; penalty.
Act 269 of 1929			Act 109 of 1905
430.51	Protection of corporate name; priority.	430.151	Unauthorized wearing of veteran's society badge or button; penalty.
430.52	Name or insignia of organizations; prohibited use or exhibition.		Act 46 of 1911
430.53	Prohibited display of emblem or insignia on motor vehicle.	430.201	Fraudulent obtaining of application or property for pretended lodge membership; penalty.
		430.202	Fraudulent and unauthorized use of lodge name or imitation; penalty.

Act 281, 1927, p. 530; Eff. Sep. 5.

AN ACT to provide for the registration and protection of the names, badges, buttons, decorations, charms, emblems, rosettes and other insignia of associations, lodges, orders, fraternal societies, beneficial societies, or fraternal and beneficial societies or associations, historical, military or veterans' organizations, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge or auxiliary thereof; to prohibit the wearing, exhibition, display or use of the same by any person not entitled to wear, exhibit, display or use the same, and fixing a penalty for the violation of this act.

The People of the State of Michigan enact:

430.1 Registration of name and insignia of certain organizations.

Sec. 1. Any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military or veterans' organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge or auxiliary thereof, whether incorporated or unincorporated, may register in the office of the secretary of state, a facsimile, duplicate or description of its name, badge, button, decoration, charm, emblem, rosette or other insignia, and may by reregistration, alter or cancel the same.

HISTORY: CL 1929, 8977;—CL 1948, 430.1.

SIMILAR NAMES: For corporations, prohibited, see Compilers' § 450.6; for secret societies, prohibited, see Compilers' § 450.138.

430.2 Registration of name and insignia of certain organizations; application, blanks.

Sec. 2. Application for such registration shall be made by the chief officer or officers of said association, lodge, order, fraternal society, beneficial association or fraternal and beneficial society or association, historical, military or veterans' organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge or auxiliary thereof, upon blanks to be provided by the secretary of state, and such registration shall be for the use, benefit and on behalf of all associations, degrees, branches, subordinate lodges and auxiliaries of said association,

lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military or veterans' organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge or auxiliary thereof and the individual members and those who thereafter become members thereof, throughout the state of Michigan.

HISTORY: CL 1929, 8978;—CL 1948, 430.2.

430.3 Registration of name and insignia of certain organizations; record.

Sec. 3. The secretary of state shall keep a properly indexed record of the registrations provided for by this act, which record shall also show any altered or cancelled registration.

HISTORY: CL 1929, 8979;—CL 1948, 430.3.

430.4 Registration of name and insignia of certain organizations; disallowance.

Sec. 4. No registration shall be granted to any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge or auxiliary thereof, having a name, badge, button, decoration, charm, emblem, rosette or other insignia similar to, imitating or so nearly resembling as to be calculated to deceive, any other name, badge, button, decoration, charm, emblem, rosette or other insignia whatsoever, already registered pursuant to the provisions of this act.

HISTORY: CL 1929, 8980;—CL 1948, 430.4.

430.5 Registration of name and insignia of certain organizations; certificate.

Sec. 5. Upon granting registration as aforesaid, the secretary of state shall issue his certificate to the petitioners, showing that a search of his records fails to disclose any conflict between the name, badge, button, decoration, charm, emblem, rosette or other insignia proposed to be registered, and any other name, badge, button, decoration, charm, emblem, rosette or other insignia registered pursuant thereto.

HISTORY: CL 1929, 8981;—CL 1948, 430.5.

430.6 Wilful unauthorized use of insignia; penalty.

Sec. 6. Any person who shall wilfully wear, exhibit, display, or use for any purpose, the badge, button, decoration, charm, emblem, rosette or other insignia of any such association or organization herein mentioned, duly registered hereunder, unless he or she shall be entitled to use and wear the same under the constitution and by-laws, rules and regulations of such association and organization, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding 100 dollars, and in default of payment, committed to jail for a period of not to exceed 60 days.

HISTORY: CL 1929, 8982;—CL 1948, 430.6.

430.7 Fees; disposition.

Sec. 7. There shall be paid to the secretary of state for each registration made by him and certificate thereof issued, pursuant to the provisions of this act, and for each search made by him and certificate thereto issued, in pursuance of the provisions of this act, the sum of 5 dollars, which shall be paid at the time the registration or search is applied for; all sums paid to the secretary of state for registrations and searches in pursuance of the provisions of this act shall be paid into the general fund of this state and become a part of said fund.

HISTORY: CL 1929, 8983;—CL 1948, 430.7.

Sec. 8. (This was a repeal section.)

HISTORY: CL 1929, 8984;—Rep. 1945, p. 406, Act 267, Imd. Eff. May 25.

Act 269, 1929, p. 666; Eff. Aug. 28.

AN ACT to protect benevolent, humane, fraternal or charitable corporations in the use of their names and emblems; to provide penalties for the violation thereof; and to repeal Act No. 255 of the Public Acts of 1909.

The People of the State of Michigan enact:

430.51 Protection of corporate name; priority.

Sec. 1. No person, society, association or corporation shall assume, adopt or use the name of a benevolent, humane, fraternal or charitable organization, incorporated under the laws of this or any other state, or of the United States or a name so nearly resembling the name of such incorporated organization as to be a colorable imitation thereof, or calculated to deceive persons not members, with respect to such corporation. In all cases where 2 or more of such societies, associations or corporations claim the right to the same name, or to names substantially similar as above provided, the organization which was first organized and used the name, and first became incorporated under the laws of the United States or of any state of the United States, shall be entitled in this state to the prior and exclusive use of such name, and the rights of such societies, associations or corporations, and of their individual members, shall be fixed and determined accordingly.

HISTORY: CL 1929, 8965;—CL 1948, 430.51.

FORMER ACT: Act 255 of 1909, being CL 1915, 10638-10641.

430.52 Name or insignia of organizations; prohibited use or exhibition.

Sec. 2. No person shall wear or exhibit the badge, button, emblem, decoration, insignia, or charm, or shall assume or use the name of any benevolent, humane, fraternal, or charitable corporation incorporated under the laws of this or any other state or of the United States or shall assume or claim to be a member thereof, or of a benevolent, humane, fraternal or charitable corporation, the name of which shall so nearly resemble the name of any other corporation existing prior to the organization of the corporation or association of which such person may claim to be a member, the name whereof may be calculated to deceive the people with respect to any such prior corporation, unless he shall be authorized under the law, statutes, rules, regulations and by-laws of such former corporation, to wear such badge, button, emblem, decoration, insignia, or charm, or to use and assume such name as a member thereof.

HISTORY: CL 1929, 8966;—CL 1948, 430.52.

430.53 Prohibited display of emblem or insignia on motor vehicle.

Sec. 3. It shall be unlawful for any person to display or permit to be displayed on his or her motor vehicle any emblem or insignia of any organization, association, fraternity, lodge, club or order, unless the owner of such motor vehicle be a member of the organization, association, fraternity, lodge, club or order, the emblem or insignia of which is so displayed: Provided, That the provisions of this act shall not apply to the owner or owners of any motor vehicles upon which such emblem or insignia is displayed solely for the purposes of participation in any public parade, or at any public fair, exhibit, or carnival.

HISTORY: CL 1929, 8967;—CL 1948, 430.53.

430.54 Violation of act; injunction.

Sec. 4. Whenever there shall be an actual or threatened violation of the above act, an application may be made to the court or judge having jurisdiction to issue an injunction, upon notice to the defendant of not less than 5 days, restraining such actual or threatened violation, or if it shall appear to such court or justice that the defendant is in fact using the name of such a benevolent, humane, fraternal or charitable corpo-

ration, incorporated as aforesaid, or a name so nearly resembling it as to be calculated to deceive the public, or is wearing or exhibiting the badge, insignia, or emblem, of such corporation without authority thereof, and in violation of the above act, an injunction may be issued by said court or justice, enjoining or restraining such actual or threatened violation, without requiring proof that any person has in fact been misled or deceived thereby.

HISTORY: CL 1929, 8968;—CL 1948, 430.54.

430.55 Violation of act; penalty.

Sec. 5. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, fined not exceeding 100 dollars, or imprisonment in the county jail not exceeding 90 days, or both such fine and imprisonment.

HISTORY: CL 1929, 8969;—CL 1948, 430.55.

Sec. 6. (This was a repeal section.)

HISTORY: CL 1929, 8990;—Rep. 1945, p. 407, Act 267, Imd. Eff. May 25.

ACT REPEALED: Act 255, 1908, CL 1915, 10638-10641.

Act 304, 1919, p. 532; Eff. Aug. 14.

AN ACT to prohibit any person, society, association or corporation from adopting or using a name similar to the name of a military, ex-military, patriotic, benevolent, humane, fraternal or charitable organization incorporated or organized under the laws of this or any other state or of the United States; to prohibit the wearing or exhibiting of the recognized or established badge, button, emblem, decoration, insignia or charm of any such organization; to prohibit the assumption or claiming of membership in any such organization; to prohibit the use of the name, emblem or insignia of any such organization in commercial advertising, except on written consent; to provide a remedy by injunction, and to provide a penalty for a violation of the provisions of this act.

The People of the State of Michigan enact:

430.101 Name or insignia of certain organizations; protection, priority.

Sec. 1. No person, society, association or corporation shall assume, adopt or use the name of a military, ex-military, patriotic, benevolent, humane, fraternal or charitable organization incorporated or organized and doing business under the laws of this or any other state of the United States, or a name so nearly resembling the name of such incorporated organization as to be a colorable imitation thereof, or calculated to deceive persons not members, with respect to such corporations. In all cases where 2 or more such societies, associations, corporations or organizations claim the right to the same name or to names substantially similar, as above provided, the organization which was first organized and used the name and first became incorporated or organized under the laws of the United States or of any state in the Union shall be entitled in this state to the prior and exclusive use of such name, and the rights of such societies, associations, corporations or organizations and of their individual members shall be fixed and determined accordingly.

HISTORY: CL 1929, 8991;—CL 1948, 430.101.

430.102 Name or insignia of organizations; prohibited use or exhibition.

Sec. 2. No person shall wear or exhibit the recognized or established badge, button, emblem, decoration, insignia or charm, or shall assume or use the name of any military, ex-military, patriotic, humane, fraternal or charitable corporation or organization incorporated or organized under the laws of this or any other state or of the United States, or shall assume or claim to be a member thereof, or of a military, ex-military, patriotic, benevolent, humane, fraternal or charitable corporation or organization, the

name of which shall so nearly resemble the name of any other organization or corporation existing prior to the organization of the corporation, association or organization of which such person may claim to be a member, the name whereof may be calculated to deceive the people with respect to any such prior corporation or organization, unless he shall be authorized under the laws, statutes, rules, regulations and by-laws of such former corporation or organization to wear such recognized or established badge, button, emblem, decoration, insignia or charm, or to use and assume such name as a member thereof.

HISTORY: CL 1929, 8692;—CL 1948, 430.102.

430.103 Certain advertisements without consent prohibited.

Sec. 3. It shall be unlawful for any person, co-partnership or corporation to publish, distribute or post or cause to be published, distributed or posted any commercial advertisement which shall contain the name, or display the emblem or insignia of any military, ex-military, patriotic, humane, fraternal or charitable corporation, organization or society incorporated under the laws of this or any other state or of the United States, without having first obtained the written consent of said corporation, organization or society to such advertisement.

HISTORY: CL 1929, 8693;—CL 1948, 430.103.

430.104 Violation of act; injunction.

Sec. 4. Whenever there shall be an actual or threatened violation of the above act, an application may be made to the court or judge having jurisdiction to issue an injunction upon notice to the defendant or defendants of not less than 5 days, for an injunction so restraining such actual or threatened violation, or if it shall appear to such court or justice that the defendant or defendants is or are in fact using the name of a military, ex-military, patriotic, benevolent, humane, fraternal or charitable corporation or organization, or a name so nearly resembling it as to be calculated to deceive the public, or is wearing or exhibiting the recognized or established badge, insignia or emblem of such corporation or organization without authority thereof and in violation of the above act, an injunction may be issued by said court or justice enjoining or restraining such actual or threatened violation, without requiring proof that any person has in fact been misled or deceived thereby.

HISTORY: CL 1929, 8694;—CL 1948, 430.104.

430.105 Violation of act; penalty.

Sec. 5. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than 50 dollars or more than 500 dollars, or by imprisonment in the county jail for a period not to exceed 6 months, or by both such fine and imprisonment.

HISTORY: CL 1929, 8695;—CL 1948, 430.105.

Act 109, 1905, p. 156; Imd. Eff. May 10.

AN ACT to prevent persons from unlawfully using or wearing the badge or button of the Grand Army of the Republic, the Loyal Legion of the United States, the United Spanish War Veterans, Military Order of Foreign Wars, or the American Legion, or of any legally incorporated organization composed of honorably discharged veterans of any war in which the United States has been, or may be, a participant, and to repeal section 11768 of the Compiled Laws of 1897. Am. 1921, p. 10, Act 6, Eff. Aug. 18.

The People of the State of Michigan enact:

430.151 Unauthorized wearing of veteran's society badge or button; penalty.

Sec. 1. Any person who shall wear the badge or button of the Grand Army of the Republic, the Loyal Legion of the United States, the United Spanish War Veterans, Military Order of Foreign Wars, or the American Legion, or of any legally incorporated organization composed of honorably discharged veterans of any war in which the United States has been, or may be, a participant, without being entitled to use or wear the same under the rules and regulations of such several organizations, or who shall use or wear the badge or button thereof to obtain aid or assistance thereby within the state of Michigan shall be guilty of a misdemeanor, and if convicted thereof, shall be punished by imprisonment in the county jail for a term not exceeding 30 days, or a fine not exceeding 20 dollars.

HISTORY: CL 1915, 15579;—Am. 1921, p. 10, Act 6, Eff. Aug. 18;—CL 1929, 8996;—CL 1948, 430.151.
REGISTRATION OF BADGE OR BUTTON: See Compilers' § 430.1 et seq.

Sec. 2. (This was a repeal section.)

HISTORY: CL 1915, 15580;—CL 1929, 8997;—Rep. 1945, p. 404, Act 267, Imd. Eff. May 25.
ACT REPEALED: CL 1897, 11768.

Act 46, 1911, p. 56; Eff. Aug. 1.

AN ACT relative to the fraudulent use of names, titles or common designations of fraternities and unions, and providing a penalty therefor.

The People of the State of Michigan enact:

430.201 Fraudulent obtaining of application or property for pretended lodge membership; penalty.

Sec. 1. Whoever, wilfully, by color or aid of any false token or writing or other false pretense or false statement, verbal or written, or without authority of the grand or supreme governing lodge, council, union or other governing body hereinafter mentioned, obtains the signature of any person to any written application or obtains any money or property for any alleged or pretended degree or for any alleged or pretended membership in any fraternity, association, society, order, organization or union having a grand or supreme governing lodge, council, union or other governing body in this state or in any subordinate lodge or body thereof, shall be punished by imprisonment for not more than 1 year or by a fine of not more than 500 dollars, or by both such fine and imprisonment.

HISTORY: CL 1915, 15581;—CL 1929, 8998;—CL 1948, 430.201.

430.202 Fraudulent and unauthorized use of lodge name or imitation; penalty.

Sec. 2. Whoever in a newspaper or other publication, or in any written or printed letter, notice, matter or device, without authority of the grand or supreme governing lodge, council, union or other governing body hereinafter mentioned, fraudulently uses or aids in any way in the use of the name, title or common designation of any fraternity, association, society, order, organization or union which has a grand or supreme governing lodge, council, union or other governing body, having priority in such use in this state, or any name, title or designation so nearly resembling the same as to be calculated or likely to deceive; and whoever without such authority fraudulently publishes, sells, circulates or distributes any written or printed letter, notice, matter or device in any way soliciting members for such fraternity, association, society, order, organization or union, or for any alleged or pretended fraternity, association, society,

order, organization or union, using any such name, title, designation, or near resemblance thereto; and whoever therein or thereby in any way without such authority fraudulently offers to sell, confer, communicate or give information where, of whom or by what means any degree or work in whole or in part of such fraternity, association, society, order, organization or union or of any alleged or pretended fraternity, association, society, order, organization or union using any such name, title or designation or near resemblance thereto, can or may be obtained, conferred or communicated, shall be punished by imprisonment for not more than 1 year or by a fine of not more than 500 dollars, or by both such fine and imprisonment.

HISTORY: CL 1915, 15582;—CL 1929, 8698;—CL 1948, 430.202.

CHAPTER 431. RACING; BOXING AND EXHIBITIONS

RACING MEETS

Act 199 of 1933

431.1-431.25 Repealed.

RACING LAW OF 1959

Act 27 of 1959

- 431.31 Racing law of 1959; short title.
- 431.32 Racing commissioner; jurisdiction.
- 431.33 Racing commissioner; appointment, qualifications.
- 431.34 Racing commissioner; oath, bond.
- 431.35 Racing commissioner; salary, deputies, assistants, expenses, record, report.
- 431.36 Racing commissioner; rules and regulations, enforcement, penalties.
- 431.37 Racing commissioner; licenses. Race meeting licenses, dates. Occupational licenses.
- 431.38 Horse race tracks; licenses for existing tracks. Same; licenses for additional tracks. Same; duration of license. Same; license, application, revocation, review, number. Same; ownership, interlocking directorates.
- 431.39 Race meetings; licenses, applications, allocations, charitable organizations; denial, review.
- 431.40 Licensee's statement of receipts, expenses and disbursements. Remittance to state. Contributions to political parties; revocation of license. Unlicensed horse racing for a stake.
- 431.41 Occupational licenses; fingerprints; suspension, hearing, review; refusal.
- 431.42 Pari-mutuel wagering at horse races. Licensee's commission; breaks. Pay-off prices. Minors.
- 431.43 Racing commissioner; receipts, general fund. Distribution of revenues; municipalities. Same; fairs, Michigan bred horses. Same; Michigan bred horses, thoroughbred racing.
- 431.44 License fees; percentage of wagers; breaks; return of fees.
- 431.45 Audit; expense, report, scope, access to totalisator.
- 431.46 Dissemination of information.
- 431.47 Violation of act; penalty.
- 431.48 Hypnotic, narcotic or stimulant; administration, penalty; definitions.
- 431.49 Stimulant or depressant; administration, possession, penalty.
- 431.50 Undue influence; penalty.
- 431.51 Unlicensed horse racing without betting; fairs.
- 431.52 Residence of licensee's employees; affidavits.
- 431.53 Illegal wagering, racing at state fair grounds at Detroit.

431.54 Political subdivisions not to assess excise or license tax or fee.

431.55 Penal code; application.

431.56 Repeal.

BOXING, SPARRING AND WRESTLING EXHIBITIONS

Act 205 of 1939

- 431.101 Michigan state athletic board of control; membership.
- 431.102 Athletic board of control; members, appointment, terms; commissioner; quorum.
- 431.103 Athletic board of control; members, qualifications, removal.
- 431.104 Athletic board of control; commissioner, salary; expenses of members.
- 431.105 Athletic board of control; offices; meetings; seal; rules and regulations.
- 431.106 Athletic board of control; secretary, salary, duties; inspectors and employees.
- 431.107 Athletic board of control; expenses, payment.
- 431.108 Athletic board of control; subpoena of witnesses; refusal to testify, false swearing, penalty; jurisdiction of circuit court.
- 431.109 Athletic board of control; annual report to legislature.
- 431.110 Boxing and wrestling matches; legalization; jurisdiction of board; exemption of certain amateur matches.
- 431.111 Boxing and wrestling matches; license or permit required; exception.
- 431.112 Boxing and wrestling matches; annual license to promoters; permits for matches.
- 431.113 Boxing and wrestling matches; license required of boxers, wrestlers and others participating; application.
- 431.114 Promoter's license; fee schedule.
- 431.114a Boxing contests; insurance of contestants, amount.
- 431.115 Boxing, sparring or wrestling exhibitions; report of receipts; tax, payment, bond; qualifications of promoters.
- 431.116 Boxing, sparring or wrestling matches; failure to file report of receipts or report unsatisfactory; authority of board to investigate; forfeiture of license; penalty.
- 431.117 Amateur boxing, sparring or wrestling matches; license fees, deposit and disbursement of proceeds.
- 431.118 Boxing matches; buildings used, health and fire requirements; compliance with statutes and ordinances.
- 431.119 Boxing matches; number of rounds; championship matches; physical examination.
- 431.120 Boxing or wrestling matches; presence of physician, examination, report, termination.
- 431.120a Boxing or wrestling matches; loss of consciousness of participant, examination.
- 431.121 Fake boxing, sparring, or wrestling exhibition; violation of rules and regulations of board, revocation of license, penalty.
- 431.122 Athletic board of control; rules and regulations.

431.123	Rulings of commissioner final until meeting of board; special meeting, expenses.		
431.124	Smoking prohibited; responsibility of promoter; grounds for cancellation of license.	431.251	Racing meets; unclaimed funds held by racing track licensees; past winners.
431.125	Gambling prohibited; grounds for cancellation of license.	431.252	Unclaimed funds held by racing track licensees; future winners.
431.126	Violations of act; penalty.	431.253	Cashed winning tickets; delivery to racing commissioner.
	MUNICIPAL POLICE REGULATIONS	431.254	Delivery of funds and reports relieves licensee from liability; exception.
	Ch. 49, R.S. 1846	431.255	Funds and records; delivery to state board of escheats.
431.201	Theatrical exhibitions and public shows; licensing, regulations.	431.256	State board of escheats; receipt of funds and records, disposition.
431.202	Theatrical exhibitions and public shows; operating without license, violation deemed separate offense, penalty.	431.257	Violation of act; penalty.

431.1-431.25 Repealed. 1959, p. 32, Act 27, Imd. Eff. May 7.

Sections provided for, regulated, and licensed conducting of racing meets; created office of racing commissioner; prescribed his powers and duties, salary and expenses; legalized auction pools and wagering at licensed race meetings; appropriated funds derived therefrom; authorized department of agriculture to lease lands for horse racing; and provided penalties for violations of act.

Act 27, 1959, p. 24; Imd. Eff. May 7.

AN ACT to provide for, regulate and license the conducting of race meetings in this state; to create the office of racing commissioner; to prescribe his powers and duties; to provide for the issuance of track licenses, race meeting licenses and occupational licenses; to provide for the disposition of the fees derived therefrom; to legalize and permit the pari-mutuel method of wagering on the results of races at licensed race meetings in this state; to appropriate the funds derived therefrom; to render inapplicable all acts or parts of acts in conflict herewith; to provide penalties for the violation thereof; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

431.31 Racing law of 1959; short title.

Sec. 1. This act shall be known and may be cited as the "racing law of 1959".

HISTORY: New 1959, p. 24, Act 27, Imd. Eff. May 7.

CITED IN OTHER SECTIONS: Sections 431.31 to 431.56 are cited in §§ 16.284 and 431.251.

431.32 Racing commissioner; jurisdiction.

Sec. 2. There is hereby created the office of racing commissioner, who is vested with the powers and duties prescribed in this act and also such powers necessary or proper to enable him to carry out fully and effectually all the purposes of this act. The jurisdiction, supervision, powers and duties of the racing commissioner extends under this act to all persons who hold or conduct any meeting within this state where horse racing is permitted for any stake, purse or reward.

HISTORY: New 1959, p. 25, Act 27, Imd. Eff. May 7.

431.33 Racing commissioner; appointment, qualifications.

Sec. 3. The commissioner shall be appointed by and hold office at the pleasure of the governor. The commissioner shall be a resident of the state; shall have resided in the state for at least 5 years next preceding his appointment and qualification; shall be a qualified voter; and shall be not less than 30 years of age.

HISTORY: New 1959, p. 25, Act 27, Imd. Eff. May 7.

431.34 Racing commissioner; oath, bond.

Sec. 4. Before entering upon the discharge of the duties of his office, the commissioner shall take the constitutional oath, and shall give bond to the state, with corporate surety approved by and filed with the auditor general, in the penal sum of \$25,000.00, with the condition that he will well and faithfully execute and perform all and singular the duties pertaining to his office according to the laws of this state. The premium on the bond shall be paid as an expense of the office.

HISTORY: New 1959, p. 25, Act 27, Imd. Eff. May 7.

431.35 Racing commissioner; salary, deputies, assistants, expenses, record, report.

Sec. 5. The commissioner shall receive such annual salary as shall be appropriated by the legislature. The commissioner may employ a deputy, a secretary and such assistants as are necessary for the administration of this act within the limits of the appropriations made by the legislature. For the purpose of carrying out the provisions of this act, relative to the conduct of racing, the commissioner shall designate the state stewards of racing as his special deputies for that race meeting. The special deputies shall take the constitutional oath of office and may exercise any power granted by rules of the commission. Appeals from decisions of special deputies may be taken to the commissioner. The commissioner shall be entitled to his reasonable and necessary expenses in the discharge of his duties prescribed in this act. The secretary shall keep a record of all proceedings, preserve all books, maps, documents and papers belonging to the commissioner or entrusted to his care, and perform such other duties as the commissioner may prescribe. The commissioner shall make an annual report to the governor on or before January 15 of each year, which report shall include a statement of his receipts and disbursements and any additional information and recommendations which he may deem of value or the governor may require.

HISTORY: New 1959, p. 25, Act 27, Imd. Eff. May 7;—Am. 1967, p. 343, Act 232, Imd. Eff. Jul. 10.

431.36 Racing commissioner; rules and regulations, enforcement, penalties.

Sec. 6. The commissioner shall prescribe rules, regulations and conditions, in accordance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.82 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948, under which all horse racing shall be conducted within the state, and may assess penalties, including fines up to \$300.00, for violations thereof by licensees under this act. The commissioner shall make rules governing, restricting or regulating betting on races. All proposed extensions, additions or improvements to the buildings, stables, improvements or tracks upon property owned or leased by any licensee shall be subject to the approval of the commissioner. The commissioner may compel the production of books, memoranda or documents showing the receipts and disbursements of any race meeting licensee. The commissioner at any time may require the removal of any employee or official employed by any licensee for cause. The commissioner may visit, investigate and place expert accountants and such other persons as he deems necessary in the offices, tracks or places of business of any licensee to insure compliance with the rules and regulations. The commissioner may summon witnesses and administer oaths or affirmations whenever, in his judgment, it is necessary for the effective discharge of his duties. Any person failing to appear before the com-

missioner at the time and place specified, without just cause, in answer to a summons, or refusing to testify, or testifying falsely, is guilty of a misdemeanor, and shall be punished by a fine of not more than \$5,000.00 or by imprisonment for not more than 6 months, or by both such fine and imprisonment.

HISTORY: New 1959, p. 25, Act 27, Imd. Eff. May 7.

431.37 Racing commissioner; licenses.

Sec. 7. The commissioner may issue annual licenses to 2 general classes of licensees:

Race meeting licenses, dates.

(1) Race meeting licenses, specifying dates on which racing may be conducted, to the individual, corporation, firm or partnership, proposing to conduct the race meeting; and

Occupational licenses.

(2) Occupational licenses to the individual racing participants, such as horse owners, trainers, jockeys, drivers, grooms, jockey agents, assumed name stables, veterinarians, vendors operating within the barn areas of licensed race tracks, and blacksmiths.

HISTORY: New 1959, p. 26, Act 27, Imd. Eff. May 7.

431.38 Horse race tracks; licenses for existing tracks.

Sec. 8. (1) The commissioner shall issue, without further application, a track license to any person maintaining or operating a licensed horse race track as of January 1, 1959, with wagering by pari-mutuel methods on the results of the racing.

Same; licenses for additional tracks.

(2) The commissioner may issue a track license to any person desiring to maintain or operate a track where it is proposed to conduct horse racing with wagering by pari-mutuel methods on the result of the racing, whether or not the track is then constructed.

Same; duration of license.

(3) The track license, once issued, shall continue so long as the annual license fee is paid, or until it is voluntarily surrendered, or terminated as provided in this act.

Same; license, application, revocation, review, number.

(4) The track license application shall be in writing, shall show satisfactory financial responsibility, shall show the location of the track or of the proposed track and shall be accompanied by substantially detailed plans and specifications of the track, buildings, fences and other improvements. The application shall give the name and address of the applicant, and if a corporation shall state the place of its incorporation, and shall give any other information required by the regulations or by the commissioner. Upon the filing of the application and payment of the licensee fee, the commissioner shall make such investigation of the applicant and of the track or proposed track as he deems best, and if satisfied the person and the track meet all regulations, he shall grant a license for the track, designating therein the county or area of the licensee. The commissioner, if the track does not comply with the regulations, shall refuse the license but shall grant a license upon compliance with requirements imposed by him. After any license is issued, it may be revoked if the licensee after reasonable notice from the commissioner does not make such improvements or additions to the track as are necessary, or if the licensee wilfully violates the provisions of this act. The action of the commissioner in refusing or revoking a track license may be reviewed by the circuit court of the county in which the track is located. Either party may appeal from the circuit court to the supreme court. The applicant for the license shall also pay the license fees provided in this act. In a city area, there may be licensed not more than 3 tracks. A city area includes any city having a population of 1,000,000 or more, accord-

ing to the latest or each succeeding federal decennial census, and includes the counties wholly or partly within a distance of 30 miles of the city limits of such city.

Same; ownership, interlocking directorates.

(5) No person, partnership, association or corporation may be issued more than 1 track license, and controlling ownership and interlocking directorates among track licensees is prohibited.

HISTORY: New 1959, p. 26, Act 27, Imd. Eff. May 7.

431.39 Race meetings; licenses, applications, allocations, charitable organizations; denial, review.

Sec. 9. (1) Any person desiring to conduct a race meeting shall apply to the commissioner for a license to do so. The application shall be filed with the secretary on or before November 1 of the year preceding the year in which it is proposed to conduct racing. The application shall specify the location and the days on which racing is desired to be held. No racing dates shall be allocated which would permit racing on any Sunday or Good Friday.

(2) The commissioner shall grant or deny applications for thoroughbred race meeting licenses and shall allocate or deny racing dates to license applicants before December 1 of the year preceding the year for which the applications are made.

(3) The commissioner shall grant or deny applications for harness race meeting licenses and shall allocate or deny racing dates to license applicants before December 15 of the year preceding the year for which the applications are made, but in no case shall harness racing dates be allocated prior to the allocation of thoroughbred racing dates.

(4) The commissioner shall not issue a race meeting license to any organization organized for a charitable purpose or organized for the purpose of distributing its profits or income to charitable organizations.

(5) The denial of a race meeting license may be reviewed by the circuit court, and either party may appeal to the supreme court.

HISTORY: New 1969, p. 27, Act 27, Imd. Eff. May 7.

431.40 Licensee's statement of receipts, expenses and disbursements.

Sec. 10. (1) On or before December 10 of each year, every licensee holding a race meeting or track license shall file with the commissioner a full statement, under oath, of all receipts from all sources whatsoever during the calendar year and of all expenses and disbursements, all itemized in manner and form as directed by the commissioner, showing the net revenue from all sources derived by the licensee.

Remittance to state.

(2) On the first secular day after each day's racing, every race meeting licensee shall remit to the state treasurer, or deliver to the representative of the commissioner, all moneys due the state at the close of the day's racing, with a detailed statement thereof as required by the regulations.

Contributions to political parties; revocation of license.

(3) Any licensee under this act who, directly or indirectly, makes any contribution whatsoever to any political party or any candidate for state, county, district or municipal office shall be guilty of a misdemeanor. The commissioner, upon proof of any contribution having been made, may revoke the race meeting license but may not revoke the track license, and no further race meeting license shall be issued thereafter to the former licensee. The action of the commissioner shall be subject to judicial review.

Unlicensed horse racing for a stake.

(4) Except as hereinafter provided, no person shall hold or conduct, or assist, aid or abet in holding or conducting, any meeting within the state where horse racing is per-

mitted for any stake, purse or reward, and at which pari-mutuel wagering is used, unless the person and the track on which the racing is conducted is licensed by the commissioner.

HISTORY: New 1959, p. 27, Act 27, Imd. Eff. May 7.

431.41 Occupational licenses; fingerprints; suspension, hearing, review; refusal.

Sec. 11. (1) All persons participating in or having to do with the racing of horses, including all racing officials, horse owners, jockeys, drivers, apprentices, exercise boys, authorized agents, trainers, grooms, valets, veterinarians, horseshoers, and the owners of stables operating under an assumed name, may be licensed by the commissioner pursuant to such rules as he may adopt.

(2) As a condition precedent to the issuance of the license, the commissioner may demand, in addition to such other information as he deems necessary and proper, fingerprints of occupational license applicants.

(3) Upon the filing of a written complaint, under oath, in the office of the racing commissioner, with regard to the actions or omissions of anyone issued an occupational license, the commissioner may suspend the occupational license. The suspension shall be for a period of not more than 10 days, during which time the suspended licensee may demand in writing a hearing before the commissioner. The commissioner shall give prompt notice of a time and place for the hearing, at which he shall hear the complainant and the applicant or occupational licensee in reference to the complained of act or omission. Pending the hearing and final determination thereon, the action of the commissioner in suspending the license shall remain in full force and effect. If the licensee does not demand a hearing, the commissioner on his own motion may set a hearing with regard to the actions or failure to act of the licensee. In the conduct of the hearing the commissioner shall not be bound by technical rules of evidence, but all evidence offered before him shall be reduced to writing, and such evidence together with the exhibits, if any, and the findings of the commissioner shall be permanently preserved and shall constitute the record of the commissioner in the case. Within 10 days after the conclusion of the hearing, the commissioner shall make a written final order setting forth the reasons for the action taken by him, and a copy thereof shall be served on the occupational licensee or applicant. The action of the commissioner in revoking or suspending a license shall be reviewable by a writ of certiorari filed in the circuit court for the county wherein the alleged act or failure to act took place. If the commissioner's order is predicated upon a series of acts, the review may be in the county wherein any of the alleged acts or failure to act took place. No writ of certiorari shall issue unless the petitioner has first sought a hearing, within the time limit set forth above, before the racing commissioner and until the hearing has been concluded and findings issued thereon.

(4) Upon a refusal by the racing commissioner to issue an occupational license, no writ of mandamus shall be directed to the racing commissioner until a hearing is held and findings issued thereon. The hearing shall be held and governed pursuant to the law and rules covering hearings held on suspension or revocation of licenses. This section shall not impair or change appeals provided for in section 8 of this act.

HISTORY: New 1959, p. 27, Act 27, Imd. Eff. May 7.

431.42 Pari-mutuel wagering at horse races.

Sec. 12. (1) Any race meeting licensee may provide a place in the race meeting grounds or enclosure at which he may conduct and supervise the pari-mutuel system of wagering by patrons on the horse racing conducted by the licensee at the race meeting. The pari-mutuel system of wagering upon horse racing held at the tracks and within the race track and at the race meeting shall not be held or construed to be un-

lawful, under any circumstances, other statutes of the state to the contrary notwithstanding. When the pari-mutuel system of wagering is used at any race meeting, a totalisator, or other mechanical device which is equal in accuracy and clearness to a totalisator and approved by the commissioner, shall be used. The odds board of the totalisator or other mechanical device shall be placed in full view of the patrons.

Licensee's commission; breaks.

(2) No other place or method of betting, pool making, wagering or gaming shall be used or permitted by the licensee, nor shall the pari-mutuel system of wagering be conducted on any races except races at the race track where the pari-mutuel system of wagering is conducted. Each race meeting licensee shall retain as his commission 15% of all moneys wagered. In all race meetings, licensees shall divide the breaks equally with the state. Breaks shall be computed at all times at 10 cents and defined as the cents over any multiple of 10 otherwise payable to a patron on a wager of \$1.00.

Pay-off prices.

(3) Pay-off prices of tickets of a higher denomination shall be calculated as even multiples of the pay-off price for a \$1.00 wager. Every licensee shall distribute to the persons holding winning tickets, as a minimum, a sum not less than \$1.10 calculated on the basis of each \$1.00 deposited in any pool.

Minors.

(4) No licensee shall knowingly permit any minor to be a patron of the pari-mutuel wagering conducted or supervised by it.

HISTORY: New 1958, p. 28, Act 27, Imd. Eff. May 7;—Am. 1963, p. 15, Act 10, Imd. Eff. Mar. 26.

431.43 Racing commissioner; receipts, general fund.

Sec. 13. (1) All moneys received by the commissioner under the provisions of this act shall be paid promptly into the state treasury and shall be credited to the general fund of the state.

Distribution of revenues; municipalities.

(2) Twenty per cent of the revenues received, not to exceed \$600,000.00, from racing license fees from any track shall be returned to the city or township in which the track is located. If the track is located in more than 1 city or township, then the revenue shall be divided equally between the cities or townships.

Same; fairs, Michigan bred horses.

(3) A sufficient portion, not to exceed 1/2 of the revenue received from harness racing in this state, shall be placed in a fund under the control of the state department of agriculture, to be allotted to county fairs, 4-H fairs and the state fairs, and to pay the costs of administering this section at the discretion of and under regulations prescribed by the director of agriculture, as follows:

(a) A sum sufficient to pay for not to exceed 75% of the purses offered by county fairs and the Upper Peninsula state fair under conditions prescribed in rules by the director of agriculture.

(b) A sum to be allotted on a matching basis, but not to exceed \$2,500.00 annually to any one fair, for the purpose of constructing, maintaining and repairing buildings and making the race track more suitable and safe for racing at the county fair.

(c) A sum not to exceed \$20,000.00 to be used for the purpose of paying special purses at county fairs on colts whose sires were owned exclusively by residents of this state at the time of service and which were standing in this state during the entire calendar year in which the service occurred.

(d) To pay not less than 50% of the premiums paid by county and district and state fairs and shows.

(e) The director of agriculture shall prescribe regulations for the payment of breeders' awards not to exceed 10% of the gross purse to breeders of Michigan bred horses for each time such horse wins at a county fair or a licensed race track in this state. A Michigan bred horse for the purpose of this subsection means a horse from a Michigan owned mare at time of breeding by a Michigan owned sire standing in Michigan for a full calendar year. Mares shall be registered with the director of agriculture.

Same; Michigan bred horses, thoroughbred racing.

(4) A sufficient portion, not to exceed 4% of the revenue received from thoroughbred racing, shall be placed in a fund under the control of the state department of agriculture, to be allotted to thoroughbred racing associations to supplement the purses for races to be conducted exclusively for Michigan bred horses and to pay the costs of administering this subsection and to pay breeders' awards, in the amount of 10% of the gross purse, to the breeders of Michigan bred horses for each time such horses win at a licensed race track in this state. Payments for Michigan bred race purses and breeders' awards shall be made at the discretion of and under regulations prescribed by the director of agriculture.

HISTORY: New 1959, p. 29, Act 27, Imd. Eff. May 7;—Am. 1963, p. 16, Act 10, Imd. Eff. Mar. 26;—Am. 1964, p. 271, Act 200, Imd. Eff. May 22;—Am. 1966, p. 307, Act 113, Imd. Eff. Jul. 29.

431.44 License fees; percentage of wagers; breaks; return of fees.

Sec. 14. (1) Each licensed track located in a city area shall pay \$500.00 annually, and any other licensed track shall pay \$100.00 annually.

(2) Each race meeting licensee shall pay a tax for each day's racing in accordance with the following schedule and in such manner and time as the commissioner shall require:

(a) Each licensee for thoroughbred races in a city area shall pay to the state treasurer, from his commission, 8% of all moneys wagered on pari-mutuel wagering, plus 1/2 the breaks. Each licensee for thoroughbred races outside a city area shall pay to the state treasurer, from his commission, 6% of all moneys wagered in pari-mutuel wagering, plus 1/2 the breaks.

(b) Each licensee for harness racing shall pay to the state treasurer, from his commission, 5% of all moneys wagered in pari-mutuel wagering, plus 1/2 the breaks.

(3) If by reason of any cause beyond control, and through no fault or neglect of any licensee, and while the licensee is not in default, it is impossible for the licensee to hold or conduct racing upon any date licensed by the commissioner, at the request of the licensee, the commissioner may return the fees paid by the licensee for racing upon the days when it is impossible for the licensee to hold or conduct racing.

HISTORY: New 1959, p. 29, Act 27, Imd. Eff. May 7;—Am. 1963, p. 16, Act 10, Imd. Eff. Mar. 26.

431.45 Audit; expense, report, scope, access to totalisator.

Sec. 15. (1) The auditing of pari-mutuel operations at each race meeting shall be performed by a private auditing firm appointed by the auditor general and approved by the racing commissioner. The expense of pari-mutuel audits shall be paid by the state as a part of the auditor general's budget. Daily audit reports on each day's racing shall be forwarded to the commissioner and the licensee on the day for which the report is made. Within 30 days following each race meeting, at least 2 copies of the pari-mutuel audit report for the entire race meeting shall be forwarded to the commissioner and additional copies shall be supplied to the auditor general and the licensee. The scope of the pari-mutuel audits shall be established in specifications prepared by the auditor general and approved by the racing commissioner.

(2) The auditors representing the state shall have free and full access to the space or enclosure where the pari-mutuel system of wagering is conducted, to the calculating room where the pay-off prices are calculated and to the rooms and enclosures where

the totalisator equipment is operated, and shall be responsible for the accuracy of the calculations on which are based the pay-off prices to the public and amount of track commission, state tax and breakage and for the amounts withheld by the licensee for payment of uncashed tickets. The auditors at all times shall have full and free access to all pari-mutuel calculating sheets, selling machine take-off sheets and other records and to all cashed tickets. The auditors, in addition to their regular reports, shall make prompt report to the racing commissioner, the auditor general and the race meeting licensee of any irregularities or discrepancies which they may encounter during their auditing.

(3) In addition to auditing the pari-mutuel operations, the auditors shall include in their final reports the daily attendance figures as supplied by the licensee.

HISTORY: New 1959, p. 30, Act 27, Imd. Eff. May 7.

431.46 Dissemination of information.

Sec. 16. No person licensed under this act shall knowingly permit the dissemination of any racing information that might be of benefit to the operator of an illegal hand-book or other illegal gambling enterprise, including the changes in odds which may take place during the period of wagering in advance of each race. This section shall not be construed to prevent the duly accredited representatives of newspapers, turf publications, newspaper press services, radio and television networks and stations from promptly reporting from the track the results of races, pay-off prices on winning tickets, entries, claims and other information concerning the actual running of races and training activities.

HISTORY: New 1959, p. 30, Act 27, Imd. Eff. May 7.

431.47 Violation of act; penalty.

Sec. 17. Any person who wilfully aids, assists or abets the violation of any of the provisions and requirements of this act is guilty of a misdemeanor, and shall be punished for each offense by a fine of not more than \$10,000.00, or by imprisonment in the county jail for not more than 1 year, or by both fine and imprisonment. For the purpose of this section, each day of racing in violation of the provisions of this act shall constitute a separate and distinct offense.

HISTORY: New 1959, p. 30, Act 27, Imd. Eff. May 7.

431.48 Hypnotic, narcotic or stimulant; administration, penalty; definitions.

Sec. 18. (1) Whoever administers or conspires to administer a drug, stimulant or depressant, internally, externally or by hypodermic method, to any horse in a race, or prior thereto, or whoever knowingly enters any horse in any race within a period of 24 hours after any hypnotic, narcotic, stimulant or depressant has been administered to the horse, either internally, externally or by hypodermic method, for the purpose of increasing or retarding the speed of the horse, is guilty of a misdemeanor and shall be punished for each offense by a fine of not more than \$1,000.00, or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment.

(2) The term "hypnotic" includes all barbituric acid preparations and derivatives.

(3) The term "narcotic" includes opium and all its alkaloids, salts, preparations and derivatives, and cocaine and all its salts, preparations, derivatives and substitutes.

(4) The term "stimulant" includes strychnine, caffeine or its derivatives or alkaloids, and amphetamine or its derivatives.

HISTORY: New 1959, p. 30, Act 27, Imd. Eff. May 7.

431.49 Stimulant or depressant; administration, possession, penalty.

Sec. 19. Whoever sponges a horse's nostrils or windpipe or uses any method, injurious or otherwise, for the purpose of stimulating or depressing a horse or affecting its speed in a race or a workout at any time, or whoever has in his possession within the

confines of a race track, stable, shed, building or grounds, or within the confines of a stable, shed, building or grounds where horses are kept which are eligible to race over the race track of any licensee, any drug or medicine or stimulant or depressant or battery or buzzer, electrical or mechanical, or other appliance, other than the ordinary whip or spur, which may or can be used for the purpose of stimulating or depressing a horse or affecting its speed at any time, or whoever has in his possession with the intent to sell, give away or exchange any of such instrumentalities, is guilty of a misdemeanor and shall be punished for each offense by a fine of not more than \$1,000.00, or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment.

HISTORY: New 1959, p. 31, Act 27, Imd. Eff. May 7.

431.50 Undue influence; penalty.

Sec. 20. Any person influencing or attempting to influence in any manner, by offer of money, thing of value, future benefit, favor, preferment or by any form of pressure or threat, or seeking or having an agreement or understanding, or conniving with any owner, jockey, driver, trainer, groom, valet, agent or other person associated with or interested in any stable of horses, horse, or race in which the horse participates, to predetermine the result of any such race, is guilty of a misdemeanor and shall be punished for each offense by a fine of not less than \$250.00 nor more than \$10,000.00, or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment.

HISTORY: New 1959, p. 31, Act 27, Imd. Eff. May 7.

431.51 Unlicensed horse racing without betting; fairs.

Sec. 21. (1) Except as to the distribution of moneys provided for in section 13, nothing in this act shall apply to county or state fairs or to agricultural or livestock exhibitions where the pari-mutuel system of wagering upon the result of horse racing is not permitted or conducted.

(2) Nothing in this act shall be construed to permit the pari-mutuel system of wagering upon any track unless the race track is licensed as provided by this act, and no person shall permit, conduct or supervise upon any race track grounds the pari-mutuel system of wagering, except in accordance with the provisions of this act.

HISTORY: New 1959, p. 31, Act 27, Imd. Eff. May 7.

431.52 Residence of licensee's employees; affidavits.

Sec. 22. At least 85% of all employees of any race meeting licensee, except employees of the racing secretary's office, shall have been residents or registered voters of this state for at least 2 years at the time of their employment. Annually, all employees shall furnish affidavits of compliance with this section to the race meeting licensee by whom they are employed.

HISTORY: New 1959, p. 31, Act 27, Imd. Eff. May 7.

431.53 Illegal wagering, racing at state fair grounds at Detroit.

Sec. 23. (1) All other forms of racing involving wagering of any kind are hereby declared illegal.

(2) Racing at the state fair grounds at Detroit involving pari-mutuel wagering under the provisions of this act shall not be authorized and shall be in violation of the laws of this state.

HISTORY: New 1959, p. 31, Act 27, Imd. Eff. May 7.

431.54 Political subdivisions not to assess excise or license tax or fee.

Sec. 24. No excise or license tax or fee shall be assessed or collected from any licensee under this act by any political subdivision of the state.

HISTORY: New 1959, p. 32, Act 27, Imd. Eff. May 7.

431.55 Penal code; application.

Sec. 25. Act No. 328 of the Public Acts of 1931, as amended, being sections 750.1 to 750.568 of the Compiled Laws of 1948, and all other acts and parts of acts inconsistent with the provisions of this act, shall not apply to the pari-mutuel system of wagering as provided for by this act at any horse racing meeting held or conducted by any person licensed to hold or conduct horse racing meetings as provided by this act.

HISTORY: New 1959, p. 32, Act 27, Imd. Eff. May 7.

431.56 Repeal.

Sec. 26. Act No. 199 of the Public Acts of 1933, as amended, being sections 431.1 to 431.25 of the Compiled Laws of 1948, is hereby repealed.

HISTORY: New 1959, p. 32, Act 27, Imd. Eff. May 7.

Act 205, 1939, p. 383; Imd. Eff. Jun. 8.

AN ACT to create the Michigan state athletic board of control, for the regulation, control and supervision of boxing, sparring or wrestling exhibitions within this state; to provide for the licensing, taxation, supervision and control of such exhibitions; to prescribe the penalties for the violation of the provisions hereof and to repeal all acts and parts of acts inconsistent with the provisions of this act.

The People of the State of Michigan enact:

431.101 Michigan state athletic board of control; membership.

Sec. 1. There is hereby created a board of control of athletics for the state of Michigan known as the "Michigan state athletic board of control"; it shall be composed of 6 members to be appointed by the governor, by and with the advice and consent of the senate, as hereinafter provided.

HISTORY: CL 1948, 431.101;—Am. 1957, p. 120, Act 100, Eff. Sep. 27.

CITED IN OTHER SECTIONS: The above section is cited in § 16.427.

431.102 Athletic board of control; members, appointment, terms; commissioner; quorum.

Sec. 2. Within 30 days after this act shall take effect the governor shall appoint, by and with the advice and consent of the senate, a state athletic commissioner, hereinafter called the commissioner, and 5 other persons on said board as advisory members thereof: Provided, however, That 1 of the members appointed shall reside in the upper peninsula. The commissioner shall be chairman and executive officer of the board. He shall be appointed for a term of 4 years. Thereafter all appointments thereto by the governor shall be for a term of 4 years, except to fill vacancies which shall be for the unexpired term thereof. Each appointee, before receiving his certificate of office, shall file in writing the constitutional oath of office. The majority of the members of the board shall constitute a quorum to do business, and the concurrence of a majority of such quorum shall be necessary to render a determination official.

HISTORY: CL 1948, 431.102;—Am. 1957, p. 120, Act 100, Eff. Sep. 27.

431.103 Athletic board of control; members, qualifications, removal.

Sec. 3. The members of the board shall be citizens of the United States and of the state of Michigan. No person interested in any way, financially or otherwise, in any club, organization or corporation, the main object of which is the holding or giving of boxing, sparring or wrestling exhibitions shall be eligible to appointment on such board. Members of the board may be removed by the governor at will without any cause assigned therefor.

HISTORY: CL 1948, 431.103.

431.104 Athletic board of control; commissioner, salary; expenses of members.

Sec. 4. The commissioner shall receive such salary as the legislature shall appropriate. Each other member of the board shall serve without compensation except that he shall receive his actual and necessary expenses incurred in the discharge of his official duties.

HISTORY: CL 1948, 431.104.

431.105 Athletic board of control; offices; meetings; seal; rules and regulations.

Sec. 5. The board shall maintain a general office for the transaction of its business at such place as it may designate and may hold its meetings at any place required by the convenience of the parties. It shall have the power to adopt an official seal and to make rules, regulations and provisions for the administration of its office and the duties incident thereto. It may thereafter amend or abrogate such rules, regulations and provisions.

HISTORY: CL 1948, 431.105.

431.106 Athletic board of control; secretary, salary, duties; inspectors and employees.

Sec. 6. The board may appoint, and at pleasure remove, a secretary who shall be paid a salary as shall be appropriated by the legislature. The duties of such secretary shall be to keep a full and true record of its proceedings, preserve at its general office all its books, documents and papers, prepare for service such notices and other papers as may be required of him by said board, and perform such other duties as the board may prescribe. It may employ such inspectors and employees as may actually be necessary in the performance of its duties and fix their compensation within the amount appropriated therefor by the legislature.

HISTORY: CL 1948, 431.106.

431.107 Athletic board of control; expenses, payment.

Sec. 7. The necessary expenses of the board in the performance of its duties, the salaries of the commissioner, secretary, and the compensation of the employees of the board shall be paid out of the state treasury on the warrant of the auditor general upon the certificate of the commissioner from the moneys appropriated to be used therefor.

HISTORY: CL 1948, 431.107.

431.108 Athletic board of control; subpoena of witnesses; refusal to testify, false swearing, penalty; jurisdiction of circuit court.

Sec. 8. The commissioner shall have the authority to issue under his hand and the seal of the board, subpoenas for the attendance of witnesses to the same effect as if they were issued in an action in the circuit court, and any member of the board or its authorized agent shall have the authority to administer oaths and affirmations and the board, the commissioner or its attorneys may examine witnesses in all matters pertaining to the administration of the affairs of the board; disobedience to such subpoenas, refusal to testify and false swearing before such board or the commissioner shall be attended with the same consequences and subject the offending party to the same prosecution and penalty as if such disobedience, refusal to testify or false swearing occurred in an action in the circuit court. The circuit court of the proper county is hereby vested with jurisdiction to hear and determine such prosecution against such offending party with such procedure and power to punish the offending party as though the offense occurred in an action in that court.

HISTORY: CL 1948, 431.108.

431.109 Athletic board of control; annual report to legislature.

Sec. 9. The board shall annually make to the legislature a full report of its proceedings for the year ending with the first day of the preceding July, and may submit with such report such recommendations pertaining to its affairs as it deems advisable.

HISTORY: CL 1948, 431.109.

431.110 Boxing and wrestling matches; legalization; jurisdiction of board; exemption of certain amateur matches.

Sec. 10. Boxing, sparring and wrestling matches or exhibitions for prizes or purses, or where an admission fee is charged or received, may be held within the state of Michigan, except on Sunday, subject to the direction, management and control of the Michigan state athletic board of control, which is hereby vested with the sole jurisdiction over all boxing, sparring and wrestling matches and exhibitions to be conducted in this state: Provided, That the provisions of this act shall not apply in any way to amateur boxing, sparring or wrestling contests, matches or exhibitions or any combination thereof, conducted by or participated in exclusively by any department or agency of the United States government or by any school, college or university or by any association or organization composed exclusively of such schools, colleges or universities when each contestant in any such contest, match or exhibition is a bona fide amateur. However, the term "school, college, university" does not include a school or other institution for the principal purpose of furnishing instruction in boxing, wrestling, or other athletics.

HISTORY: CL 1948, 431.110.

431.111 Boxing and wrestling matches; license or permit required; exception.

Sec. 11. No boxing, sparring or wrestling match or exhibition, except as herein provided, shall be held or conducted within this state, except under a license and permit issued by the Michigan state athletic board of control, in accordance with the provisions of this act, and the rules and regulations adopted in pursuance hereof: Provided, That, notwithstanding any provision of this act to the contrary, the board may issue, without the payment of any fee, a license and permit to hold either boxing or wrestling matches under the sponsorship of civic organizations or veterans' groups when held for charitable purposes, in such cases in which a 10 per cent tax is paid to the state on all tickets sold.

HISTORY: CL 1948, 431.111;—Am. 1953, p. 60, Act 65, Imd. Eff. May 12.

431.112 Boxing and wrestling matches; annual license to promoters; permits for matches.

Sec. 12. The board may in its discretion issue under the name and seal of the Michigan state athletic board of control an annual license for promoting such boxing, sparring or wrestling matches or exhibitions to any person, club, corporation or association. In addition to the license herein required every person, club, corporation or association before conducting any particular boxing, sparring or wrestling match or exhibition where 1 or more contests are to be held shall obtain a written permit therefor from the Michigan state athletic board of control; such permit so issued shall authorize 1 such boxing, sparring or wrestling match or exhibition, which may consist of such contests as the commissioner shall previously approve.

HISTORY: CL 1948, 431.112.

431.113 Boxing and wrestling matches; license required of boxers, wrestlers and others participating; application.

Sec. 13. All promoters, physicians, referees, judges, match-makers, timekeepers, announcers, professional boxers, professional wrestlers and their managers, trainers, seconds and booking agents shall first be required to obtain a license from the board be-

fore participating either directly or indirectly in any boxing, sparring or wrestling match or exhibition as above permitted; and no individual, corporation or association shall profit directly or indirectly from any such boxing or wrestling exhibition or participate directly or indirectly in the same or in the receipts therefrom, unless they shall first be licensed by the board in advance thereof under the classifications designated herein. Every application for a license shall be in writing, shall be verified by the applicant and shall set forth such facts and conform to such rules as the commission may require.

HISTORY: CL 1948, 431.113.

431.114 Promoter's license; fee schedule.

Sec. 14. Each applicant for a promoter's license shall before a license is issued by the board pay to it an annual license fee as follows:

\$25.00 in townships, villages and cities now or hereafter having a population less than 2,000;

\$50.00 with a population of not less than 2,000 and not more than 5,000;

\$75.00 with a population of not less than 5,000 and not more than 10,000;

\$100.00 with a population of not less than 10,000 and not more than 15,000;

\$125.00 with a population of not less than 15,000 and not more than 20,000;

\$150.00 with a population of not less than 20,000 and not more than 30,000;

\$175.00 with a population of not less than 30,000 and not more than 40,000;

\$200.00 with a population of not less than 40,000 and not more than 50,000;

\$225.00 with a population of not less than 50,000 and not more than 60,000;

\$250.00 with a population of not less than 60,000 and not more than 75,000;

and \$300.00 for all cities with a population of not less than 75,000 and not more than 300,000; the number of inhabitants to be determined by the last federal decennial census or by any federal decennial census hereafter taken.

Each other applicant for a license shall before the license is issued by the board pay to it the following fee: physicians, \$1.00; referees, \$25.00; timekeepers, \$1.00; announcers, \$1.00; managers, \$15.00; trainers, \$2.00; seconds, \$2.00; booking agents, \$25.00; judges, \$10.00; match-makers, \$25.00; professional boxers and professional wrestlers, \$3.00. In counties of a population of 300,000 persons or more, or which may hereafter have a population of 300,000 persons or more, each applicant for a promoter's license shall before a license is issued by the board pay to it an annual license fee as follows: where such promoter is holding bouts in a place where the seating capacity is not more than 2,500 persons—\$100.00; where the seating capacity is more than 2,500 and not more than 5,000—\$250.00; where the seating capacity is more than 5,000 and not more than 10,000—\$500.00; where the seating capacity is more than 10,000 and not more than 20,000—\$750.00; where the seating capacity is more than 20,000—\$1,000.00.

Each other applicant for a license shall before the license is issued by the board pay to it the following fee: physicians, \$1.00; referees, \$25.00; timekeepers, \$1.00; announcers, \$1.00; managers, \$15.00; trainers, \$2.00; seconds, \$2.00; booking agents, \$25.00; judges, \$10.00; match-makers, \$25.00; professional boxers and professional wrestlers, \$3.00.

HISTORY: Am. 1945, p. 16, Act 19, Eff. Sept. 6;—CL 1948, 431.114.

431.114a Boxing contests; insurance of contestants, amount.

Sec. 14a. The promoter or promoters of any professional boxing contest or contests shall insure each contestant participating in such boxing contest for not less than \$1,000.00 for medical and hospital expenses to be paid to the contestant to cover injuries

sustained in any such contest, and for not less than \$5,000.00 to be paid in accordance with the statutes of descent and distribution of personal property in such case made and provided to persons thereunder entitled, in the event the contestant should die as a result of injuries received in a boxing contest.

HISTORY: Add. 1952, p. 160, Act 138, Eff. Sep. 18.

431.115 Boxing, sparring or wrestling exhibitions; report of receipts; tax, payment, bond; qualifications of promoters.

Sec. 15. Every person, club, corporation or association which holds or exercises any of the privileges of a promoter conferred by this act shall within 24 hours after the termination of every contest, furnish to the board a written report, duly verified, showing the number of tickets sold for such contest and the amount of the gross proceeds thereof, and such other matters as the board may prescribe and shall within the same time pay to the board a tax of 10% of its gross receipts from the sale of tickets and 5% of its gross receipts from whatever other source derived, except from the sale of food, refreshments and programs, and receipts from television broadcast rights when the television broadcast is blacked out in this state, to such boxing or sparring match, wrestling contest or exhibition, except that in all boxing or sparring matches involving a national or international championship in any of the several weights as provided in section 19, there shall be paid a tax of 5% of the gross receipts from whatever source derived, except from the sale of food, refreshments and programs, to such boxing or sparring match instead of the 10% as hereinbefore provided, which tax shall be turned over to the state treasurer and by him credited to the general fund of the state. Before any promoter's license shall be granted to any person, club, corporation or association to conduct, hold or give any boxing or sparring match, wrestling exhibitions or contest, such applicant therefor shall execute and file with the board a bond in the sum of \$2,000.00, the form of said bond and the sufficiency of the sureties thereon to be approved by the board, said bond to be conditioned for the payment of the tax herein invoked and to be renewed annually thereafter: Provided, however, That in a case of promoters holding bouts in any place where the seating capacity is more than 5,500 and less than 20,000 such bonds shall be in the sum of \$5,000.00: And provided further, That where the seating capacity is more than 20,000 such bonds shall be in the sum of \$25,000.00. Upon approval of such bond, the board shall issue a certificate of approval, which shall be filed in the office of the board with the application for such license. No license shall be issued until such certificate shall be filed. No promoter's license shall be issued to any person or persons, who are not citizens of the United States, and who have not been legal residents of the state of Michigan for at least 24 months immediately prior to the date of application.

HISTORY: CL 1948, 431.115;—Am. 1952, p. 315, Act 204, Imd. Eff. Apr. 29;—Am. 1954, p. 350, Act 148, Imd. Eff. Apr. 23;—Am. 1957, p. 117, Act 96, Imd. Eff. May 24.

431.116 Boxing, sparring or wrestling matches; failure to file report of receipts or report unsatisfactory; authority of board to investigate; forfeiture of license; penalty.

Sec. 16. Whenever any person, club, corporation or association shall fail to make a report of any contest at the time prescribed by this act, or whenever such report is unsatisfactory to the board, it may examine or cause to be examined the books and records of such person, club, corporation or association and it may subpoena and examine under oath the officers thereof and other persons as witnesses for the purpose of determining the total amount of its gross receipts for any contest, and the amount of the tax due, pursuant to the provisions of this act, which tax they may, upon, and as a result of such examination, fix and determine. In case of default of the payment of any tax as ascertained to be due, together with the expenses incurred in making such examination, for a period of 20 days after notice to such delinquent person, club, association or

corporation of the amount at which the same may be fixed by the board, the license of such delinquent person, club, association or corporation shall, ipso facto, be forfeited and he or they shall thereby be disqualified from receiving any new license or renewal of license; and shall in addition forfeit to the people of the state of Michigan the sum of \$500.00, which may be recovered by the attorney general in the name of the people of the state of Michigan in the same manner as other penalties are by law recovered.

HISTORY: CL 1948, 431.116.

431.117 Amateur boxing, sparring or wrestling matches; license fees, deposit and disbursement of proceeds.

Sec. 17. A license fee of \$50.00 but no tax shall be required under this act for contests, exhibitions or tournaments held or given by organizations affiliated with the amateur athletic union of the United States and such non-profit organizations as shall be approved by the state athletic board of control. All moneys derived from fees, fines and taxes and collected under this act and all such moneys heretofore collected and remaining in the state treasury at the time this act takes effect shall be paid into or remain in the state treasury to the credit of the board hereby created to be disbursed as appropriated by the legislature for the use of said board.

HISTORY: CL 1948, 431.117.

431.118 Boxing matches; buildings used, health and fire requirements; compliance with statutes and ordinances.

Sec. 18. All buildings or structures used, or intended to be used for contests, under the purposes of this act, shall be properly ventilated and provided with fire exits and fire escapes, if there need be, and in all manner conform to the laws, ordinances and regulations pertaining to buildings in the city, town or village where situated: Provided, That where a part or portion of a building or a structure is used for the purposes set forth in this act, this section shall apply to it in the same manner.

HISTORY: CL 1948, 431.118.

431.119 Boxing matches; number of rounds; championship matches; physical examination.

Sec. 19. No boxing or sparring match or exhibition shall be of more than 10 rounds in length: Provided, however, That the commissioner may, with the concurrence of at least 2 additional members of the board, issue a permit for a contest not to exceed 20 rounds, whenever such contest shall involve a national or international championship in any of the several weights; and the contestants shall wear during such contests gloves weighing at least 6 ounces each; rounds to be no longer than 3 minutes, with not less than 1 minute rest between rounds. The contestants in all boxing or sparring matches or wrestling contests or exhibitions shall be certified to be in proper physical condition by 1 of the board's licensed physicians before participating in such boxing or sparring contest or wrestling match or exhibition.

HISTORY: CL 1948, 431.119.

431.120 Boxing or wrestling matches; presence of physician, examination, report, termination.

Sec. 20. Every promoter, at his own expense, shall have in attendance at every boxing, sparring or wrestling match or exhibition, a physician licensed by the board, who shall observe the physical condition of the boxers and wrestlers, and advise the referee or judges with regard thereto. The physician shall examine all boxers and wrestlers within 2 hours prior to their entering the ring. Every promoter shall file with the board the physician's report of physical examination of the contestants not later than 24 hours after termination of the contest. Where, in the opinion of the attending physician, the health or safety of any boxer or wrestler requires that the match or exhibition

in which he is participating be terminated, he shall notify the referee. The referee shall thereupon terminate the match or exhibition.

HISTORY: CL 1948, 431.120;—Am. 1963, p. 190, Act 138, Imd. Eff. May 10.

431.120a Boxing or wrestling matches; loss of consciousness of participant, examination.

Sec. 20a. When any boxer or wrestler shall have lost consciousness during or as a result of any match or exhibition in which he participates, he shall not again be eligible to participate in any match or exhibition in this state unless he shall be examined by a duly licensed physician appointed by the commission and unless the physician shall certify his fitness to participate. The boxer or wrestler shall pay the cost of the examination.

HISTORY: Add. 1963, p. 190, Act 138, Imd. Eff. May 10.

431.121 Fake boxing, sparring, or wrestling exhibition; violation of rules and regulations of board, revocation of license, penalty.

Sec. 21. Any licensee hereunder who shall be found guilty of participating or aiding and abetting in, any sham or fake boxing or sparring match or wrestling exhibition or contest, shall be penalized, and any licensee hereunder who shall be found guilty of violating any provision of this act, or the rules and regulations of the board prescribed pursuant to this act, may be penalized by the commissioner by revocation or suspension of their license for such period as in his discretion he may determine and in addition thereto he may impose upon such guilty licensee a fine of not to exceed \$5,000.00, which if not paid within 20 days shall be collected by the attorney general in the name of the people of the state of Michigan by an action of assumpsit in any of the circuit courts of this state.

HISTORY: CL 1948, 431.121;—Am. 1958, p. 41, Act 39, Eff. Sep. 18.

431.122 Athletic board of control; rules and regulations.

Sec. 22. The board shall prescribe such rules and regulations not inconsistent herewith to provide such further safeguards and conditions as shall insure for the public fair sportsmanlike and scientific contests.

HISTORY: CL 1948, 431.122.

431.123 Rulings of commissioner final until meeting of board; special meeting, expenses.

Sec. 23. Any action, determination or ruling in writing upon matters not specifically covered in the provisions of this act, made by the commissioner, shall be deemed conclusive and final until the next regular meeting of the state athletic board of control: Provided, That any person or persons, club, corporation or association holding a license shall have a right to request in writing a special meeting of the entire board for a review of any ruling upon matters not specifically covered by this act made by the commissioner: Provided, That the total expense of such meeting shall be borne by the person, club, corporation or association asking for such special meeting; and a certified check in the sum of \$150.00 shall accompany such written request.

HISTORY: CL 1948, 431.123.

431.124 Smoking prohibited; responsibility of promoter; grounds for cancellation of license.

Sec. 24. No smoking will be allowed in the room, hall, place or auditorium during any boxing or sparring or wrestling exhibition or contest, or where it is to take place, during the day of the contest or exhibition. The holders of the license under which boxing or sparring matches or wrestling contests or exhibitions are held, shall be responsible for the enforcement of this provision. Each failure or violation of this provi-

sion will be deemed prima facie evidence and sufficient cause for cancellation of the license of such holder.

HISTORY: CL 1948, 431.124.

431.125 Gambling prohibited; grounds for cancellation of license.

Sec. 25. There shall be no gambling upon the outcome of any contest or any portion thereof, or duration thereof and failure on the part of any person or persons to enforce the provisions of this act shall be prima facie evidence and sufficient cause for cancellation of the license of such holder.

HISTORY: CL 1948, 431.125.

431.126 Violations of act; penalty.

Sec. 26. Any person or persons who violate any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$10.00 nor more than \$100.00 or imprisonment in the county jail for a period of 90 days, or by both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1948, 431.126.

Sec. 27. (This was a severing clause section.)

HISTORY: Rep. 1945, p. 415, Act 267, Imd. Eff. May 25.

Sec. 28. (This was a repeal section.)

HISTORY: Rep. 1945, p. 409, Act 267, Imd. Eff. May 25.

ACT REPEALED: Act 328, 1919, CL 1929, 8839-8859.

R.S. 1846, Ch. 49.

MUNICIPAL POLICE REGULATIONS.

431.201 Theatrical exhibitions and public shows; licensing, regulations.

Sec. 1. The township board of any township, or the corporate board of any village, may at any meeting held for that purpose, license theatrical exhibitions, public shows, and such other exhibitions as they deem proper, to which admission is obtained on payment of money, upon such terms and conditions as they shall think reasonable, and may regulate the same in such manner as they shall think necessary for the preservation of order and decorum, and to prevent any danger to the public peace; but no such license shall be in force for a longer time than the officers granting the same shall have been elected to office.

HISTORY: CL 1857, 1637;—CL 1871, 2057;—How. 2087;—CL 1897, 3480;—CL 1915, 3474;—CL 1929, 8868;—CL 1948, 431.201.

431.202 Theatrical exhibitions and public shows; operating without license, violation deemed separate offense, penalty.

Sec. 2. Any person who shall set up or promote any such exhibition or show, or shall publish or advertise the same, or otherwise aid or assist therein, without a license first obtained, as provided in the preceding section, or contrary to the terms and conditions of such license, or while the same is suspended, shall be deemed guilty of a misdemeanor. Each act committed in violation of the provisions hereof shall be deemed a separate offense and shall be punished accordingly.

HISTORY: CL 1857, 1638;—CL 1871, 2058;—How. 2088;—CL 1897, 3481;—CL 1915, 3475;—CL 1929, 8869;—CL 1948, 431.202;—Am. 1953, p. 25, Act 27, Eff. Oct. 2.

Act 90, 1951, p. 118; Imd. Eff. May 31.

AN ACT to regulate the conducting of racing meets in the state of Michigan; to provide for the possession, control and disposition of funds held by licensees for the payment of outstanding winning tickets not claimed or demanded by the lawful owners of such funds; and to prescribe penalties for violations of the provisions of this act.

The People of the State of Michigan enact:

431.251 Racing meets; unclaimed funds held by racing track licensees; past winners.

Sec. 1. All funds held by any licensee under Act No. 27 of the Public Acts of 1959, being sections 431.31 to 431.56 of the Compiled Laws of 1948, for the payment of outstanding winning tickets for any race meeting held prior to December 31, 1958, which funds have not been claimed by the lawful owners thereof prior to September 1, 1959, shall be paid by the licensee to the racing commissioner by certified check or cashier's check together with the original records or certified copies of all records of the licensee pertaining to the outstanding tickets on or before September 10, 1959.

HISTORY: New 1951, p. 118, Act 90, Imd. Eff. May 31;—Am. 1959, p. 134, Act 130, Imd. Eff. Jul. 8.

431.252 Unclaimed funds held by racing track licensees; future winners.

Sec. 2. All funds hereafter held by any licensee for the payment of outstanding winning tickets for any race meeting held subsequent to January 2, 1959, which funds have not been claimed by the lawful owners thereof prior to September 1 in the calendar year immediately following the close of the race meeting, shall be paid by the licensee to the racing commissioner by certified check or cashier's check together with the original records or certified copies of all records of the licensee pertaining to the outstanding tickets on or before September 10 in the calendar year immediately following the close of the race meeting.

HISTORY: New 1951, p. 118, Act 90, Imd. Eff. May 31;—Am. 1959, p. 134, Act 130, Imd. Eff. Jul. 8.

431.253 Cashed winning tickets; delivery to racing commissioner.

Sec. 3. Every licensee who pays any winning ticket subsequent to the last day of a race meeting shall preserve the cashed winning ticket and shall deliver it to the racing commissioner in addition to the records provided for in section 2 hereof.

HISTORY: New 1951, p. 118, Act 90, Imd. Eff. May 31;—Am. 1959, p. 134, Act 130, Imd. Eff. Jul. 8.

431.254 Delivery of funds and reports relieves licensee from liability; exception.

Sec. 4. The licensee upon taking proper receipt from the racing commissioner for funds and records delivered to said commissioner under the provisions of this act shall be released and discharged for all liability or accountability to the owner of such funds, as well as the requirements of preparing and filing of any report concerning such property to any state, county or municipal board, commission or agency, except such as shall have been required or accrued prior to the date of such required delivery of said funds and report to the said commissioner: Provided, That said delivery of such funds and reports to the commissioner by any licensee shall not release or discharge said licensee from the powers granted to the commissioner by section 5 of this act.

HISTORY: New 1951, p. 118, Act 90, Imd. Eff. May 31.

431.255 Funds and records; delivery to state board of escheats.

Sec. 5. The racing commissioner upon the receipt of the funds and records of outstanding winning tickets as hereinbefore provided shall deliver said funds and records to the state board of escheats, taking proper receipt therefor, and said commissioner shall thereupon be released and discharged from all liability or accountability to any person on account of such funds as well as released from any requirement to prepare or file any report concerning such property to any state, county or municipal board, commission or agency, except as above provided.

HISTORY: New 1951, p. 118, Act 90, Imd. Eff. May 31.

431.256 State board of escheats; receipt of funds and records, disposition.

Sec. 6. The state board of escheats upon its receipt of the funds and records of outstanding winning tickets as hereinbefore provided shall conserve and hold the same

and expedite the disposition of said funds in accordance with the provisions of Act No. 329 of the Public Acts of 1947, being sections 567.11 to 567.76, inclusive, of the Compiled Laws of 1948, and in accordance with the provisions of Act No. 63 of the Public Acts of 1949, being sections 567.201 to 567.206, inclusive, of the Compiled Laws of 1948, and any amendments to each of said acts.

HISTORY: New 1951, p. 119, Act 90, Imd. Eff. May 31.

431.257 Violation of act; penalty.

Sec. 7. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor, punishable by a fine of not less than \$1,000.00 nor more than \$2,000.00, or imprisonment in the county jail for not less than 1 year or in a state prison for not more than 2 years, or both such fine and imprisonment in the discretion of the court.

HISTORY: New 1951, p. 119, Act 90, Eff. May 31.

CHAPTER 433. ANIMALS, BIRDS AND BOUNTIES

ANIMALS RUNNING AT LARGE

Act 185 of 1867

- 433.1 Livestock; running at large in highway unlawful; powers reserved to township.
- 433.2 Inapplicability of act.
- 433.3 Seizure of animals running at large or trespassing.
- 433.4 Seizure of animals running at large or trespassing; duty of seisor; sale procedure; disposition of proceeds; redemption.
- 433.5 Seizure of animals running at large or trespassing; owner, regaining possession before sale.
- 433.6 Seizure of animals running at large or trespassing; regaining possession when running at large, caused by another's willful act; penalty.

Act 248 of 1879

- 433.51 Animals running at large in certain cities and villages; duties of certain officers; Ludington excepted.
- 433.52 Pounds; pound masters, appointments, duties; right to seize and impound animals.
- 433.53 Keeping after seizure; sale procedure; duty of city or village attorney; costs, fees, damages; surplus, disposition.
- 433.54 Recovery by owner; procedure; fees, expenses, compensation.
- 433.55 Person wilfully causing animal to run at large; liability to owner.
- 433.56 Appeal; limitation; bond, conditions; sale cancelled, animal returned to owner.
- 433.57 Animals impounded; feeding; record, contents, inspection.
- 433.58 Replevin.
- 433.61 Provisions governing.
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BULLS, STALLIONS, BOARS AND RAMS

Act 71 of 1867

- 433.81 Allowing male animals to run at large; forfeiture, time of prosecution.
- 433.82 Allowing male animals to run at large; civil liability.

DISTRAINING AND REPLEVING BEASTS

Ch. 125, R.S. 1846

- 433.101 Beasts distrained; impounding.
- 433.102 Fees; distraining and impounding.
- 433.103 Fees; payment prerequisite to delivery of beast.
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- 433.109 Notice of beasts distrained; posting in certain cases.

- 433.110 Notice of beasts distrained; publication in newspaper.
- 433.111 Determination of damage; application by owner of animals.
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POUNDS AND IMPOUNDING CATTLE

Ch. 18, R.S. 1846

- 433.122 Pounds; maintenance by township.
- 433.123 Pounds; injury, penalty.

DAMAGES BY BEASTS

Act 109 of 1847

- 433.151 Damages upon lands by beasts; barred unless enclosed.

COYOTES AND WOLVES

Act 52 of 1937

- 433.201 Control of coyotes and wolves; special powers of director of conservation; authority of state trappers.
- 433.202 Coyote and wolf trappers; duties.
- 433.203, 433.204 Repealed.
- 433.205 Coyotes; bounties, rules.
- 433.206 Rearing or importation of coyotes or wolves; bounty by fraud; penalties.
- 433.207 Repealed.

RATS

Act 50 of 1915

- 433.251 Rat bounty.
- 433.252 Rat bounty; applicant, duty; certificate; destruction of heads.
- 433.253 Payment of certificate; nonliability of county.

ENGLISH SPARROWS

Act 4 of 1885

- 433.271 English sparrows; lawful to kill.
- 433.281 English sparrow bounty; power of board of supervisors.
- 433.282 English sparrow bounty; applicant, duty; certificate; destruction of sparrows.
- 433.283 Certificate; presentation, payment.
- 433.284 Violations of act; misdemeanor, penalty.

STARLINGS AND CROWS

Act 152 of 1941

- 433.301 Starlings and crows; bounty for killing; resolution of board of supervisors.
- 433.302 Starlings and crows; delivery to local clerk; certificate.
- 433.303 Certificate; presentation to county clerk; warrant, payment.
- 433.304 Violations of act; penalty.

Act 185, 1867, p. 251; Eff. Jun. 27.

AN ACT to prevent animals from running at large in the public highways.

The People of the State of Michigan enact:

433.1 Livestock; running at large in highway unlawful; powers reserved to township.

Sec. 1. That from and after the year 1867, it shall not be lawful for any cattle, horses, sheep or swine to run at large in any public highway of this state: Provided, That this act shall be inoperative only in those counties or parts of counties in which it shall be so determined by resolution passed by the board of supervisors of such county: Provided further, That the powers granted to boards of supervisors in this section, shall not abridge the powers reserved to the people of a township, in section 4 of chapter 12, of Compiled Laws of 1871.

HISTORY: CL 1871, 2027;—Am. 1881, p. 10, Act 13, Eff. Sept. 10;—How. 2106;—CL 1897, 5606;—CL 1915, 7285;—CL 1929, 9037;—CL 1948, 433.1.

NOTE: Sec. 4 of Ch. 12 of CL 1871, above referred to, is Compilers' § 41.4.

STRAY BEASTS: See Compilers' § 434.3 et seq.

433.2 Inapplicability of act.

Sec. 2. In case the board of supervisors in any county shall pass a resolution allowing any of the classes of animals named in section 1 of this bill to run at large in the public highway, then in such county, after the year 1867, the following sections of this act shall be null and void, but otherwise they shall be in full force.

HISTORY: CL 1871, 2028;—Am. 1881, p. 10, Act 13, Eff. Sept. 10;—How. 2107;—CL 1897, 5607;—CL 1915, 7286;—CL 1929, 9038;—CL 1948, 433.2.

433.3 Seizure of animals running at large or trespassing.

Sec. 3. It shall be the duty of the overseer of highways to seize and take into his custody and possession any animal forbidden to run at large, which may be running at large in any highway of which he is overseer contrary to the provisions of the foregoing section, and it shall be lawful for any person to seize and take into his custody and possession any animal which may be in any public highway, and opposite the land owned or occupied by him, contrary to the provisions of the foregoing section; and it shall be lawful for any person to take into his custody and possession any animal which may be trespassing upon premises owned or occupied by him.

HISTORY: CL 1871, 2029;—Am. 1877, p. 199, Act 184, Eff. Aug. 21;—How. 2108;—CL 1897, 5608;—CL 1915, 7287;—CL 1929, 9039;—CL 1948, 433.3.

433.4 Seizure of animals running at large or trespassing; duty of seizer; sale procedure; disposition of proceeds; redemption.

Sec. 4. Whenever any such person shall seize and take into custody or possession any animal under the authority of the next preceding section, it shall be the duty of such person to forthwith cause a description of said animal or animals to be entered upon a book to be kept by the clerk of the town, city or village in which such animals were taken up and shall thereupon give immediate notice to a justice of the peace, or a commissioner of highways of the town, city, or village in which such seizure and possession shall have been taken, and such justice or commissioner shall thereupon give notice by affixing the same in 3 public and conspicuous places in said town, city, or village, 1 of which shall be the district school-house nearest the residence of such justice or commissioner, that such animal or animals will be sold at public auction, at some convenient place (to be specified in such notice) in said town, city, or village, not less than 15 nor more than 30 days from the time of the affixing of such notice. The same justice or commissioner shall proceed to sell the said animals for cash, and out of the proceeds thereof shall, in the first place, retain the following fees and charges for

his services in giving said notice and making such sale, viz.: for the first horse sold, 3 dollars, and for every additional horse 1/2 dollar; for each cow, calf, or other cattle, not exceeding 5 in number, 1 dollar; and for every additional cow, calf, or other cattle, 25 cents; and for every sheep or swine, not exceeding 5 in number, 1/2 dollar; and for every additional sheep or swine, 10 cents; together with a reasonable compensation, to be estimated by such justice or commissioner, to be paid the person making the seizure for the care and keeping of said animal or animals, from the time of the seizure to the sale thereof. If there shall be any surplus money arising from said sale, the said justice or commissioner shall retain the same in his hands, and pay the same to the owner or owners of said animal or animals, after a reasonable demand therefor, and satisfactory proof of such ownership: Provided, Such owner or owners shall appear and claim such surplus moneys within 1 year after sale. And if the owner or owners of such animal or animals shall not appear and demand such surplus moneys within 1 year after such sale has been made, he shall be forever precluded from recovering any part of such moneys; and the same shall be paid to the treasurer of the town for the use of the town, and his receipt therefor shall be a legal discharge of said justice or commissioner: Provided, That any animal sold in pursuance of this act may be redeemed at any time within 6 months following such sale, by paying the expenses of such custody and sale, and a reasonable compensation for keeping the same.

HISTORY: CL 1871, 2030;—Am. 1875, p. 102, Act 66, Imd. Eff. Apr. 2;—How. 2109;—CL 1897, 5609;—CL 1915, 7288;—CL 1929, 9040;—CL 1948, 433.4.

433.5 Seizure of animals running at large or trespassing; owner, regaining possession before sale.

Sec. 5. Any owner of any animal which shall have been seized under and pursuant to the foregoing provisions, may, at any time before the sale thereof, demand and shall be entitled to the possession of such animal, upon the payment by him of the several sums hereinbefore required to be paid to the said justice or commissioner, and to the person by whom the seizure aforesaid shall have been made, together with a reasonable compensation to the person making such seizure, for the care and keeping of such animal, to be estimated and fixed by such justice or commissioner, and upon making to such justice or commissioner satisfactory proof of ownership. And if such owner shall make such demand and proof at least 3 days before the time appointed for such sale, he shall be entitled to the custody and possession of such animal upon paying 1/2 of the several sums above mentioned, together with the whole amount of compensation awarded by the said justice or commissioner.

HISTORY: CL 1871, 2031;—How. 2110;—CL 1897, 5610;—CL 1915, 7289;—CL 1929, 9041;—CL 1948, 433.5.

433.6 Seizure of animals running at large or trespassing; regaining possession when running at large, caused by another's willful act; penalty.

Sec. 6. In case the animal so seized under the foregoing provisions of this act shall have been so running at large or trespassing, by the willful act of any other person than the owner, to effect that object, such owner shall be entitled to the possession of such animal by making the demand therefor, and the proof, required in the next preceding section, and paying to the person making such a seizure the amount of compensation fixed by such justice or commissioner, for the care and keeping of such animal, and without paying any other charges; and the person committing such willful act shall be liable to a penalty of 20 dollars, to be recovered in an action at law at the suit of the owner of such animal, or the person making such seizure.

HISTORY: CL 1871, 2032;—How. 2111;—CL 1897, 5611;—CL 1915, 7290;—CL 1929, 9042;—CL 1948, 433.6.

Sec. 7. (This was a repeal section.)

HISTORY: CL 1871, 2033;—How. 2112;—CL 1915, 7291;—CL 1929, 9043;—Rep. 1945, p. 402, Act 287, Imd. Eff. May 25.

Sec. 8.

HISTORY: CL 1871, 2034;—How. 2113;—CL 1897, 5612;—CL 1915, 7292;—Am. 1923, p. 91, Act 66, Eff. Aug. 30;—CL 1929, 9044;—Rep. 1939, p. 334, Act 173, Eff. Sept. 29.

This section restricted application of act so as not to apply north of township 12 north unless ordered by the board of supervisors or township electors. The repeal of this section made act statewide.

Act 248, 1879, p. 251; Eff. Aug. 30.

AN ACT to prevent animals from running at large in certain cities and villages within this state.

The People of the State of Michigan enact:

433.51 Animals running at large in certain cities and villages; duties of certain officers; Ludington excepted.

Sec. 1. That it shall not be lawful for any cattle, horses, mules, sheep, swine, or goats to run at large in any public street, lane, alley, park, place, or highway, in any city or village within this state, having a population of 7,000 or more inhabitants; and it shall be the duty of every commissioner of highways, poundmaster, marshal, deputy marshal, policeman and constable of any such city or village, to seize and take into his possession as herein provided, and keep until disposed of according to law, any animal so found running at large, Provided The city of Ludington be exempt from the operations of this act.

HISTORY: How. 3069;—CL 1897, 5613;—CL 1915, 7293;—CL 1929, 9047;—CL 1948, 433.51.

433.52 Pounds; pound masters, appointments, duties; right to seize and impound animals.

Sec. 2. It is hereby made the duty of the common council or board of trustees of every such city or village to provide 1 or more suitable and convenient pound or pounds, and to appoint 1 or more pound-masters who shall have charge thereof, and such pound-master or other person having charge of such pound, shall receive and keep therein any animal mentioned in the first section of this act, that may have been or may be found running at large contrary to said section, upon the request of any person. And it shall be lawful for any person to seize and take into custody and retain till disposed of as required by law, any animal mentioned in said first section of this act, which may be trespassing upon premises owned or occupied by such person, or such animal may be driven to and kept in said pound as herein provided, and any inhabitant of any such city or village may take into custody till disposed of as required by law, any animal found running at large contrary to said first section of this act, if at the time there shall not be kept and maintained within such city or village, a suitable pound within a distance of not more than 2 miles from the place where such animal may be found, or if there shall not be a pound-master in charge thereof, who will receive and keep the same as herein provided.

HISTORY: How. 3069;—CL 1897, 5614;—CL 1915, 7294;—CL 1929, 9048;—CL 1948, 433.52.

POUNDS: In villages, see Compilers' § 67.3; in cities of fourth class, see Compilers' §§ 96.1, 96.2.

433.53 Keeping after seizure; sale procedure; duty of city or village attorney; costs, fees, damages; surplus, disposition.

Sec. 3. Whenever any such officer or person shall seize and take into his possession any animal under the preceding sections, such animal shall be received and kept in such pound, if there shall be one, and if not the same may be kept by any such officer or person in any other suitable place, and if such animal shall not be claimed, and the fees hereinafter provided for, paid within 2 days thereafter, said pound-master or other person in charge of said pound, if such animal shall have been received at such pound; and if not, then the person by whom such animal was seized or taken into custody shall make immediate complaint in writing, stating the name of the owner of such

animal, if known to him, and the facts, to the recorder or to any justice of the peace of any such city or village, and such recorder or justice shall thereupon have jurisdiction to hear and determine such matter and shall thereupon proceed in the same manner as in civil action, except as especially changed in this act, and shall forthwith issue a summons under his hand, directed to the owner if he shall have been named in said complaint, and stating the fact that such seizure has been made, and requiring the owner of such animal, or any party having an interest in the same, to show cause before such recorder or justice, at a time and place to be specified in such summons, why such animal should not be sold and the proceeds applied as directed by this act, and such time shall not be less than 6 nor more than 12 days from the issuing of such summons. The said summons may be served by any marshal, deputy marshal or constable of said city or village, or by any elector thereof authorized so to do by the said recorder or justice in writing thereon. Such service shall be made by delivering a copy thereof to the owner, if named in said summons and if he can be found in said city or village 6 days before the return day thereof, and if the owner shall not be named in said summons, or if he cannot be found then said summons shall be served by posting copies thereof in at least 3 public and conspicuous places in said city or village, at least 5 days before the return day thereof, and 1 of said places shall be in the office of the recorder or clerk of such city or village. At the time and place appointed for the return of said summons, the officer or person by whom such complaint was made, shall appear, and any party or persons owning or having an interest in said animal shall be allowed by said recorder or justice of the peace to appear in said proceeding, and on his filing with said recorder or justice, an answer under oath, subscribed by him or by his agent, denying any or all of the facts in said complaint, an issue shall be deemed joined in the said proceeding, and the subsequent proceedings shall be as in civil actions so far as they can be except as otherwise provided in this act, and it is hereby made the duty of the city or village attorney of all cities and villages included within this act, to appear and conduct all proceedings under this act on behalf of the person making such complaint. If no one shall appear to show cause and the said summons shall be returned duly served, or if the jury, or recorder or justice shall find, after a trial that no sufficient cause is shown why such sale should not be made, as directed by this act, then said recorder or justice shall issue his warrant under his hand, directed to any marshal, deputy marshal or constable of the said city or village, commanding him to sell the said animal at public auction for the best price he can obtain therefor, and make return thereof to the said recorder or justice at a time and place therein specified, not less than 10 nor more than 20 days thereafter. The said sale shall be on the like notice as on constable's sale on civil process, and the said sheriff, deputy sheriff or constable shall make return as required by the said warrant, and pay the proceeds of said sale to said recorder or justice. The said recorder or justice shall thereupon adjudge the costs of said proceedings, the same amounts being allowed as in civil actions, and in addition, he shall allow to the officer or person making such seizure, for every horse, mule or colt, 1 dollar; for every cow, calf or other cattle, each 50 cents, and for every goat, sheep, or swine, 25 cents, together with the actual damages sustained by such person by reason of the trespass or breaking of such animal into his premises, and compensation to such person or officer for the care and keeping of such animals from the time of the seizure thereof to the sale at the rate specified in the next section of this act, and the said recorder or justice shall be allowed the sum of 1 dollar for each animal so sold, and the marshal, deputy marshal or constable, the same fees as for service of a summons and execution in civil actions. If, after paying the sums aforesaid, there shall be any surplus of the proceeds of said sale, the said recorder or justice shall pay the same to the owner or person establishing before him, on the return of such summons, or at such other time as he shall appoint, the right to the same. If no person shall claim said

surplus within 1 year after such seizure, the said recorder or justice shall pay the same to the treasurer of such city or village for the benefit of the contingent fund. If such owner or person interested, shall not appear and demand such surplus within said year, he shall be forever precluded from recovering any part of such moneys, and the receipt of the treasurer of said city or village, given at any time after the expiration of said year, shall be a full discharge to said recorder or justice for the same.

HISTORY: How. 3070;—CL 1897, 5815;—CL 1915, 7295;—CL 1929, 9049;—CL 1948, 433.53.

SALE BY CONSTABLE: See (Jud. Act) Compilers' § 600.7233 et seq.

433.54 Recovery by owner; procedure; fees, expenses, compensation.

Sec. 4. The owner of any animal which shall have been seized or impounded under and pursuant to the foregoing provisions, may at any time before the making of the complaint hereinbefore provided for, demand and shall be entitled to the possession of such animal upon the payment to the pound-master or the person in charge of such pound, if such animal shall have been impounded, and if not, then upon payment to the person or officer who shall have seized or taken such animals into his possession, the fees provided for in the preceding sections for the seizure of such animal; and if such animal shall have been impounded, the farther fee of 50 cents for every horse, mule, colt, cow, calf, or other cattle, and 25 cents for every goat, sheep or swine, which said fee shall belong to such pound-master or person in charge of such pound, and the farther sum of 1 dollar per day as compensation for keeping every such horse, mule or colt, and 75 cents per day for every cow, calf or other cattle, and 50 cents per day for every goat, sheep or swine for each day since and including the day such animal was seized, impounded or taken into possession as aforesaid. At any time after the making of said complaint and before the sale of said animal, the owner thereof may make demand and claim for such animal before the recorder or justice, before whom said proceedings shall have been commenced; and upon making satisfactory proof of ownership of said animal before said recorder or justice, and upon paying to him the fees and compensation for keeping such animal hereinbefore in this section provided for, and other fees and expenses that shall have accrued up to the time of making such demand and proof, he shall be entitled to the custody and possession of such animal. And the said recorder or justice shall fix and determine the amount of the fees, expenses and compensation in accordance with the provisions of this act, and shall pay the same to the officer or person entitled thereto.

HISTORY: How. 3071;—CL 1897, 5816;—CL 1915, 7296;—CL 1929, 9050;—CL 1948, 433.54.

433.55 Person wilfully causing animal to run at large; liability to owner.

Sec. 5. In case the animal so seized under the foregoing provisions of this act shall have been so running at large by the willful act of any other person than the owner, such person shall be liable to the owner in a penalty not less than 25 dollars and not more than 100 dollars, which penalty may be recovered by such owner for his benefit, in an action on the case in any court of competent jurisdiction.

HISTORY: How. 3072;—CL 1897, 5817;—CL 1915, 7297;—CL 1929, 9051;—CL 1948, 433.55.

433.56 Appeal; limitation; bond, conditions; sale cancelled, animal returned to owner.

Sec. 6. An appeal may be taken by either party who shall have appeared and contested in said proceeding before such recorder or justice to the circuit court for the county, and all the laws relating to appeals from judgments of justices' courts and the jurisdiction, powers, and duties of circuit courts, to hear and determine such appeals, and the proceedings therein shall be applicable to appeals under this act, so far as the same can be applied and are consistent with this act. But such appeal can only be taken from the finding or determination that cause exists or does not exist for the sale aforesaid; and such appeal when made by the claimant shall not be effectual for any

purpose unless the bond required on appeals to the circuit court contains a clause that in case the finding or determination shall be affirmed, the claimant will pay all such sums as the court shall determine and adjudge for the costs, penalties and allowances, so as aforesaid authorized to be made. In case of appeal by a claimant as aforesaid, and after the approval by the recorder or justice of such bond, said recorder or justice shall forthwith direct the sale not to be had, and shall order the said animal to be delivered to the appellant, if it shall appear to him that said appellant is the owner, or is entitled to the possession thereof.

HISTORY: How. 3073;—CL 1897, 5618;—CL 1915, 7296;—CL 1929, 9052;—CL 1948, 433.56.

433.57 Animals impounded; feeding; record, contents, inspection.

Sec. 7. The pound-master or other person in charge of said pound shall purchase all necessary supplies for the sustenance of all animals impounded, and all animals impounded or seized under this act shall be supplied with suitable food and drink for their sustenance; and such pound-master or other person in charge of the pound, shall keep a record in a book kept for that purpose and which shall at all reasonable times be open for public inspection, of the time when each animal was received into such pound, and the time when discharged therefrom, and of the name of the person to whom the same was delivered, and also a record of all moneys paid to him.

HISTORY: How. 3074;—CL 1897, 5619;—CL 1915, 7299;—CL 1929, 9053;—CL 1948, 433.57.

433.58 Replevin.

Sec. 8. The provisions of this act shall not be construed to deprive the party claiming the ownership of said property from bringing his action in *replevee for the recovery of the same in case the same has been unlawfully seized.

HISTORY: How. 3075;—CL 1897, 5620;—CL 1915, 7300;—CL 1929, 9054;—CL 1948, 433.58.

*NOTE: It is evident the word "replevee" should be "replevin".

REPLEVIN: See Compilers' §§ 600.7371 et seq.

Secs. 9-10.

HISTORY: Add. 1881, p. 233, Act 196, Eff. Sept. 10;—How. 3076-3077;—CL 1897, 5621-5622;—CL 1915, 7301-7302;—CL 1929, 9055-9056;—Rep. 1931, p. 741, Act 328, Eff. Sept. 18.

These sections were penalty sections. For present law, see Compilers' § 750.70.

433.61 Provisions governing.

Sec. 11. The distraining and impounding of animals under this act shall be governed by chapter 214 of the Compiled Laws of 1871, for "distraining and replevying beasts," except as otherwise provided in this act.

HISTORY: Add. 1881, p. 233, Act 196, Eff. Sept. 10;—How. 3078;—CL 1897, 5623;—CL 1915, 7303;—CL 1929, 9057;—CL 1948, 433.61.

NOTE: Ch. 214 of CL 1871, above referred to, is Compilers' §§ 433.101 to 433.117. Compilers' repealed §§ 627.38 to 627.42 of the Jud. Act, has superseded part of Ch. 214 of CL 1871.

433.62 City attorney; duty.

Sec. 12. In all criminal matters under this act, it shall be the duty of the city attorney to appear before the magistrate entering [entertaining] the complaint and act as counsel on behalf of the people of this state, and in case of his absence, neglect, or refusal to so act on request of the magistrate, any attorney at law, on request of such magistrate, may act as such counsel for the people.

HISTORY: Add. 1881, p. 233, Act 196, Eff. Sept. 10;—How. 3079;—CL 1897, 5624;—CL 1915, 7304;—CL 1929, 9058;—CL 1948, 433.62.

Act 71, 1867, p. 98; Eff. Jun. 27.

AN ACT to prevent the running at large of bulls, stallions, boars and rams.

The People of the State of Michigan enact:

433.81 Allowing male animals to run at large; forfeiture, time of prosecution.

Sec. 1. That, if the owner of any bull, stallion, boar or ram shall allow the same to go at large out of his enclosure, he shall forfeit the sum of 5 dollars for such offense, to be recovered on complaint before any justice of the peace of the county in which such owner may live, and twice that amount on any subsequent conviction: Provided, That such complaint shall be prosecuted within 30 days next after such animal shall be found at large as aforesaid.

HISTORY: CL 1871, 2035;—How. 2114;—CL 1897, 5625;—CL 1915, 7305;—CL 1929, 9059;—CL 1948, 433.81.

433.82 Allowing male animals to run at large; civil liability.

Sec. 2. In addition to the penalty prescribed in the foregoing section, the owner of said bull, stallion, boar or ram thus found going at large, shall be liable to the owner of any cow, mare, sheep or swine, for any and all damages arising from the going at large of such animals as aforesaid, to be recovered on any suit brought before any court of competent jurisdiction.

HISTORY: CL 1871, 2036;—How. 2115;—CL 1897, 5626;—CL 1915, 7306;—CL 1929, 9060;—CL 1948, 433.82.

R.S. 1846, Ch. 125.

DISTRAINING AND REPLEVYING BEASTS.

433.101 Beasts distrained; impounding.

Sec. 1. When any beasts are taken up and distrained by any person, for going at large, contrary to law, or contrary to any by-law of a township, they shall be forthwith impounded in the township pound, and the keeper of such pound shall furnish them with suitable food and water, so long as they are detained in his custody.

HISTORY: CL 1857, 5046;—CL 1871, 6767;—How. 8355;—CL 1897, 10688;—CL 1915, 14779;—CL 1929, 9061;—CL 1948, 433.101.

433.102 Fees; distraining and impounding.

Sec. 2. The person so taking up and distraining the same, shall be entitled to 50 cents per head for all horses, mules, asses and neat cattle, and 10 cents per head for all sheep, goats and swine, so distrained by him; and the pound keeper shall be entitled to 4 cents per head for all the said animals so impounded.

HISTORY: CL 1857, 5047;—CL 1871, 6768;—How. 8356;—CL 1897, 10689;—CL 1915, 14780;—CL 1929, 9062;—CL 1948, 433.102.

433.103 Fees; payment prerequisite to delivery of beast.

Sec. 3. The pound keeper shall not deliver to the owner any beasts so impounded, until such owner shall pay him his fees and the expense of keeping such beasts, and also the fees due the person distraining said beasts, which last mentioned fees he shall pay to such person.

HISTORY: CL 1857, 5048;—CL 1871, 6769;—How. 8357;—CL 1897, 10690;—CL 1915, 14781;—CL 1929, 9063;—CL 1948, 433.103.

433.104 Recovery for damages caused by beasts.

Sec. 4. When any person is injured in his land, by sheep, swine, horses, asses, mules, goats or neat cattle, he may recover his damages in an action of trespass, or trespass on the case, against the owner of the beasts, or against the person having the care and control of such beasts, or by distraining the beasts doing the damage, and proceeding therewith as hereinafter directed; but if the beasts shall have been lawfully on the adjoining lands, and shall have escaped therefrom in consequence of the neglect of the person who has suffered the damage, to maintain his part of the division fences, the owner or person having the control of the beasts shall not be liable for such damage.

HISTORY: CL 1857, 5049;—CL 1871, 6770;—How. 8358;—CL 1897, 10691;—CL 1915, 14782;—CL 1929, 9064;—CL 1948, 433.104.

433.105 Impounding beasts doing damage.

Sec. 5. The beast so distrained for doing damage, shall be impounded in the township pound, if there be one, and the distrainer shall leave with the pound keeper a memorandum in writing, signed by him, stating the cause of distraining, and the sum that he demands from the owner, for the damages done by the beasts.

HISTORY: CL 1857, 5050;—CL 1871, 6771;—How. 8350;—CL 1897, 10692;—CL 1915, 14783;—CL 1929, 9065;—CL 1948, 433.105.

433.106 Delivery of beasts by poundmaster.

Sec. 6. The pound keeper shall not deliver the beasts to the owner, until such owner shall pay him his fees, and the expense of keeping such beasts, together with the sum so demanded by the distrainer, and the expense of advertising such beasts, if they shall have been advertised, and all other legal costs and expenses.

HISTORY: CL 1857, 5051;—CL 1871, 6772;—How. 8360;—CL 1897, 10693;—CL 1915, 14784;—CL 1929, 9066;—CL 1948, 433.106.

433.107 Care of beasts by person distraining.

Sec. 7. If there shall be no public pound within the township, the beasts shall be impounded in some suitable place under the immediate care and inspection of the person who distrained them, and he shall furnish them with suitable food and water so long as they remain impounded.

HISTORY: CL 1857, 5052;—CL 1871, 6773;—How. 8361;—CL 1897, 10694;—CL 1915, 14785;—CL 1929, 9067;—CL 1948, 433.107.

433.108 Notice of beasts distrained; delivery to owner.

Sec. 8. When beasts are impounded for either of the causes aforesaid, the person impounding them shall, within 24 hours thereafter, give notice thereof to the owner or person having the care or control of them, if known, and living within 6 miles from the place of impounding, which notice shall be delivered to the party, or left at his place of abode, and shall contain a description of the beasts, and a statement of the time, place and cause of impounding.

HISTORY: CL 1857, 5053;—CL 1871, 6774;—How. 8362;—CL 1897, 10695;—CL 1915, 14786;—CL 1929, 9068;—CL 1948, 433.108.

433.109 Notice of beasts distrained; posting in certain cases.

Sec. 9. If there shall be no person entitled to notice according to the provisions of the preceding section, the person impounding the beasts shall, within 48 hours thereafter, cause to be posted up in 3 public places in the township, and in a public place in each of any 2 adjoining townships, if within 4 miles from the place where they were taken, a written notice, containing a description of the beasts, and a statement of the time, place and cause of impounding.

HISTORY: CL 1857, 5054;—CL 1871, 6775;—How. 8363;—CL 1897, 10696;—CL 1915, 14787;—CL 1929, 9069;—CL 1948, 433.109.

433.110 Notice of beasts distrained; publication in newspaper.

Sec. 10. In case notice shall be given by posting up the same, if no person shall appear to claim the beasts within 7 days after the day of impounding, a like notice shall be published for 3 successive weeks, in some public newspaper, if any shall be published within 20 miles of the place of impounding, the first publication to be within 15 days after the day of impounding.

HISTORY: CL 1857, 5055;—CL 1871, 6776;—How. 8364;—CL 1897, 10697;—CL 1915, 14788;—CL 1929, 9070;—CL 1948, 433.110.

433.111 Determination of damage; application by owner of animals.

Sec. 11. If the owner or keeper of the beasts shall be dissatisfied with the claim of the person impounding them, he may have the amount for which he is liable, ascertained and determined by 2 disinterested and discreet persons, to be appointed and sworn for that purpose by a justice of the peace; and the sum determined by them shall be received instead of the sum demanded by the person who impounded the beasts, and they shall thereupon be delivered to the owner or keeper thereof.

HISTORY: CL 1857, 5056;—CL 1871, 6777;—How. 8365;—CL 1897, 10698;—CL 1915, 14789;—CL 1929, 9071;—CL 1948, 433.111.

433.112 Determination of damage; application by person impounding animals.

Sec. 12. If the sum for which the beasts are impounded and detained, shall not be paid within 14 days after notice of the impounding shall have been given, as before directed, or after the last publication of such notice in a newspaper, and shall not have been determined as aforesaid, the person who impounded them shall apply to a justice of the peace, and obtain a warrant to 2 disinterested and discreet persons, to be appointed and sworn by the justice; and the persons so appointed and sworn shall ascertain and determine the sum due from the owner or keeper of the beasts, for the damages, costs and expenses for which they are impounded and detained, including a reasonable compensation for their own services.

HISTORY: CL 1857, 5057;—CL 1871, 6778;—How. 8366;—CL 1897, 10699;—CL 1915, 14790;—CL 1929, 9072;—CL 1948, 433.112.

433.113 Sale of beasts; notice.

Sec. 13. If the sum so found to be due, shall not be forthwith paid, the person who impounded the beasts shall cause them to be sold by auction in the township where they are impounded, first advertising the sale by posting up a notice thereof in 3 public places in the same township, at least 5 days before such sale.

HISTORY: CL 1857, 5058;—CL 1871, 6779;—How. 8367;—CL 1897, 10700;—CL 1915, 14791;—CL 1929, 9073;—CL 1948, 433.113.

433.114 Sale of beasts; proceeds.

Sec. 14. The proceeds of the sale, after paying all the said damages, costs and expenses, with the charges for advertising and selling the beasts, shall be deposited in the treasury of the township, for the use of the owner of the beasts, in case he shall substantiate his claim thereto, within 2 years from the time of sale.

HISTORY: CL 1857, 5059;—CL 1871, 6780;—How. 8368;—CL 1897, 10701;—CL 1915, 14792;—CL 1929, 9074;—CL 1948, 433.114.

433.115 Beasts escaped or rescued; retaking.

Sec. 15. If any beasts that shall have been lawfully distrained or impounded, shall escape or be rescued, the pound keeper or person who distrained them, may, at any time within 7 days thereafter retake such beasts, and hold and dispose thereof, as if no such escape or rescue had taken place.

HISTORY: CL 1857, 5060;—CL 1871, 6781;—How. 8369;—CL 1897, 10702;—CL 1915, 14793;—CL 1929, 9075;—CL 1948, 433.115.

433.116 Rescuing beasts distrained; penalty.

Sec. 16. If any person shall rescue any beasts, distrained or impounded for any cause, he shall be liable in an action on the case, to be brought by any person injured, to pay all damages which such person shall have sustained thereby, and all the fees and charges which shall have been incurred before the rescue, and shall also forfeit a sum not less than 5, nor more than 20 dollars.

HISTORY: CL 1857, 5061;—CL 1871, 6782;—How. 8370;—CL 1897, 10703;—CL 1915, 14794;—CL 1929, 9076;—CL 1948, 433.116.

433.117 Legality of distress determined in replevin action.

Sec. 17. The defendant in any action brought for rescuing beasts distrained or impounded, shall not be allowed to allege or give in evidence the insufficiency of the fences, or any other fact or circumstance to show that the distress or impounding was illegal; but if there is any ground of objection to the proceeding, of which he is entitled to avail himself, he may have the advantage thereof in an action of replevin, to be brought as provided in the following sections.

HISTORY: CL 1857, 5062;—CL 1871, 6783;—How. 8371;—CL 1897, 10704;—CL 1915, 14795;—CL 1929, 9077;—CL 1948, 433.117.

Secs. 18-22.

HISTORY: CL 1857, 5063-5067;—CL 1871, 6784-6788;—How. 8372-8376;—CL 1897, 10705-10709;—Rep. 1945, p. 410, Act 267, Imd. Eff. May 25.

These sections related to the replevin of beasts distrained, and are re-enacted and superseded by Secs. 38-42 of Ch. 27 of Act 314 of 1915 (Jud. Act), see Compilers' §§ 627.38 to 627.42.

R.S. 1846, Ch. 18.

POUNDS AND IMPOUNDING CATTLE.

433.122 Pounds; maintenance by township.

Sec. 22. Each township may, at its own expense, and in such places therein as the electors shall direct, provide and maintain 1 or more sufficient pounds, in which swine, sheep, horses, asses, mules, goats and neat cattle, may be restrained and kept from going at large contrary to law, or to any by-law of such township.

HISTORY: CL 1857, 626;—CL 1871, 790;—How. 819;—CL 1897, 2437;—CL 1915, 2229;—CL 1929, 1065;—CL 1948, 433.122.

433.123 Pounds; injury, penalty.

Sec. 23. If any person shall wilfully injure any pound maintained by any township, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not exceeding 50 dollars, or by imprisonment in the county jail not exceeding 90 days at the discretion of the court.

HISTORY: CL 1857, 627;—CL 1871, 790;—How. 820;—CL 1897, 2438;—CL 1915, 2230;—CL 1929, 1066;—CL 1948, 433.123.

Act 109, 1847, p. 181; Imd. Eff. Mar. 17.

AN ACT to provide against the recovery of damages done by beasts on lands which are not enclosed by a lawful fence.

Be it enacted by the senate and house of representatives of the state of Michigan:

433.151 Damages upon lands by beasts; barred unless enclosed.

Sec. 1. No person shall be entitled to recover any sum of money, in any action at law, for damages done upon lands by any beast or beasts, unless the partition fences by which such lands are wholly or in part enclosed, and belonging to such person, or by him to be kept in repair, shall be of the same height and description as is required by the provisions of section 1, chapter 18, of the revised statutes of 1846, being section 605 of the Compiled Laws. No person shall be entitled to recovery in any action for such damages if the same was caused by any beast which gained access to such lands by reason of the failure of such person to erect or maintain that portion of the fence assigned to him therefor pursuant to the provisions of section 5 of chapter 18 of the revised statutes of 1846, being section 1068 of the Compiled Laws of 1929.

HISTORY: CL 1857, 628;—Am. 1861, p. 294, Act 179, Imd. Eff. March 15;—CL 1871, 791;—How. 817;—CL 1897, 2436;—CL 1915, 2227;—CL 1929, 1067;—Am. 1941, p. 409, Act 299, Eff. Jan. 10, 1942;—CL 1948, 433.151.

NOTE: The section above referred to is Compilers' § 43.1.

Sec. 2. (This was a repeal section.)

HISTORY: How. 818;—CL 1915, 2228;—CL 1929, 1068;—Rep. 1945, p. 402, Act 267, Imd. Eff. May 25.

Act 52, 1937, p. 65; Imd. Eff. May 25.

AN ACT to control coyotes and wolves; to authorize the appointment of state trappers therefor and to define their powers and duties; to define certain powers of conservation officers and county agricultural agents in connection therewith; to provide bounties on coyotes; to prohibit the rearing or importation of coyotes or wolves except under permit of the department of conservation; and to prescribe penalties for violation of this act. Am. 1959, p. 21, Act 23, Eff. Mar. 19, 1960.

The People of the State of Michigan enact:

433.201 Control of coyotes and wolves; special powers of director of conservation; authority of state trappers.

Sec. 1. Because of the alarming increase in the number of coyotes and wolves in the state of Michigan and their resulting damage and destruction to wild game and live-

stock, an emergency has been created which requires special legislation under the police powers of the state to provide for the control of said coyotes and wolves; and to that end special powers are hereby conferred upon the director of conservation, and any conservation officer or state trapper appointed by him under the provisions of this act.

Conservation officers of the state of Michigan, and any state trapper appointed by the director of conservation under the provisions of this act, shall have the right to enter into or upon any private or public property for the purpose of taking and trapping coyotes and wolves, and said officers and state trappers shall not be liable for trespass in so doing.

State trappers appointed under the provisions of this act shall have no authority to enter into or upon any public or private property except for the purpose of trapping and taking coyotes and wolves.

HISTORY: CL 1948, 433.201.

433.202 Coyote and wolf trappers; duties.

Sec. 2. There shall be established within the department of conservation a minimum force of 6 coyote and wolf trappers of known ability and experience. It shall be the duty of these trappers to capture coyotes, wolves, and other known predators at such localities as shall be indicated by the director of conservation. These trappers shall also be available to act as instructors in the taking of coyotes and wolves and other known predators.

HISTORY: CL 1948, 433.202.

433.203, 433.204 Repealed. 1964, p. 393, Act 256, Eff. Aug. 28.

Sections made state trappers available at request of county agricultural agent, to help control coyotes and wolves.

433.205 Coyotes; bounties, rules.

Sec. 5. There shall be paid by the department of conservation a bounty of \$15.00 for each male coyote carcass, and \$20.00 for each female coyote carcass turned over to the nearest conservation officer. Bounties will be paid only after full compliance with the rules and regulations of the department of conservation, which rules shall include the following: The pelt shall accompany the carcass, an exact description of the location in which the animal was trapped or shot shall be furnished, and the carcass and pelt shall be turned over to the nearest conservation officer within 7 days of the time of capture.

HISTORY: CL 1948, 433.205;—Am. 1959, p. 21, Act 23, Eff. Mar. 19, 1960.

433.206 Rearing or importation of coyotes or wolves; bounty by fraud; penalties.

Sec. 6. It shall be unlawful to rear in captivity except for educational purposes under permit from the department of conservation, or to import into the state of Michigan any coyote or wolf or part thereof, dead or alive, except the tanned hides, mounted or museum specimens, without permission of the department of conservation; and any violation thereof shall constitute a misdemeanor punishable by a fine of not less than 50 dollars nor more than 100 dollars, or imprisonment of not less than 30 nor more than 90 days in the county jail, or both fine and imprisonment in the discretion of the court.

Any person who shall secure or attempt to secure any bounty payments under the provisions of this act by fraud or false statements of any kind shall be guilty of a felony and shall be subject to a fine of not less than 100 dollars nor more than 500 dollars or by imprisonment of not less than 90 days nor more than 6 months, or both in the discretion of the court.

HISTORY: CL 1948, 433.206.

433.207 Repealed. 1959, p. 22, Act 23, Eff. Mar. 19, 1960.

Section made appropriation for bounties.

Sec. 8. (This was a severing clause section.)

HISTORY: Rep. 1945, p. 415, Act 267, Imd. Eff. May 25.

Act 50, 1915, p. 77; Eff. Aug. 24.

AN ACT to provide for the payment of bounties for the killing of common rats.

The People of the State of Michigan enact:

433.251 Rat bounty.

Sec. 1. Every person being an inhabitant of this state who shall kill any black, brown, grey, or Norway rats commonly known as the house rat, barn rat or wharf rat in any organized township, village or city in this state, shall be entitled to receive a bounty of 10 cents for each rat thus killed, to be allowed and paid in the manner hereinafter provided.

HISTORY: CL 1915, 7264;—Am. 1919, p. 204, Act 114, Eff. Aug. 14;—CL 1929, 9032;—CL 1948, 433.251.

433.252 Rat bounty; applicant, duty; certificate; destruction of heads.

Sec. 2. Every person applying for such bounty shall take the heads of such rats, in lots of not less than 5, to the clerk of the township, village or city within which such rats shall have been killed, in a state of good preservation, and if satisfied with the correctness of such claim, said township, village or city clerk shall issue a certificate stating the amount of bounty to which such applicant is entitled and deliver the same to said applicant, and shall destroy the heads of such rats by burning.

HISTORY: CL 1915, 7265;—CL 1929, 9033;—CL 1948, 433.252.

433.253 Payment of certificate; nonliability of county.

Sec. 3. Such certificate may be presented by the claimant or his agent to the county clerk of the county in which such rats have been killed, who shall thereupon draw a warrant for the amount on the treasurer of said county, and said treasurer shall, upon presentation of said warrant, pay the same from the general or contingent fund of such county: Provided, That no county shall be liable for the payment of such bounty when and after the board of supervisors by resolution has provided that this act shall not be operative in said county.

HISTORY: CL 1915, 7266;—Am. 1927, p. 777, Act 327, Eff. Sept. 5;—CL 1929, 9034;—CL 1948, 433.253.

Act 4, 1885, p. 4; Imd. Eff. Feb. 17.

AN ACT to authorize the killing of "English sparrows."

The People of the State of Michigan enact:

433.271 English sparrows; lawful to kill.

Sec. 1. That it shall be lawful to kill the birds commonly called "English sparrows."

HISTORY: How. 2259a;—CL 1897, 5585;—CL 1915, 7258;—CL 1929, 9026;—CL 1948, 433.271.

Sec. 2. (This was a repeal section.)

HISTORY: How. 2259a;—CL 1915, 7259;—CL 1929, 9027;—Rep. 1945, p. 403, Act 267, Imd. Eff. May 25.

Act 226, 1907, p. 297; Eff. Sep. 28.

AN ACT to provide for the payment of bounties for the killing of English sparrows.

The People of the State of Michigan enact:

433.281 English sparrow bounty; power of board of supervisors.

Sec. 1. Every person being an inhabitant of this state, who shall kill an English sparrow in any organized township, village or city in this state, during the months of December, January and February of each year, shall be entitled to receive a bounty of 2 cents for each sparrow thus killed, to be allowed and paid in the manner hereinafter provided: Provided, That this law shall not be obligatory on any county unless the board of supervisors at the October session shall adopt a resolution to that effect and then only to the amount appropriated for such purpose by said board.

HISTORY: CL 1915, 7280;—CL 1929, 9028;—Am. 1933, p. 55, Act 57, Imd. Eff. April 14;—CL 1948, 433.281.

FORMER ACTS: Act 29 of 1887, being CL 1897, 5586-5589, repealed by Act 241 of 1901; Act 167 of 1905.

433.282 English sparrow bounty; applicant, duty; certificate; destruction of sparrows.

Sec. 2. Every person applying for such bounty shall take such sparrows, in lots of not less than 10, to the clerk of the township, village or city within which such sparrows shall have been killed, in a state of good preservation, and if satisfied with the correctness of such claim, shall issue a certificate stating the amount of bounty to which such applicant is entitled and deliver the same to said applicant, and shall destroy such sparrows by burning.

HISTORY: CL 1915, 7261;—CL 1929, 9029;—CL 1948, 433.282.

433.283 Certificate; presentation, payment.

Sec. 3. Such certificate may be presented by the claimant or his agent to the county clerk of the county in which such sparrows have been killed, who shall thereupon draw a warrant for the amount on the treasurer of said county, and said treasurer shall, upon presentation of said warrant, pay the same from the general or contingent fund of said county.

HISTORY: CL 1915, 7262;—CL 1929, 9030;—CL 1948, 433.283.

433.284 Violations of act; misdemeanor, penalty.

Sec. 4. Any person who collects or attempts to collect any bounty under the provisions of this act, on any bird other than English sparrows, or who collects or attempts to collect such bounty upon any sparrows not killed in the county in which such collection or attempt to so collect is made, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than 1 dollar nor more than 10 dollars, or by imprisonment in the county jail not more than 10 days, or by both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1915, 7263;—CL 1929, 9031;—CL 1948, 433.284.

Act 152, 1941, p. 199; Eff. Jan. 10, 1942.

AN ACT to provide for the payment of bounties for the killing of starlings and crows; and to prescribe penalties for the violation of the provisions of this act.

The People of the State of Michigan enact:

433.301 Starlings and crows; bounty for killing; resolution of board of supervisors.

Sec. 1. Every person being an inhabitant of this state, who shall kill a starling or a crow in any organized township, village or city in this state shall be entitled to receive a bounty of 3 cents for each starling thus killed, and 10 cents for each crow thus killed, to be allowed and paid in the manner hereinafter provided: Provided, That this law shall not be obligatory on any county unless the board of supervisors at the October

session shall adopt a resolution to that effect, either as to starlings or as to crows or both, and then only to the amount appropriated for such purpose by said board, and shall not be effective in any city or village located in any such county in case the governing body thereof shall adopt a resolution to that effect.

HISTORY: CL 1948, 433.301.

433.302 Starlings and crows; delivery to local clerk; certificate.

Sec. 2. Every person applying for such bounty shall take such starlings, in lots of not less than 50, and crows in lots of 10 or more, to the clerk of the township, village or city within which such starlings or crows shall have been killed, in a state of good preservation, and if satisfied with the correctness of such claim, shall issue a certificate stating the amount of bounty to which such applicant is entitled and deliver the same to such applicant, and shall destroy such starlings and crows by burning or other effective method.

HISTORY: CL 1948, 433.302.

433.303 Certificate; presentation to county clerk; warrant, payment.

Sec. 3. Such certificate may be presented by the claimant or his agent to the county clerk of the county in which such starlings or crows have been killed, who shall thereupon draw a warrant for the amount on the treasurer of said county, and said treasurer shall, upon presentation of said warrant, pay the same from the general or contingent fund of said county.

HISTORY: CL 1948, 433.303.

433.304 Violations of act; penalty.

Sec. 4. Any person who collects or attempts to collect any bounty under the provisions of this act, on any bird other than starlings or crows, or who collects or attempts to collect such bounty upon any starlings or crows not killed in the county in which such collection or attempt to so collect is made, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than \$1.00 nor more than \$10.00 or by imprisonment in the county jail not more than 10 days, or by both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1948, 433.304.

CHAPTER 434. LOST AND UNCLAIMED PROPERTY

LOST GOODS AND STRAY BEASTS

Ch. 47, R.S. 1846

- 434.1 Lost money or goods; notice of finding.
- 434.2 Lost money or goods; notice by publication.
- 434.3 Taking up of animal running at large.
- 434.4 Taking up of animal running at large; notice to owner, to township clerk, to county clerk; entry, fees.
- 434.5 Taking up of animal running at large; publication of notice.
- 434.6 Appraisal of lost goods or stray animals; filing fees.
- 434.7 Lost money or goods; restitution to owner.
- 434.8 Lost money or goods; remaining to finder; township entitled to one-half of value.
- 434.9 Stray beasts; restitution to owner.
- 434.10 Stray beasts; sale; notice, finder as bidder, proceeds.
- 434.11 Stray beasts; proceeds of sale, receipt by owner or township.
- 434.12 Finder; preclusion from certain benefits; wilful neglect to comply, penalty.
- 434.13 Unlawful taking of animal taken up as stray; liability.
- 434.14 Moderate working of horses, or other animals taken up; value of labor deducted from charges.

DISPOSITION OF UNCLAIMED PROPERTY

Ch. 127, R.S. 1846

434.101-434.112 Repealed.

DISPOSITION OF LOST, UNCLAIMED OR ABANDONED PERSONAL PROPERTY

Act 238 of 1957

- 434.151 Lost, unclaimed or abandoned personal property in custody of state; application of act.
- 434.152 Lost, unclaimed or abandoned personal property in custody of state; inapplicability of act; personal effects without intrinsic value.
- 434.153 Lost, unclaimed or abandoned personal property in custody of state; appraisal.
- 434.154 Lost, unclaimed or abandoned personal property in custody of state; professional opinion as to intrinsic value; appraiser's opinion as to value.
- 434.155 Lost, unclaimed or abandoned personal property in custody of state; sale by commissioner of state police.
- 434.156 Lost, unclaimed or abandoned personal property in custody of state; disposition of property without intrinsic value.

DISPOSITION OF UNCLAIMED STOLEN PROPERTY

Act 54 of 1959

- 434.171 Unclaimed recovered stolen property; request for disposition.
- 434.172 Unclaimed recovered stolen property; notice, publication.
- 434.173 Unclaimed recovered stolen property; sale, proceeds.
- 434.174 Unclaimed recovered stolen property; claim of ownership, time limitation.

R.S. 1846, Ch. 47.

LOST GOODS AND STRAY BEASTS.

434.1 Lost money or goods; notice of finding.

Sec. 1. When any person shall find any lost money, or lost goods, if the owner thereof be known, he shall immediately give notice thereof to such owner; if the owner thereof be unknown, and such money or goods be of the value of 3 dollars or more, the finder shall, within 2 days, cause notice thereof to be posted in 2 public places within the township where the same were found; and shall also, within 7 days, give notice thereof in writing to the township clerk of such township, and pay him 25 cents for making an entry thereof in a book to be kept for that purpose.

HISTORY: CL 1857, 1803;—CL 1871, 2013;—How. 2061;—CL 1897, 5739;—CL 1915, 7445;—CL 1929, 9000;—CL 1948, 434.1.
 ESCHEATED ESTATES: See Compilers' § 567.12 et seq.

434.2 Lost money or goods; notice by publication.

Sec. 2. If the money or goods so found be of the value of 10 dollars or more, and the owner thereof be unknown, the finder thereof shall also, within 1 month after such finding, cause notice thereof to be advertised in some newspaper in the same county, if one be published there, and if not, then in some newspaper published in an adjoining county and continued therein, for 6 successive weeks.

HISTORY: CL 1857, 1804;—CL 1871, 2014;—How. 2062;—CL 1897, 5740;—CL 1915, 7446;—CL 1929, 9001;—CL 1948, 434.2.

434.3 Taking up of animal running at large.

Sec. 3. It shall be lawful for any resident freeholder of any township in this state to take up any stray horses, mules, or asses, by him found going at large in such township, beyond the range where such horses, mules, or asses usually run at large; and also to take up between the first day of November and the thirty-first day of March, any stray neat *cattel, sheep or swine, by him found going at large therein, beyond the range where such animals usually run at large.

HISTORY: CL 1857, 1805;—CL 1871, 2015;—Am. 1879, p. 142, Act 142, Eff. Aug. 30;—How. 2063;—CL 1897, 5741;—CL 1915, 7447;—CL 1929, 9002;—CL 1948, 434.3.

*NOTE: It is evident the word "cattel" should be "cattle".
RESTRAINT OF ANIMALS: See Compilers' § 433.1 et seq.

434.4 Taking up of animal running at large; notice to owner, to township clerk, to county clerk; entry, fees.

Sec. 4. Such finder shall immediately give notice thereof to the owner of any such animal, if known to him; but if the owner thereof be unknown, such finder shall, within 10 days, cause notice thereof to be entered with the township clerk, in such book as aforesaid containing a description of the color, age, and natural and artificial marks of such animals as near as may be together with the name and residence of such finder, and shall pay to said township clerk the sum of 50 cents for entering the same, and sending notice as hereinafter required; and the township clerk shall, immediately upon receipt of such notice, make and send to the county clerk a copy of the same, who shall immediately upon receipt thereof, enter the same in a book to be kept by him for that purpose, and the finder shall pay to the township clerk the further sum of 25 cents, which sum shall be sent with the notice as aforesaid to the county clerk, and the same shall be the amount of fees said county clerk shall be entitled to receive for his services.

HISTORY: CL 1857, 1806;—Am. 1871, p. 241, Act 156, Eff. July 18;—CL 1871, 2016;—How. 2064;—CL 1897, 5742;—CL 1915, 7448;—CL 1929, 9003;—CL 1948, 434.4.

434.5 Taking up of animal running at large; publication of notice.

Sec. 5. If the owner of any such animal or animals shall not, within 1 month, appear and reclaim them, and such animal or animals, taken up at the same time shall be of the value of 10 dollars or more, the finder shall cause such notice to be published in a newspaper in the same county, if one be published there, and if not, then in a newspaper published in an adjoining county, and continued therein for 6 successive weeks.

HISTORY: CL 1857, 1807;—CL 1871, 2017;—How. 2065;—CL 1897, 5743;—CL 1915, 7449;—CL 1929, 9004;—CL 1948, 434.5.

434.6 Appraisal of lost goods or stray animals; filing, fees.

Sec. 6. Every finder of lost goods or stray animals, of the value of 10 dollars or more, shall, within 3 months, and before any use shall be made thereof, procure an appraisal of the same to be made and certified by a justice of the peace of his township, which appraisal he shall within said 3 months, cause to be filed with the township clerk; and he shall pay to such justice 50 cents for such appraisal and certificate, and 6 cents for each mile necessarily traveled by him in such service, and to the clerk 6 cents for filing the certificate.

HISTORY: CL 1857, 1808;—CL 1871, 2018;—How. 2066;—CL 1897, 5744;—CL 1915, 7450;—CL 1929, 9005;—CL 1948, 434.6.

434.7 Lost money or goods; restitution to owner.

Sec. 7. If the owner or person entitled to the possession of any such money or goods, other than stray animals, shall appear at any time within 1 year after such entry with the township clerk, and shall make out his rights thereto, he shall have restitution of the same, or of the value thereof, upon his paying all the costs and charges aforesaid, together with a reasonable compensation to the finder for keeping and taking care of the same, and for his necessary travel and expenses in the case; which charges shall, in

case of disagreement between the owner and finder, be determined by some justice of the peace of the township, who shall certify the same.

HISTORY: CL 1857, 1609;—CL 1871, 2019;—How. 2067;—CL 1897, 5745;—CL 1915, 7451;—CL 1929, 9006;—CL 1948, 434.7.

434.8 Lost money or goods; remaining to finder; township entitled to one-half of value.

Sec. 8. If no owner or person entitled to the possession of the same shall appear within 1 year, then such lost money or goods shall remain to the finder, he paying 1/2 of the value thereof to the treasurer of the township, according to said appraisement, after deducting from such value all the fees and charges aforesaid, to be determined and certified by a justice of the peace as aforesaid; and upon his neglect or refusal to pay the said 1/2 of the value, the same shall be recovered by the township treasurer, in an action of debt or on the case.

HISTORY: CL 1857, 1610;—CL 1871, 2020;—How. 2068;—CL 1897, 5746;—CL 1915, 7452;—CL 1929, 9007;—CL 1948, 434.8.

434.9 Stray beasts; restitution to owner.

Sec. 9. If the owner or person entitled to the possession of any such stray beast shall appear within 6 months after such entry with the township clerk and shall make out his right thereto, he shall have restitution of the same, upon paying all lawful charges as before provided in the case of lost goods.

HISTORY: CL 1857, 1611;—CL 1871, 2021;—How. 2069;—CL 1897, 5747;—CL 1915, 7453;—CL 1929, 9008;—CL 1948, 434.9.

434.10 Stray beasts; sale; notice, finder as bidder, proceeds.

Sec. 10. If such owner or person entitled to the possession of the same, shall not appear and make out his title to the animal or animals within the said 6 months, such animal or animals shall be sold at the request of the finder, by any constable of the township, at public auction, upon first giving notice thereof in writing, by posting up the same in 3 of the most public places in such township, at least 10 days before such sale, and the finder may bid therefor at such sale, and the money arising therefrom, after deducting all the lawful charges aforesaid, and the fees of the constable, which shall be the same as upon a sale on execution, shall be deposited in the treasury of the township, and notice thereof shall be given by the constable making such sale, to the township clerk, whose duty it shall be to charge the same to the treasurer of the township.

HISTORY: CL 1857, 1612;—CL 1871, 2022;—Am. 1873, p. 191, Act 143, Imd. Eff. Apr. 22;—How. 2070;—CL 1897, 5748;—CL 1915, 7454;—CL 1929, 9009;—CL 1948, 434.10.

434.11 Stray beasts; proceeds of sale, receipt by owner or township.

Sec. 11. If the owner or person entitled to the possession of any such animal shall appear within 1 year after the entry with the township clerk as aforesaid; and establish by his own affidavit or otherwise to the satisfaction of the township treasurer, his title thereto, he shall be entitled to receive the money so deposited in the township treasury, from the proceeds of the sale; and if no owner or person entitled to the possession of the same, shall appear within the said year, such money shall belong to the township.

HISTORY: CL 1857, 1613;—CL 1871, 2023;—How. 2071;—CL 1897, 5749;—CL 1915, 7455;—CL 1929, 9010;—CL 1948, 434.11.

434.12 Finder; preclusion from certain benefits; wilful neglect to comply, penalty.

Sec. 12. If the finder of any lost money, goods, or stray beasts, shall neglect to cause the same to be entered, advertised, or notice thereof to be posted, as directed in this chapter, he shall be precluded from all the benefits of this chapter, and from all claim for keeping such goods or animals, or on account of any charges in relation thereto; and if any party shall willfully and with fraudulent intent to convert the same to his own use, neglect to make such entry, or to cause the same to be advertised as herein-before provided, for 30 days, he shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than 10, nor more than 50 dollars, and in the de-

fault of the payment thereof, be imprisoned in the county jail for a period not exceeding 90 days.

HISTORY: CL 1857, 1614;—Am. 1867, p. 36, Act 27, Eff. June 27;—CL 1871, 2024;—How. 2072;—CL 1897, 5750;—CL 1915, 7456;—CL 1929, 9011;—CL 1948, 434.12.

434.13 Unlawful taking of animal taken up as stray; liability.

Sec. 13. If any person shall unlawfully take away any animal, taken up as a stray pursuant to the provisions of this chapter, without paying all the lawful charges incurred in relation to the same, he shall be liable to the finder thereof to the value of such animal, which may be recovered in an action of trespass, or on the case.

HISTORY: CL 1857, 1615;—CL 1871, 2025;—How. 2073;—CL 1897, 5751;—CL 1915, 7457;—CL 1929, 9012;—CL 1948, 434.13.

434.14 Moderate working of horses, or other animals taken up; value of labor deducted from charges.

Sec. 14. If any horses, mules or oxen, of sufficient age and strength, and used to work, shall be taken up under the provisions of this chapter as strays, and shall not be reclaimed by the owner within 1 month after the entry thereof with the township clerk, the person taking up the same may moderately and carefully work such horses, mules or oxen within the township where they were so taken up, and the value of such labor shall be deducted from the charges aforesaid.

HISTORY: CL 1857, 1616;—CL 1871, 2026;—How. 2074;—CL 1897, 5752;—CL 1915, 7458;—CL 1929, 9013;—CL 1948, 434.14.

434.101-434.112 Repealed. 1962, p. 12, Act 13, Imd. Eff. Mar. 19.

Sections provided for disposition of unclaimed property in hands of forwarding merchants and keepers of wharves, warehouses, taverns or depots for reception and storage of personalty.

Act 238, 1957, p. 298; Eff. Sep. 27.

AN ACT to authorize the sale or other disposition of lost, unclaimed or abandoned personal property in the custody of state departments, boards or institutions; and to provide for the disposition of the proceeds of any such sale.

The People of the State of Michigan enact:

434.151 Lost, unclaimed or abandoned personal property in custody of state; application of act.

Sec. 1. The provisions of this act shall apply to:

(a) Personal property of patients in state hospitals remaining after the death, discharge, release or escape of the patient and unclaimed by the patient, his or her relatives or heirs or personal or legal representative.

(b) Personal property of prisoners in state prisons remaining unclaimed after the death, discharge, release or escape of a prisoner and unclaimed by the prisoner, his relatives or heirs, or personal or legal representatives.

(c) Personal property lost or abandoned by the owners thereof in or on state owned property administered by the department of conservation and turned into the custody of said department.

(d) Personal property lost or abandoned by the owners thereof in or on other property owned, leased or rented by the state of Michigan for the use of state departments, boards and institutions.

HISTORY: New 1957, p. 298, Act 238, Eff. Sep. 27.

434.152 Lost, unclaimed or abandoned personal property in custody of state; inapplicability of act; personal effects without intrinsic value.

Sec. 2. The provisions of this act shall not apply to property described in subsection (b) of section 5 of Act No. 329 of the Public Acts of 1947, as amended, being section

567.15 of the Compiled Laws of 1948, to property subject to the provisions of Act No. 203 of the Public Acts of 1937, being sections 28.401 to 28.406 of the Compiled Laws of 1948, nor to property subject to the provisions of section 42a of Act No. 151 of the Public Acts of 1923, being section 330.52a of the Compiled Laws of 1948. The provisions of this act shall apply to personal effects of deceased, discharged or escaped state hospital patients of no intrinsic or commercial value.

HISTORY: New 1957, p. 298, Act 238, Eff. Sep. 27.

434.153 Lost, unclaimed or abandoned personal property in custody of state; appraisal.

Sec. 3. Each state department, board or institution when necessary to accomplish the purposes of this act shall delegate authority to 2 or more of its employees, hereinafter called appraisers, to examine and appraise lost or abandoned property in its possession remaining unclaimed for at least 6 months. The said appraisers shall examine, appraise and inventory each article of lost or abandoned personal property. Property found to be of no intrinsic or commercial value in the opinion of the appraisers shall be inventoried and recorded separately from property found by the appraisers to have intrinsic or commercial value. A record of property having intrinsic or commercial value containing a description of the property, the name of the county where found, and the appraisers' estimate of its value shall be made and a copy thereof forwarded to the commissioner of the state police.

HISTORY: New 1957, p. 298, Act 238, Eff. Sep. 27.

434.154 Lost, unclaimed or abandoned personal property in custody of state; professional opinion as to intrinsic value; appraiser's opinion as to value.

Sec. 4. Should the said appraisers be unable to decide whether or not certain articles of lost or abandoned property are of intrinsic or commercial value, professional opinion may be sought. No fee shall be payable for such opinion. Whether or not professional opinion is sought as to the value of any article of lost or abandoned property, the opinion of the said appraisers, made in the exercise of ordinary care and pursuant to this act, shall be prima facie evidence of the value of such property.

HISTORY: New 1957, p. 298, Act 238, Eff. Sep. 27.

434.155 Lost, unclaimed or abandoned personal property in custody of state; sale by commissioner of state police.

Sec. 5. Upon the request of the commissioner of the state police, property previously reported to him pursuant to the provisions of section 3 of this act shall be delivered to his custody at the East Lansing state police headquarters or to such state police post as the state police commissioner may direct. Said property shall be sold at any ensuing state police sale of stolen property, such sale and the disposition of the proceeds of such sale to be governed by the provisions of Act No. 203 of the Public Acts of 1937, except that such property need not be held by the state police for the 6 months' period provided in that act.

HISTORY: New 1957, p. 299, Act 238, Eff. Sep. 27.

434.156 Lost, unclaimed or abandoned personal property in custody of state; disposition of property without intrinsic value.

Sec. 6. Property found by the appraisers to be of no intrinsic or commercial value, after being appraised and recorded as such, may be donated to state institutions for the use of patients or inmates or to charitable institutions, or may be destroyed, but the inventories of such property shall first be submitted to the state administrative board and the authority of that board secured for such disposition of the property. Property remaining unsold by the state police after having been offered for sale at any

2 state police sales may be disposed of by the commissioner of the state police in the same manner upon order of the state administrative board.

HISTORY: New 1957, p. 299, Act 238, Eff. Sep. 27.

Act 54, 1959, p. 56; Eff. Mar. 19, 1960.

AN ACT to provide for the disposition and sale of stolen property recovered by any county sheriff; and to provide for the disposition of the proceeds of sale.

The People of the State of Michigan enact:

434.171 Unclaimed recovered stolen property; request for disposition.

Sec. 1. Whenever the sheriff of any county has any recovered stolen property, including money, which is unclaimed for 6 months after recovery, he shall report the fact to the board of supervisors, and request authority from the board to dispose of it as provided in this act.

HISTORY: New 1959, p. 56, Act 54, Eff. Mar. 19, 1960.

434.172 Unclaimed recovered stolen property; notice, publication.

Sec. 2. The board of supervisors shall act upon the request of the sheriff within 6 months after the receipt of the request. If the board approves the request, the sheriff shall publish notice in a newspaper of general circulation in the county at least 5 days before the sale. The notice shall describe the property, including money, and shall state the time and place of public sale at which the property may be purchased by the highest bidder. Until the date of the sale the property, including money, may be claimed at the sheriff's office. If ownership is proved, the sheriff shall turn the property, including money, over to the owner and cancel the sale insofar as the claimed property is concerned.

HISTORY: New 1959, p. 56, Act 54, Eff. Mar. 19, 1960.

434.173 Unclaimed recovered stolen property; sale, proceeds.

Sec. 3. The sheriff shall conduct such sale and shall deposit the proceeds of the sale, after deducting the cost of the sale, together with any other money included in the notice with the county treasurer to the credit of the county general fund.

HISTORY: New 1959, p. 56, Act 54, Eff. Mar. 19, 1960.

434.174 Unclaimed recovered stolen property; claim of ownership, time limitation.

Sec. 4. If within 6 months after the sale, the owner of the property, including money, files with the board of supervisors a claim for the property, including money, and proves his right to the property, the board shall direct the county treasurer to pay the money or the amount received for the property to the owner. The board of supervisors shall not approve any claims filed more than 6 months after the sale. Any sheriff disposing of property in the manner provided in this act shall not be liable to the owner thereof.

HISTORY: New 1959, p. 56, Act 54, Eff. Mar. 19, 1960.

CHAPTER 435. SUNDAYS AND HOLIDAYS

OBSERVANCE OF SUNDAY AND PUNISHMENT OF
IMMORALITY

Ch. 43, R.S. 1846

435.1-435.8 Repealed.

SUNDAY CONVEYANCES AND CONTRACTS

Act 127 of 1962

435.11 Sunday conveyances and contracts
voided; exceptions.435.12 Sunday conveyances and contracts
voided; enforcement; knowledge of exe-
cution on Sunday.

435.13 Repeal.

SUNDAY TRANSACTIONS

Act 128 of 1962

435.51-435.59 Repealed.

LEGAL HOLIDAYS

Act 124 of 1865

435.101 Public holidays; Monday observance; ef-
fect; Saturdays.

435.102 Holiday on Sunday; Monday observance.

435.103 Saturday closing for banks, savings and
loan associations and building and loan
associations.

SEVENTH DAY ADVENTISTS

Act 198 of 1939

435.131 Seventh Day Adventists; application of
Sunday laws.

COLUMBUS DAY

Act 258 of 1909

435.151 Repealed.

ARBOR DAY

C.R. 6 of 1885

435.171 Arbor day.

JOHN FITZGERALD KENNEDY DAY

Act 250 of 1966

435.181 John Fitzgerald Kennedy Day.

TIME

Act 5 of 1885

435.201 Repealed.

EASTERN STANDARD TIME

Act 6 of 1967

435.211 Eastern standard time as legal time.

435.212 Exemption of state from federal law.

435.213 Repeals.

CAR SALES

Act 66 of 1953

435.251 Motor vehicles; sale on Sunday unlawful,
exception.435.252 Conducting business on Sunday; excep-
tion.

435.253 Violation of act; penalty.

435.254 Applicability of act.

435.1-435.8 Repealed. 1962, p. 117, Act 127, Eff. Mar. 28, 1963.

Sections prohibited unnecessary business, work, or public entertainment on Sunday except for those who observe the seventh day of the week.

Act 127, 1962, p. 117; Eff. Mar. 28, 1963.

AN ACT to continue the present law of the state prohibiting the conveyance of land and execution of contracts on Sunday; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

435.11 Sunday conveyances and contracts voided; exceptions.

Sec. 1. Any conveyance of real property or any contract, except a contract of marriage, made on the first day of the week, commonly called Sunday, is absolutely void and of no force or effect, except as expressly authorized by Act No. of the Public Acts of 1962 (House Bill No. 416, 1962 Regular Session).

HISTORY: New 1962, p. 117, Act 127, Eff. Mar. 28, 1963.

435.12 Sunday conveyances and contracts voided; enforcement; knowledge of execution on Sunday.

Sec. 2. Where a party to a conveyance or contract in violation of this act did not execute it on Sunday, and was without knowledge that 1 or more of the other parties

thereto executed it on a Sunday, the conveyance or contract, in the discretion of the court having jurisdiction, may be enforced by the innocent party where necessary to prevent a fraud against him, but shall not be enforceable by any party executing or having knowledge that another party executed it on a Sunday.

HISTORY: New 1962, p. 117, Act 127, Eff. Mar. 28, 1963.

435.13 Repeal.

Sec. 3. Sections 1, 2, 3, 4, 7 and 8 of chapter 43 of the Revised Statutes of 1846, as amended, being sections 435.1 to 435.8 of the Compiled Laws of 1948, are hereby repealed.

HISTORY: New 1962, p. 117, Act 127, Eff. Mar. 28, 1963.

435.51-435.59 Repealed. 1968, p. 97, Act 58, Eff. Nov. 15.

Sections related to Sunday transactions; prohibited exceptions; violations, penalties.

Act 124, 1865, p. 213; Eff. Jun. 22.

AN ACT to designate the holidays to be observed in acceptance and payment of bills of exchange, bank checks and promissory notes, the business of banking, savings and loan, building and loan, municipal offices, the holding of courts and relative to the continuance of suits. Am. 1919, p. 595, Act 335, Eff. Aug. 14;—Am. 1948, Ex. Ses., p. 88, Act 33, Imd. Eff. May 10.

The People of the State of Michigan enact:

435.101 Public holidays; Monday observance; effect; Saturdays.

Sec. 1. The following days namely: January 1, New Year's day; February 12, Lincoln's birthday; the third Monday of February, Washington's birthday; the last Monday of May, Memorial or Decoration day; July 4; the first Monday in September, Labor day; the second Monday in October, Columbus day; the fourth Monday of October, Veterans' day; December 25, Christmas day; every Saturday from 12 noon until 12 midnight, which is designated a half holiday; all national and state general election days, as defined in the Michigan election law, and the fourth Thursday of November, Thanksgiving day, for all purposes whatever as regards the presenting for payment or acceptance, and the protesting and giving notice of the dishonor of bills of exchange, bank checks and promissory notes, also for the holding of courts, except as hereinafter provided, shall be treated and considered as the first day of the week, commonly called Sunday, and as public holidays or half holidays. All such bills, checks and notes otherwise presentable for acceptance or payment on any of the days shall be deemed to be payable and presentable for acceptance or payment on the secular or business day next succeeding such holiday or half holiday. Nothing in any law in this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification or acceptance of a check or other negotiable instrument or any other transaction by a bank in this state, because done or performed on any Saturday between 12 noon and midnight, if such payment, certification, acceptance or other transaction would be valid if done or performed before 12 noon on such Saturday. Nothing herein shall be construed to compel any bank, savings and loan association or building and loan association in this state, which by law or custom is entitled to close at 12 noon on any Saturday, to keep open for the transaction of business or to perform any of the acts or transactions aforesaid, on any Saturday after such hour except at its own option. In construing this section, every Saturday, unless a whole holiday, shall for the holding of court and the transaction of any business authorized by the laws of this state be deemed a secular or business day. In case the return or adjourn day in any suit, matter or hearing before any court, officer, referee or arbitrators,

shall come on any of the days first above named except Sunday, such suit, matter or proceeding, commenced or adjourned, shall not, by reason of coming on any such days except Sunday, abate, but the same shall stand continued on the next succeeding day, at the same time and place unless the next day be the first day of the week, or a holiday, in which case the same shall stand continued to the next day succeeding the first day of the week or holiday, at the same time and place. Whenever the first day of the general term of any circuit court, as fixed by the order of a circuit judge shall fall upon either of the days first above named or whenever any circuit court shall be adjourned to any of the days first above named, such court may be adjourned to the next succeeding secular day. Nothing herein contained shall be construed to prevent or invalidate the entry, issuance, service or execution of any writ, summons or confession of judgment or other legal process whatever, holding courts or the transaction of any lawful business except banking on any of the Saturday afternoons herein designated as half holidays, nor to prevent any bank, savings and loan association or building and loan association from keeping its doors open or transacting its business on any Saturday afternoons, if by vote of its directors it elects to do so. The legislative body of any county or city may, by ordinance or resolution, provide for the closing of county or municipal offices for any or for all purposes on every Saturday.

HISTORY: Am. 1871, p. 29, Act 28, Eff. July 18;—CL 1871, 1559;—Am. 1875, p. 192, Act 163, Imd. Eff. April 29;—Am. 1881, p. 252, Act 208, Eff. Sept. 10;—How. 1591;—Am. 1893, p. 78, Act 77;—Am. 1893, p. 299, Act 185, Eff. Aug. 28;—CL 1897, 4880;—Am. 1903, p. 420, Act 254, Eff. Sept. 17;—Am. 1905, p. 52, Act 35, Imd. Eff. March 29;—Am. 1909, p. 429, Act 246, Eff. Sept. 1;—CL 1915, 6232;—Am. 1919, p. 595, Act 335, Eff. Aug. 14;—Am. 1929, p. 408, Act 155, Imd. Eff. May 20;—CL 1929, 9065;—Am. 1935, p. 155, Act 101, Imd. Eff. May 28;—Am. 1945, p. 92, Act 97, Eff. Sept. 6;—Am. 1946, 2nd Ex. Ses., p. 11, Act 2, Imd. Eff. July 15;—Am. 1948, 1st Ex. Ses., p. 99, Act 33, Imd. Eff. May 10;—CL 1948, 435.101;—Am. 1955, p. 145, Act 93, Eff. Oct. 14;—Am. 1969, p. 16, Act 12, Eff. Jan. 1, 1971.

435.102 Holiday on Sunday; Monday observance.

Sec. 2. Whenever January 1; February 12; July 4; or December 25 shall fall upon Sunday, the next Monday following shall be deemed a public holiday for any or all of the purposes aforesaid. In such cases all bills of exchange, checks and promissory notes made after the passage of this act which would otherwise be presentable for acceptance or payment on said Monday shall be deemed to be presentable for acceptance or payment on the secular business day next succeeding such holiday.

HISTORY: Add. 1893, p. 300, Act 185, Eff. Aug. 28;—CL 1897, 4881;—Am. 1909, p. 430, Act 246, Eff. Sept. 1;—CL 1915, 6233;—CL 1929, 9066;—Am. 1935, p. 156, Act 101, Imd. Eff. May 28;—Am. 1948, 1st Ex. Ses., p. 90, Act 33, Imd. Eff. May 10;—CL 1948, 435.102;—Am. 1955, p. 146, Act 93, Eff. Oct. 14;—Am. 1969, p. 17, Act 12, Eff. Jan. 1, 1971.

435.103 Saturday closing for banks, savings and loan associations and building and loan associations.

Sec. 3. In addition to the holidays and half-holidays designated in section 1 of this act, and notwithstanding the provisions of any other law of this state to the contrary, any one or more Saturdays up to 12 o'clock noon upon which a bank, savings and loan association, and building and loan association, as hereinafter defined, may desire to close as hereinafter provided, is hereby designated a holiday for such bank, savings and loan association, and building and loan association for such period and shall for all purposes whatever as regards the presenting for payment or acceptance, and the protesting and giving notice of the dishonor of bills of exchange, bank checks and promissory notes, after this act shall take effect, but for no other purpose be treated and considered as the first day of the week, commonly called Sunday. All such bills, checks and notes otherwise presentable for acceptance or payment on any such holiday shall be deemed to be payable and presentable for acceptance or payment on the secular or business day next succeeding such holiday.

The terms "bank", "savings and loan association" or "building and loan association" as used in this section shall mean any bank, savings and loan association or building and loan association organized under the laws of this state, any partnership or individual conducting a legally authorized private banking business, any national bank or federal savings and loan association and any federal reserve bank or branch thereof.

Any bank, savings and loan association or building and loan association desiring to close as aforesaid shall install a night depository before so doing.

Any bank, savings and loan association or building and loan association desiring to close as aforesaid shall adopt a resolution to that effect concurred in by a majority of its board of directors, or if a private bank by a majority of its partners or by all of them if there be no more than 2 partners, notice of which shall be posted in its banking house or place of doing business for not less than 15 days before the taking effect thereof.

HISTORY: Add. 1948, Ex. Ses., p. 90, Act 33, Imd. Eff. May 10;—CL 1948, 435.103.

Act 198, 1939, p. 375; Eff. Sep. 29.

AN ACT declaring what shall constitute the seventh day of the week; and to declare the effect of this act.

The People of the State of Michigan enact:

435.131 Seventh Day Adventists; application of Sunday laws.

Sec. 1. Whenever in the statutes of this state, rights, privileges, immunities or exemptions are given or duties and responsibilities are imposed on persons who conscientiously believe the seventh day of the week ought to be observed as the sabbath, said sabbath or seventh day shall mean and be construed in accordance with the worship and belief of such persons to include the period from sunset on Friday evening to sunset on Saturday evening.

HISTORY: CL 1948, 435.131.

435.151 Repealed. 1969, p. 17, Act 12, Eff. Jan. 1, 1971.

Section related to Columbus day; recognition as legal holiday.

C.R. 6, 1885, p. 378; Imd. Eff. Mar. 26.

CONCURRENT RESOLUTION for the naming of "Arbor Day."

435.171 Arbor day.

Resolved (the house concurring), That the governor is hereby requested to call the attention of the people of this state to the importance of planting trees for ornament and shade by naming a day upon which this work shall be given special attention, to be known as "Arbor Day."

HISTORY: CL 1897, 1754;—CL 1915, 1094;—CL 1929, 9068;—CL 1948, 435.171.

Act 250, 1966, p. 340; Eff. Mar. 10, 1967.

AN ACT designating May 29 of each year as the John Fitzgerald Kennedy day.

The People of the State of Michigan enact:

435.181 John Fitzgerald Kennedy Day.

Sec. 1. May 29 of each year shall be known as "John Fitzgerald Kennedy Day".

HISTORY: New 1966, p. 340, Act 250, Eff. Mar. 10, 1967.

435.201 Repealed. 1967, p. 13, Act 6, Eff. Dec. 6, 1968.

Section made central standard time legal in state; standard time defined.

Act 6, 1967, p. 13; Imd. Eff. Mar. 24.

AN ACT to establish standards of time in the state of Michigan; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

435.211 Eastern standard time as legal time.

Sec. 1. Eastern standard time, based on the seventy-fifth meridian of longitude west from Greenwich, as established by Act of March 19, 1918, 15 USC, 261-264, as last amended by Act of April 13, 1966, Public Law 89-387, is the legal time throughout the state.

HISTORY: New 1967, p. 13, Act 6, Imd. Eff. Mar. 24.

435.212 Exemption of state from federal law.

Sec. 2. The entire state, including all political subdivisions, shall be exempt from the provisions of subsection (a) of section 3 of Public Law 89-387, providing for the advancement of time.

HISTORY: New 1967, p. 13, Act 6, Imd. Eff. Mar. 24.

The effectiveness of this act was suspended as of 12:01 a.m. June 14, 1967, by action of the board of state canvassers certifying petitions to submit the act to referendum on November 5, 1968.

435.213 Repeals.

Sec. 3. Act No. 5 of the Public Acts of 1885, being section 435.201 of the Compiled Laws of 1948, is repealed.

HISTORY: New 1967, p. 13, Act 6, Imd. Eff. Mar. 24.

Act 66, 1953, p. 60; Imd. Eff. May 12.

AN ACT to prohibit the opening of any retail or wholesale new and used car business on the first day of the week, commonly called Sunday, for the purpose of carrying on or engaging in the business of offering to buy, sell, exchange, trade or participate in the negotiation thereof of any type or kind of automobile, on the first day of the week, commonly called Sunday.

The People of the State of Michigan enact:

435.251 Motor vehicles; sale on Sunday unlawful, exception.

Sec. 1. It shall be unlawful for any person, firm or corporation to engage in the business of buying, selling, trading or exchanging new, used or second-hand motor vehicles or offering to buy, sell, trade or exchange, or participate in the negotiation thereof, or attempt to buy, sell, trade or exchange any motor vehicle or interest therein, or of any written instrument pertaining thereto, on the first day of the week, commonly called Sunday.

HISTORY: New 1953, p. 60, Act 66, Imd. Eff. May 12.

435.252 Conducting business on Sunday; exception.

Sec. 2. That it shall be unlawful for any person, firm or corporation to keep open their establishment or place of business on the first day of the week, commonly called Sunday, for any of the purposes mentioned in section 1 of this act: Provided, however, That nothing in this act shall apply to any person who conscientiously believes that the seventh day of the week, from sunset Friday to sunset Saturday, should be observed as the Sabbath and who actually refrains from conducting or engaging in the business of buying, selling or offering for sale motor vehicles, or performing other secular business on that date.

HISTORY: New 1953, p. 61, Act 66, Imd. Eff. May 12.

435.253 Violation of act; penalty.

Sec. 3. Any person, firm or corporation who violates or offends against the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by the laws of this state, or by the court, in its discretion, suspending or re-

voking the dealer's license to do business within the state, or by fine and imprisonment and suspension and/or revocation, in the discretion of the court.

HISTORY: New 1953, p. 61, Act 66, Imd. Eff. May 12.

435.254 Applicability of act.

Sec. 4. This act shall not apply to counties having a population under 130,000 inhabitants according to the latest or each succeeding federal decennial census.

HISTORY: New 1953, p. 61, Act 66, Imd. Eff. May 12.

CHAPTER 436. LIQUOR

LIQUOR LAW Act 8 of 1933 (Ex. Ses.)	
436.1	Alcoholic liquors; regulation and control; enforcement of act, neglect, penalty.
436.1a	Michigan liquor control act; short title.
436.2	Michigan liquor control act; definitions.
436.2a	Bar; definition.
436.2b	Brewer; definition.
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436.2n	Sale; definition.
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436.2v	Warehouse; definition.
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436.5	Liquor control commission; creation, members, appointment, terms, oath, removal, vacancies, quorum, compensation and expenses, chairman.
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436.5b	Liquor control business manager; selection, duty and responsibility.
436.6	Liquor control commission; assistants and employees, bonds.
436.7	Liquor control commission; rules and regulations; public hearings.
436.7a	Liquor control commission; investigation; inspections; searches, seizures and examinations; witnesses, subpoena.
436.8	Liquor control commission; seal, orders, certified copies.
436.9	Liquor control commission; offices, branches.
436.10	Liquor control commission; revolving fund, use, report.
436.11	Liquor control commission; interest of members or employees.
436.12	Liquor control commission; civil liability of commission, members.
436.13	Liquor control commission; establishment of state liquor stores, basis.
436.14	Specially designated distributors.
436.15	Liquor control commission; handling of liquor; gross profit; leasing and purchasing power.
436.16	Alcoholic liquor; uniform prices; certain direct sales; gross profit; wine, minimum price. Discount to licensees; cash sales, exceptions; effective date.
436.16a	Tax on wines; rate; reduction, eligibility; statement of grape purchase, foreign extension; sacramental wines nontaxable; incorporation of farm mutual cooperative wineries, sales. Farm mutual cooperative wineries.
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436.17	Liquor licenses; discretion of liquor control commission; fees, bonds, insurance. Corporate manufacturers; expiration of licenses; construction of contract; death of licensee; receivers; short term licenses; transfer, approval by local legislative body; revocation of licenses. State-owned lands; armories, air bases or naval installations; state fair lands. Certain hotels; zones for renewal of retail licenses.
436.17a	Liquor licenses; issuance; 500 foot rule; measurement; exceptions; waiver.
436.17c	Liquor licenses; transfer to location farther from church or school.
436.17d	Class B or C hotel licenses; state owned airport; approval.
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436.19b	Liquor license; transfer fee, exceptions; inspection fee; transfers of corporate stock.
436.19c	Liquor; on premises licenses; quota. Resort licenses; term; number; classification. Resort licenses; additional; factors; transfer; report. Veterans. County airports.
436.19d	Liquor control; retailers, additional licenses; prohibited licensing.
436.19e	Liquor; sale on Sunday and election days; referendum; Christmas.
436.19f	Spirits; special license fee for Sunday sales; disposition.
436.20	Liquor control commission; licenses, revocation, suspension, penalty, procedure, criminal prosecution.
436.21	Licenses; revocation and suspension; hearings; forfeiture of privileges upon revocation.

- 436.22 Liquor licensee; bonds, form, conditions. Unlawful sale, right of action for damages, survival of action; form of action; continuance of bond.
- 436.22a Liquor licensee; retailer's liability insurance policy, approval, minimum limits, bankruptcy.
- 436.22b Consent to service of process; form.
- 436.22c Suit to enforce liability when service of process not effected; affidavit; service upon commission in duplicate; return; copy served on defendant; hearing; duty of commission.
- 436.22d Insurer to file notice of termination or cancellation of contract or policy; effective date.
- 436.22e Judgment; payment; failure to pay damages; recovery in action in assumpsit.
- 436.22f Insurance policy; coverage, conditions.
- 436.22g False statement or breach of authority; cancellation of insurance.
- 436.23 Liquor license; corporate vendor license, qualifications; transfer of stock, sale of assets, permission; renewal of outstanding license.
- 436.24 Vendors; classes.
- 436.25 Printed price list; posting.
- 436.26a Sterilization of glasses.
- 436.26b Sales in hotel rooms.
- 436.26c Unlicensed places; operating for drinking alcoholic beverages unlawful; exceptions.
- 436.27 Food; purchase, giving away.
- 436.28 Removal of liquor from premises where sold for consumption thereon.
- 436.29 Gifts; sales to intoxicated persons.
- 436.30 Aid to liquor vendor; refunding amount of price reductions by manufacturer to specially designated distributor licensees.
- 436.31 Interest in business of vendor.
- 436.32 Traffic in wine, spirits, alcohol and liquor by licensees only.
- 436.33 Sales to minors prohibited; signs, defenses.
- 436.33a Possessing or transporting alcoholic liquor in motor vehicle by minor. Impounding of motor vehicle; procedure, show cause order, notice to owner. Same; order impounding vehicle, appeal; lien holder. Transfer of title to avoid impounding.
- 436.33b Liquor; purchase or consumption by minor, penalty; fraudulent identification; construction.
- 436.34 Consumption of alcoholic liquors; public highways, parks and places of amusement.
- 436.35 Armories, air bases, naval installations and state military reservation.
- 436.40 Beer taxation; rebate.
- Retaliatory rule.
- 436.41 Failure to pay tax; penalties, collection.
- 436.42 Search warrants.
- 436.43 Seizures by execution; bankruptcy, payment.
- 436.44 Liability of vendor.
- 436.45 False and fraudulent statements.
- 436.46 Adulterated and misbranded liquors; refilling bottles; definitions; exceptions.
- 436.46a Forging documents, labels or stamps; penalty.
- 436.47 Retailer's license fees; distribution; alcoholism programs.
- 436.47a Repealed.
- 436.48 Moneys received; payment monthly to state treasurer.
- 436.49 Moneys paid to state treasurer credited to general fund.
- 436.50 Violation of act; misdemeanor, penalties; legislative intent.
- 436.51 Revocation of liquor licenses; effect.
- 436.53 Saving clause.
- 436.54 Construction of act.
- 436.56 Sale of spirits for consumption on premises; referendum, petitions, tie vote, resubmission.
- 436.56a Sale of spirits for consumption on premises; annexation of territory to city prohibiting such sale; continuance of license, referendum.
- 436.56b Sale of liquor; referendum; implementation.
- 436.57 Sale of spirits for consumption on premises; county option; form of ballot.
- 436.58 Warehouse receipts for alcoholic liquor; authority of commission.
- SPECIFIC TAX ON SPIRITS
Act 94 of 1959
- 436.101 Spirits; additional tax, collection, computation.
- 436.102 Spirits; additional tax; appropriation to school aid fund.
- 436.103 Effective date of act.
Act 275 of 1959
- 436.111-436.115 Expired.
Act 218 of 1962
- 436.121 Spirits; additional tax; collection, computation.
- 436.122 Spirits; additional tax; deposit to credit of general fund.
- 436.123 Inventory by licensee; payment of additional tax; refund.
- 436.124 Effective date of act.
- 436.125 Effectiveness of act; conditions.
- DRUNKENNESS ON TRAIN
Act 68 of 1913
- 436.201 Drunkenness on train prohibited.
- 436.202 Public drinking on train prohibited; exception.
- 436.203 Conductor; power to arrest and arraign offender.
- 436.204 Conductor; seizure of liquor, receipt, return.
- 436.205 Violation of act; penalty.

Act 8, 1933 (Ex. Ses.), p. 16; Imd. Eff. Dec. 15.

AN ACT to create a liquor control commission for the control of the alcoholic beverage traffic within the state of Michigan, and to prescribe its powers, duties and limitations; to provide for the control of the alcoholic liquor traffic within the state of Michigan and the establishment of state liquor stores; to provide for the care and treatment of alcoholics; to provide for the incorporation of farmer cooperative wineries and the granting of certain rights and privileges thereto; to provide for the licensing and taxation thereof, and the disposition of the moneys received under this act; to provide for the enforcement and to prescribe penalties for violations of this act; to provide for the confiscation and disposition of property seized under the provisions of this act; to provide a referendum in certain cases; and to repeal certain acts and parts of acts, general, local and special, and certain ordinances and parts of ordinances. Am. 1937, p. 509, Act 281, Imd. Eff. Jul. 21;—Am. 1951, p. 320, Act 219, Imd. Eff. Jun. 14.

The People of the State of Michigan enact:

436.1 Alcoholic liquors; regulation and control; enforcement of act, neglect, penalty.

Sec. 1. Scope of act. On and after the effective date of this act, it shall be lawful to manufacture for sale, sell, offer for sale, keep for sale, possess and/or transport any alcoholic liquor, as hereinafter defined, including alcoholic liquor used for medicinal, mechanical, chemical or scientific purposes and wine for sacramental purposes, subject to the terms, conditions, limitations and restrictions contained herein, and only as provided for in this act.

Except as by this act otherwise provided, the commission shall have the sole right, power and duty to control the alcoholic beverage traffic and traffic in other alcoholic liquor within the state of Michigan, including the manufacture, importation, possession, transportation and sale thereof.

No rule, regulation and/or order made by the commission shall unreasonably discriminate against Michigan manufacturers of alcoholic liquor.

The sheriffs of the several counties and their deputies and the village marshals, constables, officers or members of the village or city police and members of the department of state police, and inspectors of the commission, are hereby empowered and it is hereby made their duty to see that the provisions of this act and the rules and regulations made or authorized by said commission are enforced within their respective jurisdictions. It shall be their special duty to use their utmost efforts to repress and prevent crime and the violation of any of the provisions of this act. Any officer within the above enumeration who shall wilfully neglect or refuse to perform the duties imposed upon him by this section shall be guilty of a misdemeanor and upon conviction shall be fined not to exceed 500 dollars or imprisoned in the county jail not more than 90 days, or both.

HISTORY: CL 1948, 436.1.

CONSTITUTION: See Const. IV, 40.

COMPILERS' NOTE: The catchlines following the act section numbers were incorporated as part of the act as enacted.

436.1a Michigan liquor control act; short title.

Sec. 1a. This act shall be known and may be cited as "the Michigan liquor control act."

HISTORY: Add. 1947, p. 190, Act 140, Eff. Oct. 11;—CL 1948, 436.1a.

436.2 Michigan liquor control act; definitions.

Sec. 2. The words and phrases used in this act shall be construed as defined in this section and in sections 2a to 2w, inclusive, unless the context shall otherwise require:

“Alcoholic liquor” shall include any spirituous, vinous, malt or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing 1/2 of 1 per cent or more of alcohol by volume which are fit for use for beverage purposes. The commission shall define and classify alcoholic liquor according to their alcoholic content as belonging to 1 of the varieties hereinafter defined.

“Beer” shall mean any beverage obtained by alcoholic fermentation of an infusion or decoction of barley, malt, hops and/or other cereal in potable water.

“Wine” shall mean the product made by the normal alcoholic fermentation of the juice of sound, ripe grapes, or any other fruit with the usual cellar treatment, and containing not more than 16 per cent of alcohol by volume. The term “wine” shall include fermented fruit juices other than grapes.

“Spirits” shall mean any beverage which contains alcohol obtained by distillation, mixed with potable water and other substances in solution and includes, among other things, wine containing an alcoholic content of over 16 per cent by volume.

“Alcohol” shall mean the product of distillation of fermented liquid, whether rectified or diluted with water or not, whatever may be the origin thereof. It does not mean ethyl and/or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for beverage purposes.

HISTORY: Am. 1937, p. 510, Act 281, Imd. Eff. Jul. 21;—Am. 1945, p. 139, Act 133, Imd. Eff. Apr. 30;—Am. 1947, p. 652, Act 349, Imd. Eff. Jul. 3;—CL 1948, 436.2;—Am. 1951, p. 320, Act 219, Imd. Eff. Jun. 14;—Am. 1952, p. 352, Act 216, Imd. Eff. May 2.

CITED IN OTHER SECTIONS: The above section is cited in §§ 388.649, 436.101, 436.111, and 436.121.

436.2a Bar; definition.

Sec. 2a. “Bar” shall mean a barrier or counter at which any alcoholic liquor is sold or served to customers or consumed by customers.

HISTORY: Add. 1952, p. 353, Act 216, Imd. Eff. May 2.

436.2b Brewer; definition.

Sec. 2b. “Brewer” shall mean any person duly licensed to manufacture and sell beer.

HISTORY: Add. 1952, p. 353, Act 216, Imd. Eff. May 2.

436.2c Church; definition.

Sec. 2c. “Church” shall mean an entire house or structure set apart primarily for use for purposes of public worship, and which is tax exempt under the laws of this state, and in which religious services are held and with which a clergyman is associated, and the entire structure is kept for that use and not put to any other use inconsistent therewith.

HISTORY: Add. 1952, p. 353, Act 216, Imd. Eff. May 2;—Am. 1965, p. 418, Act 244, Imd. Eff. Jul. 21.

436.2d Citizen; definition.

Sec. 2d. “Citizen” shall mean any person not less than 21 years of age who is a citizen of the United States of America.

HISTORY: Add. 1952, p. 353, Act 216, Imd. Eff. May 2.

436.2e Club; definition.

Sec. 2e. “Club” shall mean an association whether incorporated or unincorporated, the majority of whose members shall be citizens for the promotion of some common object (not including associations organized for any commercial or business purpose, the object of which is money profit), owning, hiring or leasing a building, or space in a building, of such extent and character as in the judgment of the commission may be

suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests, and which shall have been in existence for a period of not less than 2 years prior to application for license under the provisions of this act. Public notice of the intent of the commission to issue such club license shall be given by publication in some newspaper published or in general circulation within the municipality at least 10 days before such license shall issue. Such club shall file with the commission annually, within 10 days of February 1st of each year, a list of the names and residences of its members, and similarly file, within 10 days of the election of any additional member, his name and address, and that its aggregate annual membership fees or dues and other income, exclusive of any proceeds from the sale of alcoholic liquor, are sufficient to defray the annual rental of its leased or rented premises, or, if such premises are owned by the club, are sufficient to meet the taxes, insurance, repairs and the interest on any mortgage thereon. The affairs and management of the club shall be conducted by a board of directors, executive committee, or similar body chosen by the members. No member or any officer, agent or employee of the club shall be paid, or directly or indirectly receive in the form of salary or other compensation, any profits from the disposition or sale of alcoholic liquor to the club or to the members of the club, beyond the amount of such salary as may be fixed and voted at meetings by the members or by its directors or other governing body and as reported by the club to the commission, within 3 months after such meeting.

HISTORY: Add. 1952, p. 353, Act 216, Imd. Eff. May 2.

436.2f Commission; definition.

Sec. 2f. "Commission" shall mean the liquor control commission provided for in this act.

HISTORY: Add. 1952, p. 353, Act 216, Imd. Eff. May 2.

436.2g Distiller; definition.

Sec. 2g. "Distiller" shall mean any person duly licensed to manufacture and sell spirits and/or alcohol of any kind.

HISTORY: Add. 1952, p. 353, Act 216, Imd. Eff. May 2.

436.2h Hotel; definition.

Sec. 2h. "Hotel" shall mean a building which in the judgment of the commission has been regularly used and kept open as such in a bona fide manner for the feeding and lodging of guests, where all who conduct themselves properly and who are able and ready to pay for such services are received if there be accommodations for them. Said hotel must be prepared to show that the major portion of its receipts is derived from the renting of rooms and the sale of food. The commission may require that said hotel shall have been maintained as such for a period of 1 year prior to the issuance of the license. For license purposes "hotels" in cities of 50,000 population and less than 175,000 population shall contain not less than 25 permanent bedrooms and in cities of 175,000 population or over shall contain not less than 50 permanent bedrooms within 1 structure for lease to persons, and shall be adequately equipped to serve meals to not less than 100 persons at 1 time, in a cafeteria and/or dining room provided for that purpose. Any hotel in a city, village or township of less than 100,000 population which does not contain at least 25 permanent bedrooms, but shall be adequately equipped to serve meals to not less than 25 persons at 1 time in a public cafeteria and/or dining room provided for that purpose, may apply to the commission setting forth the special facts and circumstances, and the commission may make an exception and grant such petitioner a hotel license. Class "A" hotels are those hotels, licensed under this act to sell beer and wine. Class "B" hotels are those hotels, licensed under this act to sell beer, wine and spirits.

HISTORY: Add. 1952, p. 354, Act 216, Imd. Eff. May 2.

436.2i License; definition.

Sec. 2i. "License" shall mean a contract between the commission and the licensee granting authority to said licensee to manufacture and sell, or sell, or warehouse any alcoholic liquor in the manner provided by this act.

HISTORY: Add. 1952, p. 354, Act 216, Imd. Eff. May 2.

436.2j Manufacturer; definition.

Sec. 2j. "Manufacturer" shall mean any person engaged in the manufacture of any alcoholic liquor, and among others, includes a distiller, a rectifier, a wine maker, and a brewer.

HISTORY: Add. 1952, p. 354, Act 216, Imd. Eff. May 2.

436.2k Person; definition.

Sec. 2k. "Person" shall mean any person, firm, partnership, association or corporation.

HISTORY: Add. 1952, p. 354, Act 216, Imd. Eff. May 2.

436.2l Residence; definition.

Sec. 2l. "Residence" shall mean the premises where a person resides permanently.

HISTORY: Add. 1952, p. 354, Act 216, Imd. Eff. May 2.

436.2m Retailer, vendor, wholesaler, warehouseman; definitions.

Sec. 2m. "Retailer" means any person who customarily sells to the consumer, under such rules as the commission may establish.

"Vendor" means a person licensed by the commissioner under this act to sell alcoholic liquor.

"Wholesaler" means any person who shall sell only to retailers or other licensees.

"Warehouseman" means any licensee authorized by the commission to store alcoholic beverages, but prohibited from making sales or deliveries to retailers unless such licensee is also the holder of a wholesaler or manufacturer license issued by the commission.

HISTORY: Add. 1952, p. 354, Act 216, Imd. Eff. May 2;—Am. 1954, p. 414, Act 174, Imd. Eff. May 5;—Am. 1957, p. 165, Act 143, Eff. Sep. 27;—Am. 1967, p. 629, Act 296, Eff. Nov. 2;—Am. 1969, p. 207, Act 112, Eff. Mar. 20, 1970.

436.2n Sale; definition.

Sec. 2n. "Sale" shall include exchange, barter or traffic, furnishing or giving away any alcoholic liquor. In case of a sale in which a shipment or delivery of any alcoholic liquor is made by a common or other carrier, the sale thereof shall be deemed to be made in the county wherein the delivery thereof is made by such carrier to the consignee, his agent or employee, and the prosecution for such sale may be had in the county or city where the seller resides, or from which the shipment is made or at the place of delivery.

HISTORY: Add. 1952, p. 354, Act 216, Imd. Eff. May 2.

436.2o Special license; definition.

Sec. 2o. "Special license" shall mean a contract between the commission and the special licensee granting authority to said licensee to sell beer, wine or spirits. The license shall be granted only to such persons and such organization and for such period of time as the commission shall determine.

HISTORY: Add. 1952, p. 354, Act 216, Imd. Eff. May 2;—Am. 1966, p. 220, Act 196, Eff. Mar. 10, 1967.

436.2p Specially designated distributor; definition.

Sec. 2p. "Specially designated distributor" shall mean a person engaged in an established business licensed by the commission to distribute alcoholic liquor other than wine under 16 per cent alcohol by volume and beer in the original package for the commission for consumption off the premises.

HISTORY: Add. 1952, p. 355, Act 216, Imd. Eff. May 2.

436.2q Specially designated merchant; definition.

Sec. 2q. "Specially designated merchant" shall mean any person to whom the commission grants a license to sell beer and/or wine at retail for consumption off the premises of such licensed place.

HISTORY: Add. 1952, p. 355, Act 216, Imd. Eff. May 2.

436.2r State liquor store; definition.

Sec. 2r. "State liquor store" shall mean a store established by the liquor control commission under this act for the sale of alcoholic liquor in the original package for consumption off the premises.

HISTORY: Add. 1952, p. 355, Act 216, Imd. Eff. May 2.

436.2s Tavern; definition.

Sec. 2s. "Tavern" shall mean any place licensed to sell at retail beer and wine for consumption on the premises only.

HISTORY: Add. 1952, p. 355, Act 216, Imd. Eff. May 2.

436.2t Class C license; definition.

Sec. 2t. "Class C license" shall mean any place licensed to sell at retail beer, wine and spirits for consumption on the premises.

HISTORY: Add. 1952, p. 355, Act 216, Imd. Eff. May 2.

436.2u Vehicle; definition.

Sec. 2u. "Vehicle" shall mean any means of transportation by land, by water, or by air.

HISTORY: Add. 1952, p. 355, Act 216, Imd. Eff. May 2.

436.2v Warehouse; definition.

Sec. 2v. "Warehouse" shall mean any premises or place primarily constructed or used or provided with facilities for the storage in transit or other temporary storage of perishable goods and/or for the conduct of a warehousing business.

HISTORY: Add. 1952, p. 355, Act 216, Imd. Eff. May 2.

436.2w Wine maker; definition.

Sec. 2w. "Wine maker" shall mean any person duly licensed to manufacture and sell at wholesale wine, with no restriction as to alcoholic content.

HISTORY: Add. 1952, p. 355, Act 216, Imd. Eff. May 2.

436.2x Cash; definition.

Sec. 2x. "Cash" means money in hand, or bank notes, or demand deposits at a bank, or legal tender, which a creditor must accept according to law. Cash shall not include call loans, post-dated checks or promissory notes.

HISTORY: Add. 1959, p. 119, Act 116, Eff. Mar. 19, 1960.

436.2y School; definition; institutions not included.

Sec. 2y. "School" shall include all buildings used for school purposes to impart instruction to children in grades kindergarten through 12, when provided by any public, private, denominational or parochial school, and shall include all buildings used to impart instruction provided by colleges and universities when being operated under the laws of this state except such buildings used primarily for adult education or college

extension courses. The term does not include any proprietary trade or occupational school, such as, a barber school, beauty school, music school or electronics school.

HISTORY: Add. 1962, p. 4, Act 3, Imd. Eff. Mar. 6;—Am. 1964, p. 114, Act 116, Imd. Eff. May 15.

436.3 Alcoholic liquors; sale or delivery by commission; importation for personal use; federal allowance.

Sec. 3. Excepting as otherwise provided in this act, no sale or delivery of alcoholic liquor, other than beer, or wine, shall be made in this state unless such sale or delivery is made by the commission, or its authorized agent or distributor. All alcoholic liquor, other than beer or wine of an alcoholic content of 16% or less by volume for sale, use, storage or distribution in this state, shall originally be purchased by and imported into the state by the commission, or by prior written authority of the commission. The provisions of this section shall not apply in the case of an alcoholic beverage brought into this state personally by a person 21 years of age or older at the time of re-entry into this state from without the territorial limits of the United States for personal or household use in an amount permitted by federal law if the person has been outside the territorial limits of the United States for more than 48 hours and has not brought an alcoholic beverage into the United States during the preceding 30 days.

HISTORY: Am. 1937, p. 512, Act 281, Imd. Eff. Jul. 21;—Am. 1945, p. 142, Act 133, Imd. Eff. Apr. 30;—CL 1948, 436.3;—Am. 1956, p. 46, Act 38, Imd. Eff. Mar. 28;—Am. 1957, p. 165, Act 143, Eff. Sep. 27;—Am. 1966, p. 106, Act 83, Eff. Mar. 10, 1967.

436.4 Fruit juices, preparations and other exceptions to act.

Sec. 4. Exceptions to act. The provisions of this act shall not be construed to prevent the manufacture of cider from fruit, for the purpose of making vinegar, and non-intoxicating cider and fruit juice for use and sale, and cider and fruit juice shall be deemed non-intoxicating within the meaning of this act when used and/or sold within 30 days after the manufacture thereof; and this act shall not apply to wine or cider of any alcoholic content made on the premises by the owner or lessee of such premises provided such premises are used and occupied by such owner or lessee as a dwelling and such wine or cider is made for family use and home consumption; or to prevent the sale or gift, or keeping and storing for sale by druggists and general merchants and others of any of the medicinal preparations manufactured in accordance with the formulas prescribed by the United States pharmacopoeia and national formulary, patent or proprietary preparations, and other bona fide medicinal and technical preparations, which contain no more alcohol than is necessary to extract the medicinal properties of the drugs contained in such preparations; and no more alcohol than is necessary to hold the medicinal agents in solution and to preserve the same, which are manufactured and sold as medicine and not as beverages, are unfit for use for beverage purposes, and the sale of which does not now require the payment of a United States liquor dealer's tax; or to prevent the manufacture and sale of tinctures or of toilet, medicinal and antiseptic preparations and solutions not intended for internal human use nor to be sold as beverages, and which are unfit for beverage purposes, and upon the outside of each bottle, box or package of which is printed in the English language, conspicuously and legibly, the quantity by volume of alcohol in such preparations; or to prevent the manufacture and keeping for sale of the food product known as flavoring extracts which shall be so manufactured and sold for cooking, culinary or flavoring purposes, and are unfit for use as a beverage or for beverage purposes: Provided, That it shall not be lawful to manufacture or sell any toilet, medicinal or antiseptic preparations or solutions, or any flavoring extracts or patent or proprietary medicines or preparations, the manufacture and sale of which now requires the payment of a United States liquor dealer's tax, except as herein provided: Provided further, That nothing in this act shall apply to the manufacture and/or sale of ethyl, mechanical or industrial alcohol, not used for or made unfit for beverage purposes: And provided further, That this act shall not apply to the purchase of alcoholic liquor as defined in this act, for use

in the manufacture of toilet, medicinal or antiseptic preparations or solutions, or any flavoring extract or patent or proprietary medicines or preparations, by a manufacturer using such alcoholic liquor exclusively for such manufacturing purposes and duly licensed therefor by the commission; said license to expire on May first following the date of issuance, issued on the payment of an annual fee of 10 dollars and the furnishing of such bond or bonds as the commission may require running to the people of the state of Michigan, for the faithful performance of the conditions of the license and compliance with the provisions of this act.

HISTORY: CL 1948, 436.4.

436.5 Liquor control commission; creation, members, appointment, terms, oath, removal, vacancies, quorum, compensation and expenses, chairman.

Sec. 5. A commission to be known as the liquor control commission of the state of Michigan is hereby created. The commission shall consist of 5 members, not more than 3 of whom shall be members of the same political party, to be appointed by the governor with the advice and consent of the senate. Two of these members, 1 from each political party, shall hear cases and render decisions. The remaining 3 commissioners shall act as an appeal board. Each member of the commission shall devote his entire time to the performance of the duties of his office. The terms of the commissioners shall be 4 years each. All current 3-year terms of office shall be extended by 1 year without any additional appointment by the governor being necessary. Each member of said commission shall qualify by taking and filing the constitutional oath of office and shall hold office until the appointment and qualification of his successor. The members of the commission shall not be removed from office by the governor except for malfeasance, misfeasance or neglect in office.

In the event of a vacancy or vacancies in the membership of the commission the governor shall appoint in like manner a successor or successors to fill the unexpired term.

A quorum for the transaction of business shall consist of 3 commissioners.

Each member of the commission shall receive an annual salary as appropriated by the legislature and shall be entitled to actual and necessary expenses while on the business of the commission.

The commission shall annually designate 1 of its members to act as chairman of the commission.

HISTORY: Am. 1937, p. 512, Act 281, Imd. Eff. Jul. 21;—Am. 1945, p. 142, Act 133, Imd. Eff. Apr. 30;—CL 1948, 436.5;—Am. 1951, p. 322, Act 219, Imd. Eff. Jun. 14;—Am. 1957, p. 350, Act 264, Imd. Eff. Jun. 13;—Am. 1968, p. 304, Act 207, Eff. Nov. 15.

CITED IN OTHER SECTIONS: The above section is cited in § 16.330.

436.5a Repealed. 1957, p. 353, Act 264, Imd. Eff. Jun. 13.

Section related to liquor law; created board of hearing examiners, determined membership and terms, provided for filling of vacancies and removal of members, determined compensation, and regulated hearings before board.

436.5b Liquor control business manager; selection, duty and responsibility.

Sec. 5b. The powers of the commission, enumerated in this act, which are not specifically and exclusively reserved to the commission by the act, shall be vested in, and exercised and administered by a liquor control business manager, who shall be selected by and responsible to the commission, and whose position shall be in the state classified civil service. The powers of the commission enumerated in, and provided for by this act, shall be exercised in conformity with the provisions of the act pertaining to the duties of the liquor control manager: Provided, however, That the commission shall exclusively exercise the power to make rules and regulations under the act to regulate the control of the alcoholic beverage traffic within the state; to hear and decide all cases of violation of the provisions of the act and regulations thereunder; to employ a liquor control business manager as provided for by the act; and to hear and decide

all public appeals from the administrative decisions of the liquor control business manager.

The liquor control business manager shall be and shall serve as the business manager of the liquor control commission, and as such it shall be his duty and responsibility to manage the business affairs of the commission relative to purchasing, merchandising, warehousing, rationing, distributing, inspecting, investigating, licensing and accounting, in accordance with policies established by the liquor control commission and in compliance with the provisions of this act and with the rules and regulations adopted thereunder. In addition to the foregoing, said business manager shall be exclusively responsible for the assigning, training and supervision of all commission classified employees.

HISTORY: Add. 1951, p. 323, Act 219, Imd. Eff. Jun. 14.

436.6 Liquor control commission; assistants and employees, bonds.

Sec. 6. The commission may employ such assistants, clerks, stenographers and employees and experts as it may deem necessary and fix their compensation, and incur such other expenses as are necessary to carry out the provisions of this act subject to appropriations provided by the legislature. Such assistants and employees shall be entitled to actual and necessary traveling and other expenses while on the business of the commission, when authorized and approved by the commission.

It shall be the duty of the commission to secure from all members and employees of the commission handling money, a bond or bonds, said bond or bonds to be executed by any surety company or companies authorized to do business in the state of Michigan or in the discretion of the commission by approved personal surety adequate to guarantee to the state the proper handling and accounting of such money.

HISTORY: Am. 1935, p. 409, Act 241, Imd. Eff. Jun. 8;—CL 1948, 436.6;—Am. 1951, p. 324, Act 219, Imd. Eff. Jun. 14.

436.7 Liquor control commission; rules and regulations; public hearings.

Sec. 7. Same; rules and regulations; public hearings. The commission shall adopt rules and regulations governing the carrying out of this act and the duties and responsibilities of licensees in the proper conduct and management of their licensed places. The commission shall hold public hearings twice each calendar year for the purpose of hearing complaints and receiving the views of the public with respect to the administration of this act. The hearings shall be kept and transcribed as a part of the records of the commission.

HISTORY: Am. 1937, p. 513, Act 281, Imd. Eff. July 21;—Am. 1945, p. 143, Act 133, Imd. Eff. April 30;—CL 1948, 436.7.

436.7a Liquor control commission; investigation; inspections; searches, seizures and examinations; witnesses, subpoena.

Sec. 7a. Same; investigations; inspections; searches; seizures and examinations; examination of witnesses; subpoenas; procedure on failure to obey. The commission may make, or cause to be made, such investigations as it shall deem proper in the administration of this act and of any and all other laws and rules and regulations now or which may hereafter be in force and effect concerning alcoholic liquor, or the manufacture, distribution or sale thereof, or the collection of taxes thereon, including the inspection and search of premises for which the license is sought or has been issued, of any building containing the same, of licensed buildings, examination of the books, records, accounts, documents and papers of the licensees or on the licensed premises.

The commission may by itself, or its duly authorized agents, examine or copy the books, records and papers of any person relating to any requirement pertaining to this act. Any member of the commission or its duly authorized agents may issue a subpoena requiring any person to appear before the commission, or its duly authorized agent, at any reasonable time and place, and be examined with reference to any matter within the scope of the inquiry or investigation being conducted by the commission

and to produce any books, records or papers pertaining to the question involved. Any member of the commission or its duly authorized agents may administer an oath or affirmation to a witness in any matter before the commission, certify to official acts, and take depositions. In case of disobedience of a subpoena, the commission or its duly authorized agents may invoke the aid of any circuit court of the state of Michigan in requiring the attendance and testimony of witnesses and the production of books, records and papers pertaining to the question involved. Any of the circuit courts of the state within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena, issue an order requiring such person to appear before said commission or its duly authorized agents and to produce books, records and papers if so ordered and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

The fees of witnesses required to appear before the commission shall be the same as those allowed to witnesses in the circuit courts and shall be paid by the commission.

Any sheriff's or police department shall, upon request of the commission, cause to be served any subpoena which may be directed to any person located within the jurisdiction of the sheriff's or police department. No fee shall be charged for this service by such sheriff's or police department. Subpoenas may also be served by any investigator of the commission.

HISTORY: Add. 1945, p. 143, Act 133, Imd. Eff. April 30;—CL 1948, 436.7a.

Sec. 7a as added in 1935, relative to rules as to wine, had the following history: Add. 1935, p. 410, Act 241, Imd. Eff. June 8;—Rep. 1937, p. 522, Act 281, Imd. Eff. July 21.

436.8 Liquor control commission; seal, orders, certified copies.

Sec. 8. Same; seal, orders and records. The commission shall adopt a suitable seal of which all courts of the state shall take judicial notice, and all proceedings, orders, licenses and official acts shall be authenticated thereby. Certified copies of the orders and records of said commission shall be prima facie evidence of the acts of said commission in any court of this state.

HISTORY: CL 1948, 436.8.

436.9 Liquor control commission; offices, branches.

Sec. 9. Same; offices. The commission shall be authorized to establish throughout the state of Michigan 4 branch offices. The expense of the same shall be paid by the commission in the manner hereinafter provided.

HISTORY: Am. 1937, p. 513, Act 281, Imd. Eff. July 21;—CL 1948, 436.9.

436.10 Liquor control commission; revolving fund, use, report.

Sec. 10. The commission is hereby authorized to maintain a revolving fund which fund is to be derived from the money deposited to the credit of the commission with the state treasurer. From time to time amounts shall be transferred from the revolving fund to the general fund in accordance with the provisions of Act No. 259 of the Public Acts of 1941, as amended, being sections 21.121 to 21.130, inclusive, of the Compiled Laws of 1948. The fund herein provided for is to be exclusively used for the purpose of replenishing, maintaining, warehousing and transporting the liquor stock into the various state liquor stores throughout the state. A monthly report thereof shall be made to the state treasurer and to the budget director which shall contain an itemized account of all moneys received and all expenditures made by the commission during the month covered in the report.

HISTORY: Am. 1935, p. 410, Act 241, Imd. Eff. June 8;—CL 1948, 436.10;—Am. 1952, p. 355, Act 216, Imd. Eff. May 2;—Am. 1956, p. 305, Act 161, Imd. Eff. Apr. 16.

436.11 Liquor control commission; interest of members or employees.

Sec. 11. Same; interest of members. No member of the commission or employe thereof shall be pecuniarily, directly or indirectly, interested in the manufacture, warehousing, sale, distribution or transportation, or selling or furnishing of any equipment, furnishings or refrigeration used in the manufacture or sale of any alcoholic liquor within the state of Michigan.

HISTORY: CL 1948, 436.11.

436.12 Liquor control commission; civil liability of commission, members.

Sec. 12. Same; liability of commission. The commission, or any member of the commission, shall not be personally liable for any action at law for damages sustained by any person because of any action performed or done by the commission, or any member of the commission, in the performance of their respective duties in the administration and in the carrying forth of the purposes and provisions of this act.

HISTORY: CL 1948, 436.12.

436.13 Liquor control commission; establishment of state liquor stores, basis.

Sec. 13. The commission may establish state liquor stores throughout the state of Michigan: Provided, That in counties under 40,000 population according to the last federal census there shall be no more than 1 store in any such county, except as hereinafter provided: Provided further, That in counties of 40,000 population or over according to the last federal census such stores shall not exceed 1 for each 40,000 population or major fraction thereof according to the last federal census, except as hereinafter provided: Provided, however, That the commission may in its discretion establish a state liquor store in any village or city of 3,000 population or over according to the last federal census.

HISTORY: Am. 1937, p. 513, Act 281, Imd. Eff. July 21;—CL 1948, 436.13.

436.14 Specially designated distributors.

Sec. 14. Same; specially designated distributors. The commission may license any hotel or established merchant, who or which shall be if a natural person, a citizen of this state and if a corporation, shall be organized under the laws of the state of Michigan, in such places as it may designate to sell alcoholic liquor except wine under 16 per cent alcohol by volume and beer for consumption off the premises. Where alcoholic liquor is sold by specially designated distributors, it shall be sold at a price to be fixed by the commission, and shall be sold in accordance with the rules and regulations of the commission.

HISTORY: Am. 1937, p. 513, Act 281, Imd. Eff. July 21;—Am. 1945, p. 144, Act 133, Imd. Eff. April 30;—CL 1948, 436.14.

436.15 Liquor control commission; handling of liquor; gross profit; leasing and purchasing power.

Sec. 15. The commission shall have the right and power to buy, have in its possession and sell in its own name all alcoholic liquor for distribution as provided in sections 13 and 14. It shall be the duty of the commission to supply such types of alcoholic liquors as shall be demanded by the public: Provided, however, That if any such brands as are demanded are not manufactured within the borders of the United States or are not readily obtainable within the borders of the United States, then such orders shall be filled by the commission at the entire expense of the person placing such order, plus not less than 46 per cent gross profit, subject to any discounts provided for in section 16 of this act. The commission may lease or occupy any building or land required for its operation, and may purchase any warehouse required for its operation, subject to the approval of the state administrative board.

HISTORY: Am. 1935, p. 410, Act 241, Imd. Eff. Jun. 8;—Am. 1937, p. 514, Act 281, Imd. Eff. Jul. 31;—CL 1948, 436.15;—Am. 1952, p. 355, Act 216, Imd. Eff. May 2.

436.16 Alcoholic liquor; uniform prices; certain direct sales; gross profit; wine, minimum price.

Sec. 16. The commission shall establish uniform prices for the sale of alcoholic liquor in state liquor stores, and by specially designated distributors. The commission may establish by rule or regulation prices for the sale of alcoholic liquors to hospitals, charitable institutions and military establishments located in the state. Such prices shall not return a gross profit to the commission in excess of 65%. The commission, regardless of any limitations herein provided, shall establish and maintain minimum uniform retail prices for the sale of wine, containing an alcoholic content of over 16% by volume, in state liquor stores and by specially designated distributors, which minimum price for wine of over 16% of alcohol by volume shall be based upon the minimum price of grapes per ton as set forth in section 16a, and shall be 1% of the minimum price of grapes per ton for each 1/5 gallon of wine or fraction thereof. For wine of 16% or under manufactured from grapes grown in Michigan and sold through distributors or wholesalers, the commission shall determine the minimum markup at wholesale and retail at which various classes of bottled wine shall be distributed and sold in Michigan, either at wholesale or retail. The minimum wholesale price for wine produced in the United States and distributed or sold in Michigan shall be fixed by the commission, and it shall be the same as the minimum wholesale price fixed for wine produced in Michigan. Wine containing an alcoholic content of over 16% by volume manufactured in Michigan from the juice of grapes grown in Michigan shall be sold at prices that shall not exceed the cost to the commission of buying and distributing such wine, and shall not exceed a gross profit to the commission of 10%. If any spirits have not met sales standards established by the commission for a period of 6 months, the commission may sell such spirits at a price to be approved by the state administrative board.

Discount to licensees; cash sales, exceptions; effective date.

Effective February 26, 1967, on the sale of alcoholic liquors made by state liquor stores to specially designated distributors, there shall be allowed a discount of 11 1/2% deducted from the sale price as established by the commission, and to establishments licensed to sell for consumption on the premises there shall be allowed a discount of 12 1/2%, deducted from the sale price as established by the commission. Every sale of alcoholic liquor made in state liquor stores and by all types of licensees shall be for cash only, except customer's charge accounts with specially designated merchants who are not holders of a license authorizing sale of alcoholic liquor for consumption on the premises, bona fide registered guests of hotels, industrial accounts and persons holding authorized credit cards from credit card agencies, and professional accounts, industrial accounts of class "C's" and taverns, whose major business is food, such credit not to exceed 30 days, and sales by private clubs to bona fide members.

HISTORY: Am. 1937, p. 514, Act 281, Imd. Eff. Jul. 21;—Am. 1945, p. 144, Act 133, Imd. Eff. Apr. 30;—Am. 1947, p. 654, Act 349, Imd. Eff. Jul. 3;—CL 1948, 436.16;—Am. 1950, 1st Ex. Ses., p. 11, Act 12, Eff. Mar. 31, 1951;—Am. 1951, p. 324, Act 219, Imd. Eff. Jun. 14;—Am. 1952, p. 356, Act 216, Imd. Eff. May 2;—Am. 1954, p. 415, Act 174, Imd. Eff. May 5;—Am. 1959, p. 319, Act 217, Eff. Mar. 19, 1960;—Am. 1964, p. 144, Act 153, Eff. Aug. 28;—Am. 1966, p. 112, Act 90, Imd. Eff. Jun. 14.

The bill was presented to the governor on May 31, 1966, at 3:35 p.m., and not having been returned by him to the house in which it originated became law on June 14, 1966, at 3:35 p.m., the legislature having continued in session. (See 1966 House Journal, p. 3493.)

436.16a Tax on wines; rate; reduction, eligibility; statement of grape purchase, foreign extension; sacramental wines nontaxable; incorporation of farm mutual cooperative wineries, sales.

Sec. 16a. There shall be levied and collected by the commission on all wines sold in this state and manufactured from grapes or fruits not grown in this state, a tax at the rate of 50 cents per gallon if sold in bulk and in a like ratio if sold in smaller quantities. The commission shall reduce the tax 46 cents per gallon on all wines manufactured in Michigan from grapes grown in Michigan, for which the wineries, blenders or rectifi-

ers have paid, in cash, the Michigan grape growers \$100.00 per ton, or more, at the shipping point, the buyer furnishing at his expense, all necessary packages or containers and paying transportation charges beyond such shipping point; the tax shall likewise be reduced on wines manufactured in Michigan from Michigan grown fruits, other than grapes, and also on such wines when blended with wine or wine spirits manufactured in Michigan and also blended with wine or wine spirits manufactured from grapes and fruits not grown in Michigan, when such blend does not use in the finished product over 25% in volume of wines or wine spirits manufactured outside the state of Michigan. All wines not manufactured and not entitled to tax reduction as provided herein shall be subject to and shall pay to the commission the full amount of tax as provided herein. Every Michigan winery, as a condition precedent to the commission having jurisdiction to grant or recognize any claim for tax reduction, as herein provided, shall, on or before December fifteenth of each year hereafter, when Michigan grapes are purchased file with the commission a detailed and sworn statement showing the date, place of delivery and amount of grapes purchased of Michigan grape growers, and the name and address of the Michigan growers from whom such purchases are made, together with a sworn statement that such grapes have been paid for at the price and manner provided for in this act, and that such act in all respects has been fully complied with. The commission may grant extensions for late filing prior to the calendar year 1969. The commission shall have the power to establish and put in force such other necessary and proper regulations as in the opinion of such commission will prevent tax evasion or allow wineries tax reduction on more gallons of wine than would ordinarily be produced and manufactured from the tonnage purchased and on which tax reduction could legally be claimed. In each year, wineries desiring the benefits of this act, shall, on or before September 1, file with the commission written notice of its intention, in that season, to operate under and in compliance with the provisions hereof. All sacramental wines shall be nontaxable when used by churches and the wines may be imported and the commission shall not impose restrictions on importations for such purposes but may adopt such rules as may prevent any abuses which in their opinion grow out of the importations.

Farm mutual cooperative wineries.

On approval by the liquor control commission, the securities bureau shall incorporate such limited number of farm mutual cooperative wineries as, in the judgment of the commission, will be beneficial to the Michigan grape and fruit industry. Such wineries shall be licensed under this act and the payment of 1 license fee annually by such corporation shall authorize wine making on the premises of the corporation and also on the premises of the grape and fruit growing farmers who are members of or stockholders in such corporation and it is herein provided that the stockholders or members, on incorporation of such farmers cooperative corporations herein provided for, shall be certified to be Michigan grape and fruit growing farmers. This act shall authorize manufacture by cooperative corporations on farm premises but all sales must be made by the corporation and from the corporation premises.

HISTORY: Add. 1937, p. 514, Act 281, Imd. Eff. Jul. 21;—CL 1948, 436.16a;—Am. 1950, 1st Ex. Ses., p. 11, Act 12, Eff. Mar. 31, 1951;—Am. 1967, p. 111, Act 92, Imd. Eff. Jun. 21;—Am. 1969, p. 511, Act 273, Imd. Eff. Aug. 11.

436.16b Repealed. 1950, Ex. Ses., p. 13, Act 12, Eff. Mar. 31, 1951.

Section taxed wine made from fruit not grown in state and imported or purchased for blending purposes by bonded Michigan wineries, blenders, or rectifiers.

436.17 Liquor licenses; discretion of liquor control commission; fees, bonds, insurance.

Sec. 17. The commission is hereby authorized to issue licenses in its discretion, as provided in this act, upon the payment of the fees provided in section 19 and the filing of the bonds required in section 22, or the liability insurance provided in section 22a.

Corporate manufacturers; expiration of licenses; construction of contract; death of licensee; receivers; short term licenses; transfer, approval by local legislative body; revocation of licenses.

The commission shall issue licenses to manufacturers only when a majority of the stockholders are citizens and only when 25% or more of the capital stock is owned by citizens of the state of Michigan, except that the foregoing limitations shall not apply to manufacturers of beer or malt beverages or to distillers or rectifiers. All full-year licenses issued by the commission shall expire on April 30 following the date of issuance or the date fixed by the commission. All licenses issued under this act shall be construed to be a contract between the commission and the licensee and shall be signed by both parties. In the case of the death of a licensee, the commission may approve the operation of the establishment by a special administrator or special administratrix, administrator or administratrix, or executor or executrix duly appointed by the proper court, pending the settlement of the estate of the deceased licensee. The commission in its discretion may approve a receiver or trustee appointed by a proper court to operate the licensed establishment of a licensee of the commission. The commission is authorized to grant part-year licenses for a proportionate part of the license fee hereinafter specified. In resort areas the commission shall grant licenses for as short a period of time as 3 months. Licenses may be transferred with the consent of the commission. Class C and specially designated distributor licenses obtained other than by transfer shall not be transferred within 3 years of their issuance except in cases where the licensee clearly and convincingly shows unusual hardship will result if such transfer is not consented to by the commission. All applications for licenses to sell beer and wine or spirits for consumption on the premises, except in counties of 1,000,000 population or over, shall be approved by the local legislative body in which said applicant's place of business is located before being granted a license by the commission, except that in the case of an application for renewal of an existing license, where no objection to a renewal has been filed with the commission by the local legislative body, prior to 30 days before the date of expiration of the license, the approval of the local legislative body shall not be required. Upon request of the local legislative body in any county of less than 1,000,000 population, after due notice and proper hearing by the body, the commission shall revoke the license of any licensee granted a license to sell beer and wine or spirits for consumption on the premises.

State-owned lands; armories, air bases or naval installations; state fair lands.

No licenses shall be issued by the commission to sell alcoholic liquor, either on or off the premises, in such cases in which the property or establishment to be covered by the license is situated in or on any state-owned lands, except armories, air bases and naval installations owned or leased by the state or provided by the federal government by either lease, license or use permit and used by outside parties of a nonmilitary or state governmental nature and lands which were under lease to any person licensed in the calendar year 1954 and on which a licensed establishment is presently located. Before the issuance of a license and annually thereafter prior to the issuance of a license for a new licensing period the applicant for license shall submit to the commission a certificate from the department or agency charged with control of such lands setting forth that the issuance of a license is not incompatible with the objects and purposes entrusted to such department or agency under the law establishing control of the lands in such department or agency. No license shall be issued where the property or establishment to be covered by the license is situated on land placed under the control of the state department of agriculture under the terms of Act No. 13 of the Public Acts of 1921, as amended, being sections 285.1 to 285.7 of the Compiled Laws of 1948.

Certain hotels; zones for renewal of retail licenses.

Nothing in this act contained shall be deemed to prohibit hotels, which are or have been the holders of licenses authorizing the retail sale of alcoholic liquor for consumption on the premises, from applying for and receiving, under the provisions of this act, any other and different type of license authorizing the retail sale of alcoholic liquor for consumption on the premises, nor shall the application therefor be deemed a new application for a license, so long as the total number of public licenses therefor shall not exceed the authorized total as in this act established and the sale of alcoholic liquor has been approved by the electors. The commission may divide the state into 3 zones and establish for each zone an anniversary date for renewal of full-year retail licenses in the licensing year. The commission shall promulgate rules and regulations for the effective administration of the renewal of licenses.

HISTORY: Am. 1837, p. 516, Act 281, Imd. Eff. Jul. 21;—CL 1948, 436.17;—Am. 1949, p. 183, Act 174, Eff. Sep. 23;—Am. 1951, p. 324, Act 219, Imd. Eff. Jun. 14;—Am. 1952, p. 176, Act 150, Eff. Sep. 18;—Am. 1955, p. 51, Act 42, Imd. Eff. Apr. 26;—Am. 1955, p. 192, Act 126, Imd. Eff. Jun. 7;—Am. 1957, p. 369, Act 275, Eff. Sep. 27;—Am. 1960, p. 221, Act 151, Imd. Eff. May 23;—Am. 1962, p. 30, Act 35, Eff. May 1;—Am. 1964, p. 227, Act 172, Eff. Aug. 26;—Am. 1965, p. 55, Act 39, Imd. Eff. May 19;—Am. 1966, p. 220, Act 196, Eff. Mar. 10, 1967.

436.17a Liquor licenses; issuance; 500 foot rule; measurement; exceptions; waiver.

Sec. 17a. (a) Any new application for a license to sell alcoholic beverages at retail, or any request to transfer location of an existing license, shall be denied in the event the contemplated location is within 500 feet of a church or a school building. Such distance between the church or school building and the contemplated location shall be measured along the center line of the street or streets of address between 2 fixed points on the center line determined by projecting straight lines, at right angles to the center line, from the part of the church or school building nearest to the contemplated location and from the part of the contemplated location nearest to the church or school building.

(b) This section shall not apply to specially designated merchants not in conjunction with on the premise licenses.

(c) This section shall not apply to any outstanding license issued prior to March 1, 1949, for a location within the aforesaid distance or to the renewal or transfer thereof at such location or to any resort license in effect during the 1948-1949 licensing year or to the renewal or transfer thereof at such location or to any application for a license at such location which has been approved by the commission prior to March 1, 1949, and all licenses so issued, renewed, transferred or approved shall be conclusively presumed to be valid for purposes of this section only.

(d) The commission may waive the provisions of this section in the case of other classes of licenses. If no objection is filed by the church or school, the commission may issue the license in accordance with the provisions of this act. If an objection is filed, the commission shall hold a hearing in accordance with rules established by it prior to making a decision on the issuance of the license.

HISTORY: Add. 1945, p. 145, Act 133, Imd. Eff. Apr. 30;—CL 1948, 436.17a;—Am. 1949, p. 110, Act 106, Imd. Eff. May 17;—Am. 1960, p. 768, Act 339, Imd. Eff. Dec. 12.

436.17c Liquor licenses; transfer to location farther from church or school.

Sec. 17c. Nothing in section 17a of this act shall be construed to prevent the transfer of a license to a location farther from a church or school, if the license to be transferred is within the 500 foot radius.

HISTORY: Add. 1949, p. 355, Act 282, Eff. Sep. 23.

436.17d Class B or C hotel licenses; state owned airport; approval.

Sec. 17d. Notwithstanding the provisions of section 17, the commission, with the approval of the state department of aeronautics, may issue without regard to the quota provision of section 19c, not more than 1 class "C" or class "B" hotel license for each

state-owned airport serviced by scheduled commercial passenger airlines. Such license shall not be transferable.

HISTORY: Add. 1965, p. 252, Act 158, Imd. Eff. Jul. 9.

The bill was presented to the governor on June 25, 1965, at 11:38 a.m., and not having been returned by him to the house in which it originated became law on July 9, 1965, at 11:38 a.m., the legislature having continued in session. (See 1965 House Journal, p. 2968.)

436.17e Liquor licenses; publicly owned airports, issuance.

Sec. 17e. The commission may issue, without regard to the quota provision of section 19c, licenses to the owner or lessee, or both, to sell alcoholic beverages for consumption on the premises of buildings in the passenger terminal complex of each publicly owned airport which is served by scheduled commercial passenger airlines certificated to enplane and deplane passengers on a scheduled basis by the federal aviation agency or the civil aeronautics board. Licenses issued under this section shall not be transferable.

HISTORY: Add. 1965, p. 771, Act 381, Imd. Eff. Jul. 29;—Am. 1968, p. 275, Act 186, Eff. Nov. 15.

436.18 Liquor licenses; ineligibility of law enforcement officers; nonprofit fraternal organization club licenses.

Sec. 18. No person who holds or whose spouse holds, either by appointment or election, any public office which involves the duty to enforce any of the penal laws of the United States of America, or the penal laws of the state, or any penal ordinance or resolution of any municipal subdivision of the state, except civil defense volunteer policemen, shall be issued any license, nor shall such a person have any interest, directly or indirectly, in any such license. However, a nonprofit fraternal organization incorporated under the laws of this state, whose membership is not totally composed of law enforcement personnel or public officeholders charged with the duty of enforcing any penal laws or ordinances of any governmental body, may be issued a club liquor license if the organization is otherwise qualified.

HISTORY: Am. 1937, p. 518, Act 281, Imd. Eff. July 21;—Am. 1945, p. 145, Act 133, Imd. Eff. Apr. 30;—CL 1948, 436.18;—Am. 1957, p. 52, Act 45, Eff. Sep. 27;—Am. 1967, p. 131, Act 107, Eff. Nov. 2.

The bill was presented to the governor on June 12, 1967, at 3:48 p.m., and not having been returned by him to the house in which it originated became law on June 26, 1967, at 3:48 p.m., the legislature having continued in session. (See 1967 Senate Journal p. 1676.)

CITED IN OTHER SECTIONS: The above section is cited in § 87.2.

436.18a Beer and wine; referendum as to Sunday sale; petition, form of ballot.

Sec. 18a. The sale of beer and wine between the hours of 2:00 a.m. and 12:00 midnight on Sunday may be prohibited in any county, city, village, or township, by a majority vote of the electors voting at a regular state election. Not oftener than once in every 4 years, upon the filing of a petition with the county, city, village, or township clerk, as the case may be, requesting the submission of the question of the Sunday sale of beer and wine, the clerk shall submit such question at the next regular state election held in such county, city, village or township: Provided, That said petition is filed 60 days prior to said regular state election. In case of a county, city or township such petition shall be signed by a number of the registered and qualified electors thereof which shall be not less than 35 per centum of the total number of votes cast for all candidates for the office of secretary of state in such county, city or township at the last general election held for such purpose, and in case of a village such petition shall be signed by a number of the registered and qualified electors thereof which shall not be less than 35 per centum of the total number of votes cast for all candidates for the office of president of such village at the last village election held for such purpose. The question of the Sunday sale of beer and wine shall be submitted by ballot in substantially the following form:

"Shall the sale of beer and wine within (the county, city, village, or township as the case may be) between the hours of 2:00 a.m. and 12:00 midnight on Sunday be prohibited?

Yes

No"

All votes on the question shall be taken, counted and canvassed in the same manner as votes cast in county or city or village or township election, as the case may be, are taken, counted and canvassed. Ballots shall be furnished by the election commission or similar body of the respective counties, cities or villages or townships. In case a majority of the electors voting at any such election shall vote in favor thereof, the sale of beer and wine within such county, city, village, or township between the hours of 2:00 a.m. and 12:00 midnight on Sunday shall be prohibited.

HISTORY: Add. 1945, p. 372, Act 258, Eff. Sept. 6;—CL 1948, 436.18a;—Am. 1949, p. 486, Act 295, Eff. Sep. 23.

436.19 Liquor control act; license fees.

Sec. 19. The following license fees shall be paid at the time of filing applications or as hereinafter provided:

(1) Manufacturers of spirits, but not including makers, blenders and rectifiers of wines containing an alcoholic content of over 16% and not exceeding 21% by volume, \$5,000.00.

(2) Manufacturers of beer, \$50.00 per 1,000 barrels, or fraction thereof, production annually with a maximum fee of \$100.00.

(2a) Outstate seller of beer, delivering or selling beer in the state, \$100.00.

(3) Wine makers, blenders and rectifiers of wine, including makers, blenders and rectifiers of wines containing an alcoholic content of over 16% and not exceeding 21% by volume, \$500.00.

(3a) Outstate seller of wine, delivering or selling wine under 16% in the state, \$100.00.

(4) Dining cars or other railroad or pullman cars selling alcoholic liquor, \$50.00 per train.

(5) Wholesale vendors other than manufacturers of beer, \$100.00 for the first truck, trailer or semitrailer and \$50.00 for each additional truck, trailer or semitrailer.

(6) Watercraft, licensed to carry passengers, selling alcoholic liquor, a minimum fee of \$50.00 and a maximum fee of \$500.00 per year computed on the basis of \$1.00 per person per passenger capacity.

(7) Specially designated merchants, for selling beer or wine for consumption off the premises only, but not at wholesale, \$50.00 for each location regardless of the fact that such a location may be a part of any system or chain of merchandising.

(7a) Specially designated distributors licensed by the commission to distribute alcoholic liquor other than wine under 16% alcohol by volume and beer in the original package for the commission for consumption off the premises, \$75.00 per year; and \$1.50 additional fee for each \$1,000.00 or major fraction thereof in excess of \$25,000.00 of the total retail value of merchandise purchased under each license from the liquor control commission during the previous calendar year.

(8) Hotels of class "A" selling beer and wine, a minimum fee of \$150.00 and for all bedrooms in excess of 20, \$1.00 for each additional bedroom, but not to exceed \$500.00.

Hotels of class "B" selling beer, wine and spirits, a minimum fee of \$500.00, and for all bedrooms in excess of 20, \$2.00 for each additional bedroom, but not to exceed \$1,000.00. If a hotel of class "B" sells beer, wine and spirits in more than 1 public bar, such fee shall entitle such hotel to sell in only 1 public bar, other than a bedroom, and a license must be secured for each additional public bar, other than a bedroom, the fee for which shall be \$250.00.

(9) Taverns, selling beer and wine, \$150.00.

(10) Class "C" license selling beer, wine and spirits, \$500.00. If a class "C" licensee sells beer, wine and spirits in more than 1 bar, a fee of \$250.00 shall be paid for each additional bar.

(11) Clubs selling beer, wine and spirits, \$100.00 for clubs having 150 or less duly accredited members and \$1.00 for each additional member. The membership list for the purpose only of determining the license fees to be paid under this section shall be the accredited list of members as determined by a sworn affidavit 30 days prior to the closing of the license year. Nothing herein contained shall be construed to prevent the commission from checking any such list and making its own determination from such list or otherwise. The maximum fee shall not exceed \$500.00 for any one club.

(12) Warehouses, to be fixed by the commission with a minimum fee for each warehouse of \$25.00.

(13) Special licenses, a fee of \$25.00 per day, except that the fee for such license or permit issued to any bona fide nonprofit association, duly organized and in continuous existence for 1 year prior to the filing of its application, shall be \$15.00. No more than 5 special licenses may be granted to any organization, including any auxiliary thereof, in any calendar year.

(14) Aircraft licensed to carry passengers, selling alcoholic liquor, \$50.00 per plane.

The fees provided in this act for the various types of licenses shall not be prorated for a portion of the effective period of the license.

HISTORY: Am. 1937, p. 516, Act 281, Imd. Eff. Jul. 21;—Am. 1941, p. 138, Act 111, Eff. Jan. 10, 1942;—Am. 1945, p. 145, Act 133, Imd. Eff. Apr. 30;—Am. 1947, p. 191, Act 140, Eff. Oct. 11;—CL 1948, 436.19;—Am. 1950, 1st Ex. Ses., p. 12, Act 12, Eff. Mar. 31, 1951;—Am. 1951, p. 325, Act 219, Imd. Eff. Jun. 14;—Am. 1952, p. 356, Act 216, Imd. Eff. May 2;—Am. 1953, p. 148, Act 143, Eff. Oct. 2;—Am. 1954, p. 99, Act 72, Eff. Aug. 13;—Am. 1962, p. 461, Act 217, Eff. Jul. 1.

436.19a Repealed. 1955, p. 308, Act 206, Eff. Oct. 14.

Section required bartenders to be licensed.

436.19b Liquor license; transfer fee, exceptions; inspection fee; transfers of corporate stock.

Sec. 19b. On all transfers of license or any interest therein from 1 person to another which are approved by the commission, there shall be paid to the commission a transfer fee equal to the fee provided in this act for the class of license being transferred. Such transfer fee shall not be prorated for a portion of the effective period of the license. No transfer fee applies to the spouse or the children of the deceased licensee. No transfer fee shall apply where a member of a firm, partnership or association of licensees is dropped from the license, or where the spouse, son, daughter or parent is added or dropped from the license. An inspection fee of \$35.00 shall be paid on all changes in the status of a license upon approval by the commission of such change in status. For purposes of this section, the transfer in the aggregate of more than 10% of the outstanding stock of a corporation to whom a license has been granted shall be deemed to be a transfer of an interest in a license for which a transfer fee shall be paid.

HISTORY: Add. 1952, p. 357, Act 216, Imd. Eff. May 2;—Am. 1953, p. 91, Act 94, Imd. Eff. May 20;—Am. 1957, p. 303, Act 245, Eff. Sep. 27;—Am. 1965, p. 613, Act 325, Eff. Mar. 31, 1966.

436.19c Liquor; on premises licenses; quota.

Sec. 19c. (a) No public license shall be granted for the sale of alcoholic liquor for consumption on the premises in excess of 1 license for each 1,500 of population or ma-

major fraction thereof. The above quota shall not bar the right of existing licensees to renew their licenses or transfer same nor bar the right of taverns and class "A" hotels who have been in business 5 calendar years preceding the passage of this 1969 amendatory act and have been under the same ownership for 5 calendar years from requesting reclassification of their licenses to class "C" unless local option laws prevent the sale of spirits by such licensed premises, subject to the consent of the commission. Any upgrading of licenses resulting from such requests must be approved by the local governmental units having jurisdiction.

Resort licenses; term; number; classification.

(b) In resort areas the commission may in its discretion issue licenses for a period not to exceed 12 months without regard to any limitations because of population, but not in excess of 550, and with respect to such resort licenses the commission, by rule, shall define and classify resort seasons by months and may issue licenses for resort seasons without regard to the calendar year or licensing year.

Resort licenses; additional; factors; transfer; report.

(c) In addition to the resort licenses authorized in subsection (b), the commission may issue not more than 10 additional licenses per year for each of the years 1964, 1965, 1966, 1967 and 1968, and 10 additional licenses per year for each of the years 1969, 1970, 1971, 1972 and 1973 to establishments whose business and operation, as determined by the commission, is designed to attract and accommodate tourists and visitors to the resort area, and whose primary purpose is not for the sale of alcoholic beverages. In this respect, the commission shall consider economic development factors of the area in the issuance of licenses to establishments designed to stimulate and promote the resort and tourist industry. The commission shall not transfer resort licenses issued under this subsection to other locations, and if the licensee goes out of business the license shall be surrendered to the commission. The commission may cancel the license if the resort is no longer active or no longer qualifies for the license. On or before January 15 of each year the commission shall transmit to the legislature a report giving details as to the number of applications received under this subsection, the number of licenses granted and to whom; the number of applications rejected and the reasons; the number of such licenses revoked, suspended or other disciplinary action taken and against whom and the grounds therefor.

Veterans.

(d) The limitations and quotas of this section shall not be applicable to the issuance of a new license to any veteran of the armed forces of the United States who was honorably discharged or released under honorable conditions from the armed forces of the United States and who had by forced sale disposed of a similar license within 90 days before or after entering or while serving in the armed forces of the United States, as a part of his preparation for such service if the application for a new license is made for the same governmental unit in which the previous license was issued within 60 days after the discharge of the applicant from the armed forces of the United States.

County airports.

(e) The limitations and quotas of this section shall not be applicable to the issuance of a new license or the renewal of an existing license where the property or establishment to be licensed is situated in or on land on which an airport owned by a county or in which a county has an interest is situated.

HISTORY: Add. 1952, p. 357, Act 216, Imd. Eff. May 2;—Am. 1957, p. 355, Act 267, Imd. Eff. Jun. 13;—Am. 1964, p. 91, Act 92, Imd. Eff. May 13;—Am. 1968, p. 618, Act 337, Imd. Eff. Jul. 17;—Am. 1970, p. 17, Act 7, Imd. Eff. Mar. 7.

436.19d Liquor control; retailers, additional licenses; prohibited licensing.

Sec. 19d. (1) Any retail vendor licensed under this act to sell for consumption on the premises is eligible to apply for a license as a specially designated merchant. Any spe-

cially designated distributor is eligible to apply for a license as a specially designated merchant. No warehouseman or wholesaler shall be licensed as a specially designated merchant or a specially designated distributor or permitted to sell or deliver to the consumer any quantity of alcoholic liquor at retail or to the consumer.

(2) No specially designated distributor or specially designated merchant or any other holder of a retailer license shall be eligible to hold any wholesale or warehouse license.

(3) No brewer, warehouseman or wholesaler shall be licensed as a specially designated merchant, excepting brewers who manufacture less than 200,000 barrels of beer per year. The provisions of this subsection shall not affect the operation of a brewery hospitality room.

(4) Any wholesaler shall be permitted to sell or deliver beer and alcoholic liquor to hospitals, military establishments and churches requiring sacramental wines and to sell to his own employees to a limit of 2 cases of twenty-four 12 ounce units or its equivalent of malt beverage per week.

HISTORY: Add. 1952, p. 358, Act 216, Imd. Eff. May 2;—Am. 1967, p. 629, Act 296, Eff. Nov. 2;—Am. 1969, p. 219, Act 124, Eff. Mar. 20, 1970.

436.19e Liquor; sale on Sunday and election days; referendum; Christmas.

Sec. 19e. No licensee enumerated under section 19 or any other person shall sell at retail, give away or furnish and no person shall knowingly and wilfully buy any spirits between the hours of 2 a.m. and 12 midnight on any Sunday, nor on any primary election day, general election day or municipal election day until after the polls are closed, except that the legislative body of any county may authorize the sale of spirits, for consumption on the premises, on Sunday after 2 p.m., by resolution approved by a majority of the legislative body voting thereon within 60 days after the effective date of this 1968 amendatory act in any establishment licensed under this act in which the gross receipts derived from the sale of food and other goods and services exceed 50% of the total gross receipts. With respect to any action taken by such legislative body, or, if the legislative body fails to act within the 60-day period, a petition may be filed with the county clerk requesting the submission of the question of such sale of spirits for consumption on the premises in addition to beer and wine on Sunday. The petition shall be signed by a number of the registered and qualified electors thereof which shall be not less than 8% of the total number of votes cast for all candidates for the office of secretary of state in the county at the last general election held for such purpose. The question shall not be submitted to the electors of such county more than once every 4 years.

The county clerk shall submit such question at the next regular state election held in such county; provided, that such petitions must be filed at least 60 days prior to said election. The question of the sale of such spirits for consumption on the premises, in addition to beer and wine, on Sunday shall be submitted by ballot in substantially the following form:

“Shall the sale of spirits for consumption on the premises be permitted on Sunday, in any establishment licensed under this act in which the gross receipts derived from the sale of food or other goods and services exceed 50% of the total of the total gross receipts within the county of under the provisions of the law governing the same?

Yes

No

All votes on the question shall be taken, counted and canvassed in the same manner as votes cast in county elections are taken, counted and canvassed. Ballots shall be furnished by the election commission or similar body of the respective county. In case a

majority of the electors voting at any such election shall vote in favor thereof, spirits may be sold in any such county under the provisions of this act for consumption on the premises, in addition to beer and wine, on Sunday. Such sale shall not be permitted in any city, village or township in which the sale of spirits is prohibited under this act. Any violation of this section is a misdemeanor. This section shall not apply to spirits served to bona fide guests in the residence of any person or sold or furnished for medicinal purposes as provided for in this act. No licensee enumerated under section 19 or any other person shall sell at retail, and no person shall knowingly and wilfully buy, any alcoholic liquor between the hours of 9 p.m. on December 24 and 7 a.m. on December 26. When December 26 falls on Sunday, the hours of closing hereunder shall be extended to 7 a.m. on December 27. The legislative body of any city, village or township, by resolution or ordinance, may prohibit the sale of alcoholic liquor on any Sunday, legal holiday, primary election day, general election day or municipal election day.

HISTORY: Add. 1953, p. 358, Act 216, Imd. Eff. May 2;—Am. 1968, p. 550, Act 313, Imd. Eff. Jul. 3.

436.19f Spirits; special license fee for Sunday sales; disposition.

Sec. 19f. Any licensee who elects to sell spirits on Sunday under the provisions of section 19e shall not do so until he first pays to the liquor control commission an additional fee in the amount of 15% of the fee charged for the issuance of his license. The revenue received from this section shall be deposited with the state treasurer in a special fund to be used only by the department of public health in programs for the treatment of alcoholics.

HISTORY: Add. 1968, p. 551, Act 313, Imd. Eff. Jul. 3.

436.20 Liquor control commission; licenses, revocation, suspension, penalty, procedure, criminal prosecution.

Sec. 20. The commission shall have the right and power to suspend or revoke and any commissioner designated by the chairman shall, upon due notice and proper hearing, have the right and power to suspend or revoke any license upon a violation of any of the provisions of this act or any of the rules and regulations adopted by the commission hereunder: Provided, however, That the commission, or any member of the commission designated by the chairman may assess a penalty of not more than \$300.00 for each violation, in addition to or in lieu of revocation or suspension of the license, which penalty shall be paid to the commission and deposited with the state treasurer and shall be credited to the general fund of the state: Provided further, That any and all penalties heretofore paid to the commission shall be transferred to the credit of the general fund.

The commission shall provide the procedure by which any licensee feeling aggrieved by any such suspension or revocation and/or penalty ordered by the commission or a commissioner may request a hearing for the purpose of laying any facts or reasons before said commission why said suspension or revocation and/or penalty should be modified or rescinded. Any such request shall be in writing and accompanied by a fee of \$25.00. The commission after reviewing the record made before the commissioner or examiner may allow or refuse to allow the hearing in accordance with the commission's rules and regulations. Such right, however, shall not be interpreted by any court as curtailing, removing or annulling the right in said commission to so suspend or revoke licenses as hereby given it. A licensee shall have no right of appeal from the final determination of the commission, except by writ of certiorari to the proper court. Notice of the order of suspension or revocation of a license and/or assessment of a penalty shall be given in the manner prescribed by the commission. The suspension or revocation of a license and/or assessment of a penalty by the commission shall not prohibit the institution of criminal prosecutions for the violations of the

provisions of this act. The institution of criminal prosecutions for such violations, or the acquittal or conviction of any person thereunder, shall not prevent the suspension or revocation of licenses and/or assessment of a penalty by the commission. In a hearing for the suspension or revocation of a license issued pursuant to this act, proof that the defendant licensee or his agent or employee demanded and was shown, before furnishing any alcoholic beverages to a minor, a motor vehicle operator's license or a registration certificate issued by the federal selective service, or other bona fide documentary evidence of majority and identity of such person, may be offered as evidence in a defense to such proceedings for the suspension or revocation of the licenses so issued.

HISTORY: Am. 1937, p. 518, Act 281, Imd. Eff. July 21;—Am. 1945, p. 147, Act 133, Imd. Eff. April 30;—CL 1948, 436.20;—Am 1951, p. 327, Act 219, Imd. Eff. Jan. 14;—Am. 1955, p. 127, Act 80, Imd. Eff. May 26.

436.21 Licenses; revocation and suspension; hearings; forfeiture of privileges upon revocation.

Sec. 21. Same; forfeiture of privileges under. Any and all privileges conferred by a license issued under this act shall be forfeited on the revocation of such license and the commission shall seize any and all alcoholic liquor found in the possession of the licensee. The commission shall remit to such licensee the purchase price less 10 per cent, paid by the licensee to the commission for all alcoholic liquor seized. All other alcoholic liquor seized shall be disposed of by order of the commission and no payment shall be made therefor.

HISTORY: CL 1948, 436.21.

436.22 Liquor licensee; bonds, form, conditions.

Sec. 22. As a condition precedent to the approval and granting of any license, the following persons shall make, execute and deliver to the commission a bond or bonds, said bond or bonds to be executed by any surety company or companies authorized to do business in the state of Michigan or in the discretion of the commission by approved personal surety running to the people of the state of Michigan, in the following amounts:

1. Manufacturers, a bond or bonds in the sum of \$5,000.00; wholesalers, a bond or bonds in the sum of \$2,500.00; warehousemen, a bond or bonds in the sum of \$2,500.00; specially designated distributors and specially designated merchants, a bond or bonds in the sum of \$1,000.00, for the faithful performance of the conditions of the license issued and compliance with the provisions of this act; any manufacturer who has given the bond or bonds herein provided for shall not be required to give any additional bond or bonds for any warehouse he may own or operate.

2. Retailers of beer or wine for consumption on the premises, a bond or bonds in the sum of not less than \$3,000.00 nor more than \$5,000.00, in the discretion of the commission; retailers of spirits for consumption on the premises, a bond or bonds in the sum of not less than \$5,000.00 nor more than \$10,000.00, in the discretion of the commission, conditioned that any such retailer or specially designated merchant will not directly or indirectly, by himself, his clerk or agent or servant at any time sell, furnish, give or deliver any alcoholic liquor to a minor except as provided in this act, nor to any adult person whatever who is at the time intoxicated, and that he will pay all damages actual and exemplary that may be adjudged to any person or persons, including those hereinafter mentioned, for injuries inflicted upon him or them either in person or property or means of support or otherwise, by reason of his selling, furnishing, giving or delivering any such alcoholic liquor.

The bond required by this act shall be substantially in the following form:

“Know all men by these presents, that we as principal and as surety are held and firmly bound unto the people of the state of Michigan in the sum

of dollars to the payment thereof well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns firmly by these presents.

Sealed with our seals this day of A.D. 19.....

Whereas, the above named principal purposes [sic] to carry on the business of at in the county of, state of Michigan.

Whereas, the said principal has covenanted and agreed and doth hereby covenant and agree as follows, to wit: That he will not directly or indirectly, by himself, his clerk, agent or servant at any time sell, furnish, give or deliver any spirituous, malt, brewed, fermented or vinous liquor, any mixed liquor or any mixture or compound a part of which is spirituous, malt, brewed, fermented or vinous liquor to a minor, nor to any adult person whatever who is at the time intoxicated, and that he will pay all damages actual and exemplary that may be adjudged to any person or persons for injuries inflicted upon him or them either in person or property or means of support or otherwise by reason of his selling, furnishing, giving or delivering any such liquors. Now, the condition of this obligation is such that if the said principal shall well and truly keep and perform all and singular the foregoing covenants and agreements and shall pay any judgment for actual or exemplary damages which may be recovered against him in any court of competent jurisdiction and all fines and costs that may be imposed upon him for violations of this act, then this obligation shall be void and of no effect; otherwise, the same shall be in full force and effect.

Signed and sealed in
the presence of

..... L.S.
..... L.S.”

The liquor control commission shall be empowered to embody such other provisions in the bond as it shall deem necessary.

Unlawful sale, right of action for damages, survival of action; form of action; continuance of bond.

Every wife, husband, child, parent, guardian or other persons who shall be injured in person or property, means of support or otherwise, by an intoxicated person by reason of the unlawful selling, giving or furnishing to any such persons any intoxicating liquor, shall have a right of action in his or her name against the person who shall by such selling or giving of any such liquor have caused or contributed to the intoxication of said person or persons or who shall have caused or contributed to any such injury, and the principal and sureties to any bond given under this law shall be liable, severally and jointly, with the person or persons selling, giving or furnishing any spirituous, intoxicating or malt liquors as aforesaid, and in any action provided for in this section, the plaintiff shall have the right to recover actual and exemplary damages in such sum not less than \$50.00 in each case as the court or jury may determine, but no surety shall be liable in excess of the amount of the bond required by this act. Any action shall be instituted within 2 years after the happening of the event. In case of the death of either party, the action or right of action given in this section shall survive to or against his or her executor or administrator, and in every such action by a husband, wife, child or parent, the general reputation of the relation of husband and wife or parent and child shall be prima facie evidence of such relation, and the amount so recovered by either husband or wife or parent and child shall be his or her sole and separate property. Such damages together with the costs of suit shall be recovered in an action of trespass on the case before any court of competent jurisdiction; and in any case where the parent shall be entitled to any such damages, either the father or mother may sue alone therefor, but recovery by one of such parties shall be a bar to suit brought by the other. The bond required by this act shall continue from year to year

unless sooner cancelled by the surety. No surety shall cancel any bond except upon 10 days' written notice to the commission.

HISTORY: Am. 1937, p. 518, Act 281, Imd. Eff. July 21;—CL 1948, 436.22;—Am. 1951, p. 328, Act 219, Imd. Eff. Jun. 14;—Am. 1958, p. 165, Act 152, Eff. Sep. 13;—Am. 1961, p. 385, Act 224, Eff. Sep. 8.

436.22a Liquor licensee; retailer's liability insurance policy, approval, minimum limits, bankruptcy.

Sec. 22a. In lieu of the requirements of section 22 of this act, any retailer may file with the commission a liability policy or a certificate, approved by the commission, certifying it has issued a liability policy as defined in this act, issued by any insurer authorized to write such coverage in Michigan. Such policy shall insure the retailer with respect to his liability to the persons enumerated and for the damages specified in section 22, with power in the commission to designate the limits of liability under the policy to be not less than \$10,000.00 to any one person and not less than a total liability of \$25,000.00 to all persons as occasioned by any event giving rise to a cause of action. The licensee may furnish a policy in excess of the requirements of the commission. No insurer under such policy shall be named as defendant in any action in tort brought against the insured. Bankruptcy of the insured shall not discharge the insurer from liability. Insurance policies issued under this section shall continue from year to year unless sooner cancelled by the insurer. No insured shall cancel any policy except upon 10 days' written notice to the commission.

HISTORY: Add. 1952, p. 177, Act 150, Eff. Sep. 18;—Am. 1954, p. 40, Act 33, Imd. Eff. Mar. 31;—Am. 1955, p. 250, Act 163, Imd. Eff. Jan. 7;—Am. 1961, p. 387, Act 224, Eff. Sep. 8.

436.22b Consent to service of process; form.

Sec. 22b. As a condition precedent to acceptance of such liability policy in lieu of a bond, the commission shall require and the retailer shall execute and file with the commission a consent to service of process, under oath, which consent shall be in the following form:

Consent to Service of Process

The undersigned, having filed a liability policy in lieu of a bond and having applied for a license under the provisions of Act No. 8 of the Public Acts of the Extra Session of 1933, does hereby consent, in the event such liability policy is accepted and such license is issued by the Michigan liquor control commission, and in consideration of such acceptance and issuance, to service of process upon the Michigan liquor control commission as the duly authorized agent of the undersigned to receive service of such process in any action which may be brought against the undersigned by any person to enforce the liability provided for in section 22 of said Act No. 8 of the Public Acts of the Extra Session of 1933. The undersigned agrees that this consent shall have the effect of constituting said commission as the agent of the undersigned to receive any such legal process and that the service thereof on the commission shall have the same legal force and effect as personal service thereof on the undersigned within the jurisdiction of any court of competent jurisdiction of the state in which such action has been instituted, subject, however, to compliance by the plaintiff with the provisions of section 22c of said act. The undersigned further agrees that on receipt of such process, the commission may mail copy thereof to the undersigned at the following address, which mailing shall constitute full notice to the undersigned of said action or proceedings: The undersigned further agrees that this consent shall be irrevocable and shall apply to all process relating to liability arising during the period for which the undersigned is licensed by the commission and for which said liability insurance is effective. The undersigned further agrees that this consent shall not be revoked by death of the undersigned, but shall be binding on the executor or administrator of the undersigned.

.....
(Signature)

.....
(Signature)

State of Michigan } ss.
County of }

Before me, the undersigned, a notary public in and for said county, this day of, 19, personally appeared to me known to be the person or persons whose name or names appear as undersigned in the foregoing instrument, who being by me first duly sworn, did depose and say that he or they executed the foregoing instrument as his or their free act and deed.

.....
Notary Public, County, Michigan
My commission expires

HISTORY: Add. 1952, p. 177, Act 150, Eff. Sep. 18.

436.22c Suit to enforce liability when service of process not effected; affidavit; service upon commission in duplicate; return; copy served on defendant; hearing; duty of commission.

Sec. 22c. In the event suit is instituted against a retailer as defendant in any court of competent jurisdiction to enforce the liability provided in section 22 of this act and service of process has not been effected in the manner provided for by law, and in the event (1) that the sheriff or constable to whom process has been delivered for service shall make return that he has not been able to serve the defendant for a period of 30 days, in which period he has made 3 or more attempts to serve the defendant at his residence or place of business, or (2) that plaintiff or other person with knowledge of the facts shall file an affidavit in such cause that the defendant has ceased to be a resident of the state of Michigan or has been absent from the state for a continuous period of 6 months, it shall be competent for the plaintiff to cause service of process to be made upon the defendant by service thereof upon the commission: Provided, That the commission is in possession of a consent to service of process filed by the defendant under the provisions of section 22b of this act: And provided further, That the liability for which suit is brought arose during the period in which the defendant was a licensed retailer and was insured under the provisions of section 22a of this act. Such service of process shall be made in duplicate on the commission, and return showing such service shall be made to the court. The commission shall mail a copy of the process served upon it to the defendant at the address shown in the consent to service of process, and shall forthwith transmit to the clerk of the court in which said cause is pending an acknowledgment of mailing of copy of such process by the commission to the defendant. Whenever the foregoing provisions of this section have been complied with the court may proceed to hear and determine the matter as fully and effectually as though the defendant retailer had been personally served with process within the jurisdiction of the court. The commission shall also notify the insurer under the liability policy of the defendant, on file with the commission, that said commission has received service of such process, stating the names of the parties to the suit and the court in which such suit is pending. In the event of the death of the defendant retailer, service of process may be made upon the executor or administrator of the defendant by service on the commission, in any case in which such service would be authorized herein upon the defendant if living, in the manner herein provided.

HISTORY: Add. 1952, p. 178, Act 150, Eff. Sep. 18.

436.22d Insurer to file notice of termination or cancellation of contract or policy; effective date.

Sec. 22d. The insurer shall file with the liquor control commission, at Lansing, Michigan, at least 30 days before the effectiveness of any termination or cancellation of the contract or policy, a notice giving the date at which it is proposed to terminate or cancel the contract or policy. Any termination of the contract or policy shall not be effective as far as the insured covered thereby is concerned until 30 days after such notice of the proposed termination or cancellation is received by the liquor control commission.

HISTORY: Add. 1952, p. 179, Act 150, Eff. Sep. 18.

436.22e Judgment; payment; failure to pay damages; recovery in action in assumpsit.

Sec. 22e. When any action for damages brought under the provisions of this act shall have been reduced to a judgment the insurer shall within 90 days from the date of said judgment cause said judgment together with the costs to be paid in full, unless said judgment shall have been paid or settled by the insured, and if the insurer fails or neglects to pay the same within said 90 days it shall be subject to punitive damages in the amount of \$1,000.00, in addition to the amount of such judgment and legal interest thereon. The amount of such judgment with legal interest thereon and the punitive damages herein provided for may be recovered by the person or persons entitled to damages under such judgment in an action in assumpsit against the insurer in any court of competent jurisdiction in this state.

HISTORY: Add. 1952, p. 179, Act 150, Eff. Sep. 18.

436.22f Insurance policy; coverage, conditions.

Sec. 22f. The insurance policy hereinbefore mentioned shall cover the liability imposed by section 22 of Act No. 8 of the Public Acts of the Extra Session of 1933, as amended, and shall contain the following conditions:

That no condition, provision, stipulation or limitation contained in the policy, or any other endorsement thereon, shall relieve the insurer from liability (within the statutory limits provided by section 22a of Act No. 8 of the Public Acts of the Extra Session of 1933, as amended), for the payment of any claim for which the insured may be held legally liable under section 22 of said act.

HISTORY: Add. 1952, p. 179, Act 150, Eff. Sep. 18.

436.22g False statement or breach of authority; cancellation of insurance.

Sec. 22g. No false statement or breach of authority or act or omission on the part of the insured shall vitiate this insurance, unless the intention of the insured to conceal a hazard of perpetrating fraud is proven; and this policy cannot be cancelled by the insured or the company without first giving thirty days' written notice to the Michigan liquor control commission in Lansing, Michigan.

HISTORY: Add. 1952, p. 179, Act 150, Eff. Sep. 18.

436.23 Liquor license; corporate vendor license, qualifications; transfer of stock, sale of assets, permission; renewal of outstanding license.

Sec. 23. Vendors shall be, when a corporation, only a corporation authorized to do business under the laws of the state of Michigan. The stockholders of any such corporation organized primarily for the purpose of engaging in the sale of alcoholic beverages at wholesale or retail in the state of Michigan must be citizens of the United States and residents of the state of Michigan for a period of not less than 1 year immediately prior to the time the application of such corporation for a license is made. For purposes of this section the word "primarily" shall be construed to mean that 50% or more of the income of the business of the licensed establishment is derived from the

sale of alcoholic beverages or that the corporation was formed within 1 year prior to the date of application for license to sell alcoholic beverages. The transfer of any of the stock of the corporation shall be deemed to be a transfer of an interest in the license for purposes of section 19b of this act. There shall be no transfer of the stock of such corporation or the sale of the assets of such corporation without permission of the liquor control commission being first duly obtained, and any new stockholders must meet the qualifications of this section; and when a firm or partnership, only when all members of said firm or partnership are American citizens who have resided in the state of Michigan for 1 year prior to the time of application for such license. The amendment to this section relative to qualifications of a firm or partnership shall not apply to renewal of any outstanding license issued prior to May 1, 1951; and when an individual, an American citizen residing in the state of Michigan for at least 1 year immediately prior to the time of application for such license.

HISTORY: CL 1948, 436.23;—Am. 1951, p. 329, Act 219, Imd. Eff. Jun. 14;—Am. 1952, p. 358, Act 216, Imd. Eff. May 2;—Am. 1957, p. 303, Act 245, Eff. Sep. 27.

436.24 Vendors; classes.

Sec. 24. Same; classes. The following classes of vendors shall have the right to sell the several alcoholic liquors as provided for in this section:

1. Taverns wherein beer and wine may be sold for consumption on the premises only;

2. Class "C" license wherein beer, wine and spirits may be sold for consumption on the premises;

3. Clubs wherein beer, wine and spirits may be sold for consumption on the premises only to bona fide members, who have attained the age of 21 years;

4. Hotels of Class "A" wherein beer and wine may be sold for consumption on the premises and in the rooms of bona fide registered guests;

Hotels of Class "B" wherein beer, wine and spirits may be sold for consumption on the premises and in the rooms of bona fide registered guests;

5. Specially designated merchants, wherein beer and wine may be sold for consumption off the premises only;

6. Specially designated distributors wherein alcoholic liquor, except wine under 16 per cent alcohol by volume and beer, may be sold for consumption off the premises only;

7. Manufacturers wherein beer may be sold for consumption off the premises only, and wherein alcoholic liquor other than beer may be sold only to the commission;

8. Special licenses where beer and wine may be sold for consumption on the premises only;

9. Dining cars or other railroad or pullman cars, watercraft or aircraft, wherein alcoholic liquor may be sold for consumption on the premises only, subject to rules and regulations of the commission.

HISTORY: Am. 1937, p. 520, Act 281, Imd. Eff. July 21;—Am. 1945, p. 147, Act 133, Imd. Eff. April 30;—CL 1948, 436.24.

436.25 Printed price list; posting.

Sec. 25. Printed price list. Alcoholic liquor for consumption on the premises shall be sold only in accordance with a printed price list posted conspicuously in a prominent place on the premises.

HISTORY: CL 1948, 436.25.

Sec. 26.

HISTORY: Rep. 1937, p. 522, Act 281, Imd. Eff. July 21.

This section required table and prohibited bar service, and prohibited sale of spirits in places not licensed therefor.

436.26a Sterilization of glasses.

Sec. 26a. Sterilization of glasses. No alcoholic liquor shall be served to any person for consumption on the premises, unless the glass shall have been sterilized by such method and in such manner as shall be prescribed by the commission.

HISTORY: Add. 1937, p. 530, Act 281, Imd. Eff. July 21;—CL 1948, 436.26a.

436.26b Sales in hotel rooms.

Sec. 26b. That alcoholic liquor may be served by any hotel licensed individually under the provisions of this act in the room of a bona fide guest thereof. No spirits shall be consumed in any place licensed under this act to sell beer and/or wine and not licensed to sell spirits.

HISTORY: Add. 1937, p. 530, Act 281, Imd. Eff. July 21;—CL 1948, 436.26b.

436.26c Unlicensed places; operating for drinking alcoholic beverages unlawful; exceptions.

Sec. 26c. No person shall maintain, operate, lease or otherwise furnish to other persons any premises or place which is not licensed under this act, wherein such other persons may engage in the drinking of alcoholic beverages, for a fee or for any other consideration, including the sale of food, mixers, ice or other fluids used with alcoholic drinks or the storage of alcoholic liquors: Provided, That the provisions of this section shall not apply to any hotel nor to any licensee under the provisions of this act: Provided further, That the provisions of this section shall not be construed to repeal or amend the provisions of section 26b of this act.

HISTORY: Add. 1940, p. 486, Act 265, Eff. Sep. 23.

436.27 Food; purchase, giving away.

Sec. 27. Food; purchase, giving away. No regulation shall be made requiring the purchase or serving of food with the purchase of alcoholic liquor, nor shall any food of any kind be given away in connection with the sale of alcoholic liquor.

HISTORY: CL 1948, 436.27.

436.28 Removal of liquor from premises where sold for consumption thereon.

Sec. 28. Removal of liquor from premises. Alcoholic liquor sold by vendors for consumption on the premises shall not be removed therefrom.

HISTORY: CL 1948, 436.28.

436.29 Gifts; sales to intoxicated persons.

Sec. 29. Gifts; sales to intoxicated person. No vendor shall give away any alcoholic liquor of any kind or description at any time in connection with his business except manufacturers for consumption on the premises only. No vendor shall sell any alcoholic liquor to any person in an intoxicated condition.

HISTORY: CL 1948, 436.29.

436.30 Aid to liquor vendor; refunding amount of price reductions by manufacturer to specially designated distributor licensees.

Sec. 30. No manufacturer, warehouseman or wholesaler shall aid or assist any other vendor by gift or loan of money or property of any description or other valuable thing, or by the giving of premiums or rebates, and it shall be unlawful for any vendor to accept the same, except in cases where manufacturers of spirits reduce the price of their products, such manufacturer of spirits may refund the amount of such price reductions to specially designated distributor licensees in a manner prescribed by the commission.

HISTORY: CL 1948, 436.30;—Am. 1954, p. 50, Act 42, Eff. Aug. 13.

436.31 Interest in business of vendor.

Sec. 31. Interest in business of vendor. No manufacturer, warehouseman or wholesaler shall have any financial interest, directly or indirectly, in the establishment,

maintenance, operation or promotion of the business of any other vendor. No manufacturer, warehouseman or wholesaler, nor any stockholder thereof shall have any interest by ownership in fee, leasehold, mortgage or otherwise, directly or indirectly, in the establishment, maintenance, operation or promotion of the business of any other vendor. No manufacturer, warehouseman or wholesaler shall have any interest directly or indirectly by interlocking directors in a corporation or by interlocking stock ownership in a corporation in the establishment, maintenance, operation, or promotion of the business of any other vendor. No person shall buy the stocks of any manufacturer, warehouseman or wholesaler and place such stock or stocks in any portfolio under any arrangement, written trust agreement, or any form of investment trust agreement and issue participating shares based upon such portfolio, trust agreement or investment trust agreement, and sell such participating shares within the state of Michigan.

HISTORY: CL 1948, 436.31.

436.32 Traffic in wine, spirits, alcohol and liquor by licensees only.

Sec. 32. Compliance with act; necessity. No person, directly or indirectly, himself or by his clerk, agent or employee shall manufacture, manufacture for sale, sell, offer or keep for sale, barter, furnish, or import, import for sale, transport for hire, or transport, or possess any wine, spirits, alcohol and/or alcoholic liquor unless such person shall have fully complied with the provisions of this act.

HISTORY: Am. 1937, p. 520, Act 281, Imd. Eff. July 21;—CL 1948, 436.32.

436.33 Sales to minors prohibited; signs, defenses.

Sec. 33. No alcoholic liquor shall be sold to any person unless he shall have attained the age of 21 years. A suitable sign, describing the provisions of this section and warning violators thereof, shall be posted in a conspicuous place in each room where any alcoholic liquors are sold. Said signs shall be approved and furnished by the state liquor control commission. In any criminal prosecution for the violation of this section, proof that the defendant licensee or his agent or employee demanded and was shown, before furnishing any alcoholic liquor to a minor, a motor vehicle operator's license or a registration certificate issued by the federal selective service, or other bona fide documentary evidence of majority and identity of such person, may be offered as evidence in a defense to such prosecutions.

HISTORY: Am. 1937, p. 521, Act 281, Imd. Eff. Jul. 21;—CL 1948, 436.33;—Am. 1955, p. 127, Act 80, Imd. Eff. May 26.

436.33a Possessing or transporting alcoholic liquor in motor vehicle by minor.

Sec. 33a. No person under the age of 21 years shall purchase or knowingly possess or transport any alcoholic liquor, or knowingly possess, transport, or have under his control in any motor vehicle any alcoholic liquor unless said person is employed by a licensee under this act and is possessing, transporting or having such alcoholic liquor in a motor vehicle under his control during regular working hours and in the course of his employment.

Impounding of motor vehicle; procedure, show cause order, notice to owner.

At any time within 30 days following the conviction of any such person for the violation of the provisions of this section, which conviction has become final, complaint may be made by the arresting officer or his superior before a justice of the peace or municipal judge of the court from which was issued the warrant, which complaint shall be under oath and shall contain a description of the motor vehicle in which such alcoholic liquor was possessed or transported by said minor in committing such offense and praying that said motor vehicle be impounded as provided in this section. Upon the filing of said complaint a justice or municipal judge of said court shall issue an or-

der to the owner of such property to show cause, if any, why said motor vehicle shall not be impounded as provided herein. Such order to show cause shall have a date and time fixed therein for the hearing thereof, which date shall not be less than 10 days from its issuance and shall be served by delivering a true copy thereof to said owner at any time not less than 3 full days before the date of hearing or, if the owner cannot be located, by sending a true copy by certified mail to the last known address of said owner. In case said owner is a nonresident of the state of Michigan, service thereof may be made upon the secretary of state as provided in section 403 of Act No. 300 of the Public Acts of 1949.

Same; order impounding vehicle, appeal; lien holder.

If the court determines upon the hearing of said order to show cause, from competent and relevant evidence, that at the time of the commission of said offense said motor vehicle was being driven by said minor with the express or implied consent or knowledge of said owner, and that the use of said motor vehicle is not needed by the owner in the direct pursuit of his employment or the actual operation of his business, the court shall authorize the impounding of said vehicle for a period to be determined by the court, of not less than 15 days nor more than 30 days. The court's order authorizing the impounding of said vehicle shall authorize any peace officer to take possession without other process of said car wherever located and to store the same in a public or private garage at the expense and risk of the owner of said vehicle. Appeal shall lie from such order to the circuit court of said county and the provisions governing the taking of appeals from judgments for damages shall be applicable thereto: Provided, That nothing herein shall prevent any bona fide lien holder from exercising any rights under such lien.

Transfer of title to avoid impounding.

Any person who shall knowingly transfer title to any motor vehicle for the purpose of avoiding the provisions of this act shall be guilty of a misdemeanor.

HISTORY: Add. 1952, p. 375, Act 227, Eff. Sep. 18;—Am. 1956, p. 346, Act 187, Eff. Aug. 11.

436.33b Liquor; purchase or consumption by minor, penalty; fraudulent identification; construction.

Sec. 33b. (1) Any minor who purchases or consumes any alcoholic liquor in a licensed premise or who possesses any alcoholic liquor is guilty of a misdemeanor.

(2) Anyone who furnishes fraudulent identification to a minor, or a minor who uses a fraudulent identification to purchase any alcoholic liquor, is guilty of a misdemeanor.

(3) Nothing in this section shall be construed to limit the civil or criminal liability of the vendor, his clerk, servant, agent or employee, for the violations of the provisions of this act.

HISTORY: Add. 1969, p. 125, Act 68, Eff. Mar. 20, 1970.

436.34 Consumption of alcoholic liquors; public highways, parks and places of amusement.

Sec. 34. Public highways, public parks and places of amusement. No alcoholic liquor shall be consumed on the public highways. No alcoholic liquor, except beer and/or wine shall be consumed in public parks and places of amusement not licensed to sell for consumption on the premises.

HISTORY: CL 1948, 436.34.

436.35 Armories, air bases, naval installations and state military reservation.

Sec. 35. The commanding general, Michigan national guard, is hereby authorized to publish by general order such regulations and restrictions as to the transportation, possession, sale and use of liquors of any alcoholic content in armories, air bases and naval

installations owned or leased by the state or provided by the federal government by either lease, license or use permit and used by outside parties of a nonmilitary or state governmental nature and on the state military reservation during the field training periods of the Michigan national guard, either in state or federal service, as shall in his opinion be for the best interests of the military service.

HISTORY: CL 1948, 436.35;—Am. 1966, p. 222, Act 196, Eff. Mar. 10, 1967.

Secs. 36-39.

HISTORY: Rep. 1837, p. 522, Act 281, Imd. Eff. July 21.

These sections provided for prescription sales.

436.40 Beer taxation; rebate.

Sec. 40. There shall be levied and collected by the commission on all beer manufactured or sold in this state a tax at the rate of \$6.30 per barrel if sold in bulk, and in like ratio if sold in different quantities, the payment of which shall be evidenced by excise tax beer stamps, caps, lids or crowns as prescribed by the commission, affixed to the barrel, keg, case or other container, by the brewer if manufactured in this state, unless otherwise provided by the commission with respect to beer manufactured within this state, or by the wholesaler or the person from whom purchased if manufactured outside this state, whichever shall be designated by the commission, before sale thereof within this state by said wholesaler. The tax imposed by this act upon beer manufactured in or imported into this state shall be rebated to such manufacturer or wholesaler upon satisfactory proof being furnished to the commission by affidavit or otherwise, as the commission may determine, that such beer was shipped out of the state for sale and consumption outside the state. Upon application to the commission on or before March 15, 1970, with respect to taxes paid under this section on beer sold during the calendar year 1969, and on or before March 15, 1971, with respect to taxes paid under this section on beer sold during the calendar year 1970, by a brewer or importing wholesaler of beer which application establishes satisfactory proof that he has paid tax at the rate of \$6.30 per barrel on sales of 50,000 barrels of beer or less during the preceding calendar year, said brewer or importing wholesaler may make application for a refund of tax paid on beer sold in Michigan during the preceding year, which refund shall be an amount determined by multiplying the number of barrels in excess of 10,000 barrels but not in excess of 25,000 barrels by \$2.00. In determining the number of barrels, all brands or labels of a manufacturer shall be combined. In the case of a wholesaler of imported beer the rebate shall be determined by the ratio that the wholesaler's Michigan sales of the imported beer of an out-of-state manufacturer bears to the total Michigan sales of the beer of that out-of-state manufacturer. If the tax imposed by this section is repealed or reduced, every licensee who on the effective date of the repeal or reduction has on hand any beer shall file a complete inventory thereof with the commission within 20 days thereafter and shall receive from the commission a refund equal to the amount of tax or the difference between the old tax and the new tax. For the purposes of taxation, a barrel shall be construed to contain 31 gallons.

Retaliatory rule.

The commission shall forthwith adopt a regulation designating the states, the laws, or the rules or regulations of which are found to require a licensed wholesaler of beer therein to pay an additional fee for the right to purchase, import or sell beer manufactured in this state; or which deny the issuance of a license authorizing the importation of beer to any duly licensed wholesaler of beer therein who may make application for such license; or which prohibit licensed wholesalers of beer therein from possessing or selling beer purchased in this state, unless the one from whom purchased has secured a license and paid a fee therein, when such seller neither transports the beer into said state nor sells the same therein; or which impose any higher taxes or inspection fees upon beer manufactured in this state when transporting into or sold therein, than is

imposed upon beer manufactured and sold within said state, the regulation adopted shall prohibit all licensees from purchasing, receiving, possessing or selling any beer manufactured in any state therein designated, said regulation to become effective 90 days after its adoption. Any licensee or person adversely affected shall be entitled to review by certiorari to the proper court the question as to whether the commission has acted illegally or in excess of authority in making its finding with respect to any state.

HISTORY: Am. 1937, p. 581, Act 281, Imd. Eff. Jul. 21;—CL 1948, 436.40;—Am. 1959, p. 459, Act 273, Imd. Eff. Jan. 1, 1960;—Am. 1962, p. 408, Act 217, Eff. Jul. 1;—Am. 1966, p. 593, Act 330, Imd. Eff. Jul. 19;—Am. 1969, p. 553, Act 297, Imd. Eff. Aug. 11.

Sec. 40a.

HISTORY: Add. 1945, p. 212, Act 150, Imd. Eff. May 14.

Sec. 40a as added by amendatory Act 150, 1945, provided for a 10 per cent tax on certain alcoholic liquor and for the distribution of the fund raised thereby. This amendatory act did not amend or add other sections to the act amended and contained a section 2 reading as follows: "Section 2. This amendatory act shall expire 2 years from the effective date thereof."

436.41 Failure to pay tax; penalties, collection.

Sec. 41. Same; failure to pay tax. If any person shall fail or refuse to pay the tax required by this act, the commission shall proceed to assess the tax against such person, and such tax shall become due and payable together with such penalty or penalties as the commission shall add, but such penalty or penalties shall not exceed 5,000 dollars, upon demand by the commission or some person designated by it. If such tax remains unpaid for 15 days after such demand has been made, the commission may issue its warrant under its official seal, directed to the sheriff of any county or other officer, to levy upon and sell the property, either personal or real, of the taxpayer, used in connection with the business for the privilege of doing which the tax is levied, found within his jurisdiction, for the payment of the amount thereof with the added penalties, interest and cost of executing the warrant. Such warrant shall be returned to the commission, together with the money collected, by virtue thereof, within the time therein specified, which shall not be less than 20 nor more than 90 days from the date of the warrant. The sheriff or other officer to whom such warrant shall be directed shall proceed upon the same in all respects, and with like effect, and in the same manner as prescribed by law in respect to executions issued against property upon judgments by a court of record, and shall be entitled to the same fees for his service in executing the warrant, to be collected in the same manner. The state of Michigan, through the commission or some officer or agent designated by it, is hereby authorized to bid for and purchase any property sold under the provisions hereof.

In addition to the mode of collection provided herein, the commission may bring an action at law in the county in which the business or any part thereof is carried on, to collect and recover the amount of taxes, interest and/or penalties due from any taxpayer.

HISTORY: CL 1948, 436.41.

436.42 Search warrants.

Sec. 42. Search warrant. A search warrant may be issued in accordance with provisions of chapter 16 of Act No. 175 of the Public Acts of 1927 as amended, being sections 17492 to 17509 of the Compiled Laws of 1929. Under such search warrant the officer may seize any alcoholic liquor, containers, implements or conveyances used in connection with the violation of the provisions of this act or any rule or regulation of the commission. No property right of any kind shall exist in any alcoholic liquors had, kept, transported or possessed contrary to law or in or to any receptacle or container of any kind whatever in which said liquors may be found and all such are hereby declared contraband and forfeited to the state and shall be seized. All alcoholic liquor, containers, implements or conveyances seized under any such search warrant shall be turned over to the commission by direction of the court or magistrate and shall be disposed of in accordance with the rules and regulations of the commission, which shall guarantee the return of such property, or payment of moneys received for the sale of

the same, to the owner unless the owner shall be charged and convicted of the alleged offense or offenses in connection with which the said search and seizure was made.

All alcoholic liquors as defined by this act which shall be manufactured, transported and/or sold and/or possessed without the consent of the liquor control commission being first duly obtained, are hereby declared contraband and shall be disposed of by order of the liquor control commission.

HISTORY: Am. 1945, p. 148, Act 133, Imd. Eff. April 30;—CL 1948, 436.42.

NOTE: CL 1929, 17492-17509, above referred to, is Compilers' repealed § 776.1 et seq. See § 780.651 et seq.

436.43 Seizures by execution; bankruptcy, payment.

Sec. 43. Seizures by execution or in bankruptcy. In case of seizure of alcoholic liquor under any judgment rendered against the holder of any license, or in the case of insolvency of such licensee, the officer seizing such alcoholic liquor or the trustee in bankruptcy of such licensee, shall deliver to the commission all alcoholic liquor found in the possession of the judgment debtor or bankrupt, as the case may be. The commission shall, within 1 month after the date of delivery by said officer or trustee in bankruptcy, as the case may be, pay over to such officer or trustee in bankruptcy the purchase price, less 10 per cent, paid by such licensee to the commission for all legal alcoholic liquor seized, and the value, less 10 per cent, as established by the commission, of other legally acquired alcoholic liquor so delivered. Any illegally acquired alcoholic liquor so delivered shall be disposed of by order of the commission and no payment shall be made therefor.

HISTORY: CL 1948, 436.43.

436.44 Liability of vendor.

Sec. 44. Liability of vendor. Any person engaged in the business of selling or keeping for sale alcoholic liquor in violation of the provisions of this act, whether as owner, clerk, agent, servant or employe, shall be equally liable, as principal, both civilly and criminally, for the violation of the provisions of this act, or any person or principal shall be liable, both civilly and criminally, for the acts of his clerk, servant, agent or employe, for the violation of the provisions of this act.

HISTORY: CL 1948, 436.44.

436.45 False and fraudulent statements.

Sec. 45. False and fraudulent statements. Any person who shall make any statement either orally or in writing to the commission for the purpose of inducing the commission to act or for the purpose of inducing the commission to refrain from taking action, which statement is false or fraudulent, and any person who makes any false or fraudulent statement for the purpose of enabling or assisting any person to evade the provisions of this act, shall be guilty of a violation of this act.

HISTORY: CL 1948, 436.45.

436.46 Adulterated and misbranded liquors; refilling bottles; definitions; exceptions.

Sec. 46. Any licensee who, by himself or by his agent or employee, shall sell, offer for sale, expose for sale, or possess, any alcoholic liquor that is adulterated or misbranded or any alcoholic liquor in bottles which have been refilled shall be guilty of a violation of this act. For the purpose of this section alcoholic liquor shall be deemed to be adulterated if it contains any liquid or other ingredient, that was not placed there by the original manufacturer or bottler. For the purpose of this section alcoholic liquor shall be deemed to be misbranded when not plainly labeled, marked or otherwise des-

ignated. For the purpose of this section alcoholic liquor bottles shall be deemed to be refilled when the bottles contain any liquid or other ingredient not placed in the bottles by the original manufacturer or bottler. The above provisions shall not apply to beer containers.

HISTORY: CL 1948, 436.46;—Am. 1967, p. 243, Act 181, Eff. Nov. 2.

436.46a Forging documents, labels or stamps; penalty.

Sec. 46a. Forging, altering or counterfeiting documents, labels or stamps. Whoever falsely or fraudulently makes, simulates, forges, alters or counterfeits any document, label or stamp prescribed by the commission under the provisions of this act or the rules or regulations of the commission, or causes or procures to be falsely or fraudulently made, simulated, forged, altered, or counterfeited any such document, label or stamp, or knowingly and wilfully utters, publishes, passes or tenders as true, any such false, altered, forged or counterfeited document, label or stamp, or uses more than once any label or stamp prescribed by the commission pursuant to this act or the rules or regulations of the commission, shall be guilty of a felony punishable by imprisonment in the state prison not more than 1 year or by a fine of not more than \$1,000.00, or both, in the discretion of the court.

HISTORY: Add. 1945, p. 148, Act 133, Imd. Eff. April 30;—CL 1948, 436.46a.

436.47 Retailer's license fees; distribution; alcoholism programs.

Sec. 47. Quarterly, upon recommendation of the commission, the state shall pay in the manner prescribed by law to the city, village or township in which a full-time police department or full-time ordinance enforcement department is maintained, and where no police department or full-time ordinance enforcement department is maintained, then to the counties, to be credited to the sheriff's department in which the license is located 85% of the amount of the proceeds of the retailers' license fees collected therein, for the specific purpose of enforcing the provisions of this act and the rules and regulations of the commission. The legislature shall appropriate 5% of the amount of the proceeds of retailers' license fees collected in the state to be credited to a special fund in the state treasury for the purpose of promoting and for sustaining programs for the prevention, rehabilitation, care and treatment of alcoholics, and may appropriate an additional 5% of the license fees to be credited to the special fund to provide continuing support for established, approved alcoholism programs as prescribed by law. Any unencumbered or uncommitted moneys in such fund shall revert to the general fund of the state 12 months after the end of each fiscal year in which any such funds were collected. The balance of the license fee shall be turned over to the state treasury and credited to the state general fund. This section shall not include retail license fees collected for railroad or pullman cars, for watercraft, for aircraft, or the transfer fees provided in section 19.

HISTORY: Am. 1935, p. 410, Act 241, Imd. Eff. Jun. 8;—Am. 1945, p. 149, Act 133, Imd. Eff. Apr. 30;—Am. 1948, 1st Ex. Ses., p. 82, Act 29, Imd. Eff. May 11;—CL 1948, 436.47;—Am. 1951, p. 329, Act 219, Imd. Eff. Jun. 14;—Am. 1952, p. 359, Act 216, Imd. Eff. May 2;—Am. 1957, p. 351, Act 264, Imd. Eff. Jun. 13;—Am. 1959, p. 306, Act 206, Eff. Mar. 19, 1960;—Am. 1968, p. 304, Act 207, Eff. Nov. 15.

436.47a Repealed. 1968, p. 51, Act 22, Imd. Eff. May 17.

Section defined "alcoholism" and "alcoholic"; created state board of alcoholism, members, terms, qualifications, expenses, offices; director, compensation, assistants; duties.

436.48 Moneys received; payment monthly to state treasurer.

Sec. 48. Handling of moneys. All moneys received by the commission under the provisions of this act, shall be turned over monthly to the state treasurer, and credited to the general fund, to be disbursed according to law.

HISTORY: Am. 1935, p. 410, Act 241, Imd. Eff. June 8;—CL 1948, 436.48.

436.49 Moneys paid to state treasurer credited to general fund.

Sec. 49. Appropriations. All moneys deposited by the commission with the state treasurer, shall be credited to the general fund and shall be available for the purposes for which the general fund is available.

HISTORY: Am. 1935, p. 411, Act 241, Imd. Eff. June 8;—CL 1948, 436.49.

436.50 Violation of act; misdemeanor, penalties; legislative intent.

Sec. 50. Penalties. Any person, other than persons required to be licensed under this act, who shall violate any of the provisions of this act shall be guilty of a misdemeanor.

Any licensee who shall violate any of the provisions of this act, or any rule or regulation of the commission promulgated hereunder, shall be guilty of a misdemeanor, punishable by imprisonment in the county jail not more than 6 months or by a fine of not more than 500 dollars, or both, in the discretion of the court.

Any person, who shall do any act for which a license is required under this act, without first obtaining said license or any person who shall sell any alcoholic liquor in any county which shall have prohibited the sale of alcoholic liquor under the provisions of section 57 hereof, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 1 year or by a fine of not more than 1,000 dollars, or both, in the discretion of the court.

It is the intent of the legislature that the court, in imposing punishment under the provisions of this section, should discriminate between casual or slight violations and habitual sales of alcoholic liquor or attempts to commercialize violations of this act or any of the rules or regulations of the commission promulgated hereunder.

HISTORY: CL 1948, 436.50.

436.51 Revocation of liquor licenses; effect.

Sec. 51. Where for any violation of this act, the license to any person issued under this act or Act No. 64 of the Public Acts of 1933 has been revoked for cause, or any person whom the commission has ordered to transfer the license for cause, no license shall be thereafter issued for a period of 2 years after such revocation or order to transfer, to such person.

HISTORY: CL 1948, 436.51;—Am. 1956, p. 213, Act 106, Eff. Aug. 11.

Sec. 52. (This was a repeal section.)

HISTORY: Rep. 1947, p. 169, Act 129, Eff. Oct. 11.

ACTS REPEALED: Act 338, 1917, CL 1929, 9138-9209; Act 64, 1933; Sec. 25, Act 285, 1909, CL 1929, 8340; Secs. 27-28, Act 134, 1885, CL 1929, 6853-6854; Sec. 3, Act 123, 1921, CL 1929, 547; Sec. 8, Act 263, 1917, CL 1929, 5399; Act 325, Local Acts 1901.

436.53 Saving clause.

Sec. 53. Saving clause. This act shall not impair or affect any act done, offense committed or right accruing, accrued or acquired, or penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this act had not been passed.

HISTORY: CL 1948, 436.53.

436.54 Construction of act.

Sec. 54. Liberal construction. This act shall be liberally construed to effect the intent and purposes herein set forth.

HISTORY: CL 1948, 436.54.

Sec. 55. (This was a severing clause section.)

HISTORY: Rep. 1947, p. 170, Act 129, Eff. Oct. 11.

436.56 Sale of spirits for consumption on premises; referendum, petitions, tie vote, resubmission.

Sec. 56. Spirits for consumption on the premises, in addition to beer and wine, may be sold by restaurants, hotels and establishments, approved by the commission under

this act, in the following cities and villages or townships; when the legislative body of any such city or village or township shall, by resolution of a majority vote of the members elect, within 60 days after the effective date of this amendatory act, vote in favor thereof: Provided, however, That with respect to any action taken by such legislative body, or, in case such legislative body shall fail to act within said 60 day period, a petition may be filed with the city or village or township clerk, as the case may be, requesting the submission of the question of sale of spirits for consumption on the premises, in addition to beer and wine. In case of a city or township such petition shall be signed by a number of the registered and qualified electors thereof which shall be not less than 35% of the total number of votes cast for all candidates for the office of secretary of state in such city or township at the last general election held for such purpose. In case of a village such petition shall be signed by a number of the registered and qualified electors thereof which shall not be less than 35% of the total number of votes cast for all candidates for the office of president of such village at the last village election held for such purpose: Provided, That such question shall not be submitted to the electors of any such city or village or township more often than once in every 4 years. The city or village or township clerk, as the case may be, shall within 10 days from the filing with said clerk of the petition, give notice of the filing thereof by publication of notice setting forth the essential facts of such petition in a newspaper published or in general circulation in the city, village or township. The city or village or township clerk, as the case may be, shall submit such question at the next regular state election, held in such city, village or township: Provided, That such petitions must be filed at least 60 days prior to said election: Provided, however, That with respect to newly incorporated cities or villages, class C licensees in any such city or village shall continue to be licensed by the commission until the question of the sale of spirits for consumption on the premises, in addition to beer and wine, is submitted to the electors of said city or village as herein provided. The question of the sale of such spirits for consumption on the premises, in addition to beer and wine, shall be submitted by ballot in substantially the following form:

"Shall the sale of spirits in addition to beer and wine be permitted for consumption on the premises within (the city or village or township as the case may be) of under the provisions of the law governing same?"

Yes

No"

All votes on the question shall be taken, counted and canvassed in the same manner as votes cast in city or village or township elections, as the case may be, are taken, counted and canvassed. Ballots shall be furnished by the election commission or similar body of the respective cities or villages or townships. In case a majority of the electors voting at any such election shall vote in favor thereof, spirits may be sold in any such city or village or township, under the provisions of this act, for consumption on the premises, in addition to beer and wine.

At any time within 18 months after such an election has resulted in a tie vote, the question shall be resubmitted to the electors upon the filing of a petition therefor with the legislative body of the city, village or township. The petition shall be signed by a number of electors not less than that required by this section for the calling of an election on an original petition. The question shall be resubmitted to the electors by the city, village or township clerk at the next regular election if same shall occur not less than 30 days, nor more than 60 days, after the filing of the petition, or at a special election called for that purpose and to be held within not less than 30 nor more than 60 days after the filing of the petition.

HISTORY: Am. 1937, p. 521, Act 281, Imd. Eff. Jul. 21;—CL 1948, 436.56;—Am. 1949, p. 496, Act 295, Eff. Sep. 23;—Am. 1953, p. 22, Act 22, Eff. Oct. 2;—Am. 1955, p. 42, Act 38, Imd. Eff. Apr. 21;—Am. 1955, p. 84, Act 52, Imd. Eff. May 6;—Am. 1955, p. 190, Act 125, Imd. Eff. Jun. 7;—Am. 1956, p. 138, Act 54, Eff. Aug. 11;—Am. 1957, p. 87, Act 82, Eff. Sep. 27.

436.56a Sale of spirits for consumption on premises; annexation of territory to city prohibiting such sale; continuance of license, referendum.

Sec. 56a. Whenever spirits for consumption on the premises, in addition to beer and wine, may be sold by restaurants, hotels and establishments, approved by the commission, in any city, village or township, and a part of or the whole of such city, village or township shall become annexed to and a part of any city or village which does not, at the time of annexation, permit such sales, class C licensees in any such annexed area shall continue to be licensed by the commission until the next regular or city or village election subsequent to the effective date of this amendatory act, at which election, without the necessity of the filing of a petition, the question of the sale of spirits for consumption on the premises, in addition to beer and wine, shall be submitted to the electors of the city or village to which the territory has been annexed. The form of the ballot, the voting and canvassing of votes and the effect thereof shall be as provided in section 56 of this act. The fact that a vote has been taken upon such question either in the annexing municipality or the annexed area, or in both, within 4 years preceding the annexation shall not be a bar to submission of the question as herein provided.

HISTORY: Add. 1956, p. 328, Act 170, Eff. Aug. 11;—Am. 1957, p. 87, Act 81, Eff. Sep. 27.

436.56b Sale of liquor; referendum; implementation.

Sec. 56b. When the question of the sale of spirits for consumption on the premises is submitted to and approved by the electors of any city, village or township, the legislative body of such city, village or township shall implement the will of the electors within 1 year of the date of the election at which the question was approved.

HISTORY: Add. 1970, p. 282, Act 85, Imd. Eff. Jul. 20.

436.57 Sale of spirits for consumption on premises; county option; form of ballot.

Sec. 57. The provisions of this act shall be the law controlling the alcoholic liquor traffic within the state of Michigan, including the manufacture, transportation, possession, wholesale and retail sales thereof, and shall be applicable to and in every county within the state of Michigan: Provided, however, That upon the filing with the county clerk of a petition signed by not less than 20 per cent of the registered and qualified electors of any county of the entire vote cast for the office of secretary of state in such county at the last general election, after 90 days and within 1 year after this act shall take effect, and once within 2 years after the expiration of said 1 year period, and not oftener than once in every 4 years thereafter, requesting the submission to the electors of such county of the question of the manufacture and/or sale within such county of alcoholic liquor, the county clerk shall submit such question at the next regular state election held in such county: Provided, That such petitions must be filed at least 60 days prior to said election. All votes on the questions shall be taken, counted and canvassed in the same manner as votes cast for county offices are taken, counted and canvassed. The vote on such question shall be by ballot which shall be substantially in 1 of the following forms:

“1. Shall the manufacture of alcoholic liquor be prohibited in the county of under the provisions of the law governing the same?

Yes

No

2. Shall the sale of alcoholic liquor be prohibited in the county of under the provisions of the law governing the same?

Yes

No

3. Shall the manufacture and sale of alcoholic liquor be prohibited in the county of under the provisions of the law governing the same?

Yes

No"

Such ballots shall be furnished by the board of election commissioners of the county.

Alcoholic liquor shall not be manufactured and/or sold in any county in this state in which the electors at any such election shall by a majority thereof vote to prohibit the manufacture and/or sale of alcoholic liquor, as the case may be, in such county. The effective date of prohibiting the manufacture and sale of alcoholic liquor, or either manufacture or sale, shall be 30 days after the board of county canvassers has determined that a majority of those voting on said question have voted in the affirmative thereon. It shall be the duty of the county clerk to give notice of the effective date of such prohibition by publishing said date at least once in a newspaper published in said county, or, if there be no newspaper published within the county, in a newspaper published in an adjoining county.

HISTORY: CL 1948, 436.57;—Am. 1949, p. 487, Act 295, Eff. Sep. 23.

436.58 Warehouse receipts for alcoholic liquor; authority of commission.

Sec. 58. The commission shall have complete power to regulate, limit and control the sale, transfer, barter and/or exchange in this state of warehouse receipts for alcoholic liquor wheresoever such alcoholic liquor may be situated.

HISTORY: Add. 1937, p. 522, Act 281, Imd. Eff. July 21;—CL 1948, 436.58.

Act 94, 1959, p. 100; Eff. Jul. 1.

AN ACT to impose a specific tax on spirits; to provide for the collection of the tax; to prescribe the powers and duties of the liquor control commission; and to appropriate the proceeds of the tax.

The People of the State of Michigan enact:

436.101 Spirits; additional tax, collection, computation.

Sec. 1. In addition to any and all taxes imposed by law, there is hereby imposed and there shall be levied and collected a specific tax equal to 4% of the retail selling price of spirits, as defined in section 2 of Act No. 8 of the Public Acts of the Extra Session of 1933, as amended, being section 436.2 of the Compiled Laws of 1948, other than those having an alcoholic content of less than 22%. The tax shall be collected by the state liquor control commission at the time of sale by the commission. In the case of sales to licensees, the tax shall be computed on the retail selling price established by the commission without allowance of discount: Provided, however, That the tax imposed under this act shall not become effective so long as any tax imposed under section 39 of Act No. 312 of the Public Acts of 1957 remains in effect.

HISTORY: New 1959, p. 100, Act 94, Eff. Jul. 1.

436.102 Spirits; additional tax; appropriation to school aid fund.

Sec. 2. Upon collection, the state liquor control commission shall deposit the entire proceeds in the state treasury, which proceeds are hereby appropriated to the state school aid fund established by section 23 of article 10 of the state constitution.

HISTORY: New 1959, p. 100, Act 94, Eff. Jul. 1.

436.103 Effective date of act.

Sec. 3. This act shall take effect July 1, 1959.

HISTORY: New 1959, p. 100, Act 94, Eff. Jul. 1.

436.111-436.115. Expired June 30, 1961.

Sections (Secs. 1-5, Act 275, 1959, p. 471, Imd. Eff. Jan. 1, 1960) imposed a specific tax on spirits. Sections expired June 30, 1961 by the terms of the act.

Act 218, 1962, p. 463; Eff. Jul. 1.

AN ACT to impose a specific tax on spirits; to provide for the collection of the tax; to prescribe the powers and duties of the liquor control commission; and to appropriate the proceeds of the tax.

The People of the State of Michigan enact:

436.121 Spirits; additional tax; collection, computation.

Sec. 1. In addition to any and all taxes imposed by law, there is hereby imposed and there shall be levied and collected a specific tax equal to 4% of the retail selling price of spirits, as defined in section 2 of Act No. 8 of the Public Acts of the Extra Session of 1933, as amended, being section 436.2 of the Compiled Laws of 1948, other than those having an alcoholic content of less than 22%. The tax shall be collected by the state liquor control commission at the time of sale by the commission. In the case of sales to licensees, the tax shall be computed on the retail selling price established by the commission without allowance of discount.

HISTORY: New 1962, p. 463, Act 218, Eff. Jul. 1.

436.122 Spirits; additional tax; deposit to credit of general fund.

Sec. 2. Upon collection, the state liquor control commission shall deposit the entire proceeds in the state treasury, to the credit of the general fund.

HISTORY: New 1962, p. 463, Act 218, Eff. Jul. 1.

436.123 Inventory by licensee; payment of additional tax; refund.

Sec. 3. Every licensee who on the effective date of this act has on hand any spirits shall file a complete inventory thereof with the state liquor control commission within 20 days thereafter and, at the same time, pay a specific tax equal to 4% of the retail selling price of such spirits, less the amount of tax paid on inventory pursuant to the provisions of section 3 of Act No. 275 of the Public Acts of 1959. In the event of repeal of this act every licensee, who on the effective date of such repeal has on hand any spirits, shall file a complete inventory thereof with the state liquor control commission within 20 days thereafter and shall receive from the liquor control commission credit equal to 4% of the retail selling price of such spirits on future purchases of spirits from said commission.

HISTORY: New 1962, p. 463, Act 218, Eff. Jul. 1.

436.124 Effective date of act.

Sec. 4. This act shall take effect on July 1, 1962.

HISTORY: New 1962, p. 464, Act 218, Eff. Jul. 1.

436.125 Effectiveness of act; conditions.

Sec. 5. This act shall not take effect unless House Bills Nos. 187, 315, 375, 723 and 724 of the 1962 regular session are enacted into law and become effective.

HISTORY: New 1962, p. 464, Act 218, Eff. Jul. 1.

NOTE: House Bill No. 187 of the 1962 session became Act No. 217.

House Bill No. 315 of the 1962 session became Act No. 215.

House Bill No. 375 of the 1962 session became Act No. 216.

House Bill No. 723 of the 1962 session became Act No. 219.

House Bill No. 724 of the 1962 session became Act No. 220.

Act 68, 1913, p. 100; Eff. Aug. 14.

AN ACT relating to drunkenness on railway trains or interurban cars, and prohibiting the drinking of intoxicating liquor thereon as a beverage, and providing for the arrest of offenders, and penalties for violation of this act.

The People of the State of Michigan enact:

436.201 Drunkenness on train prohibited.

Sec. 1. No person shall while in an offensive state of intoxication enter or be on or remain upon any railway train or interurban car as a passenger.

HISTORY: CL 1915, 8443;—CL 1929, 11590;—CL 1948, 436.201.

436.202 Public drinking on train prohibited; exception.

Sec. 2. No person shall publicly drink any intoxicating liquor as a beverage in any railway train or coach, or interurban car, or give, or cause to be given to any other person therein, intoxicating liquor as a beverage, except in a compartment or place where such liquor is sold or served under the authority of a license lawfully issued.

HISTORY: CL 1915, 8444;—CL 1929, 11591;—CL 1948, 436.202.

436.203 Conductor; power to arrest and arraign offender.

Sec. 3. The conductor of any railway train or interurban car, may summarily arrest, with or without warrant, any person violating any of the foregoing provisions, and for such purpose shall have the same power and authority as any peace officer, including the power to summon assistance; and such conductor shall further have power to deliver any such person to any policeman, constable, or other public officer at the next station stop where such public officer can be found, and it shall be the duty of such officer to bring the person charged with such offense before the nearest justice of the peace or municipal court of the county where said offense was committed, and to make a complaint against such person, and such complaint made upon information and belief of said officer, shall be sufficient.

HISTORY: CL 1915, 8445;—CL 1929, 11592;—CL 1948, 436.203.

436.204 Conductor; seizure of liquor, receipt, return.

Sec. 4. The conductor of any railway train or interurban car may take from any person found violating any of the foregoing provisions, any intoxicating liquor then in possession of such person and deliver the same to the nearest station agent, giving the person from whom it was taken a receipt therefor. Upon the presentation and surrender of such receipt within 10 days thereafter such liquor shall be delivered to the person presenting same, and if not so delivered within such time shall be destroyed by such station agent.

HISTORY: CL 1915, 8446;—CL 1929, 11593;—CL 1948, 436.204.

436.205 Violation of act; penalty.

Sec. 5. Any person violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than 100 dollars, or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1915, 8447;—CL 1929, 11594;—CL 1948, 436.205.

CHAPTER 438. MONEY AND INTEREST

MONEY OF ACCOUNT AND INTEREST		CRIMINAL USURY	
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R.S. 1846, Ch. 34.

MONEY OF ACCOUNT AND INTEREST VERDICTS ETC.

438.1 Money of account.

Sec. 1. The money of account of this state, shall be the dollar, cent, and mill; and all accounts in the public offices, and all other public accounts, and all proceedings in courts, shall be kept and had in conformity with this regulation.

HISTORY: CL 1857, 1312;—CL 1871, 1630;—How. 1592;—CL 1897, 4854;—CL 1915, 5993;—CL 1929, 9235;—CL 1948, 438.1.

438.2 Reduction of monetary units to standard units.

Sec. 2. Nothing contained in the preceding section, shall vitiate or affect any account, charge or entry, originally made, or any note, bond, or other instrument expressed in any other money of account; but the same shall be reduced to dollars and parts of a dollar, as hereinbefore directed, in any suit thereupon.

HISTORY: CL 1857, 1313;—CL 1871, 1631;—How. 1593;—CL 1897, 4855;—CL 1915, 5994;—CL 1929, 9236;—CL 1948, 438.2.

NEGOTIABLE INSTRUMENTS: Designation of particular kind of money for payment, see Compilers' § 440.3107.

Secs. 3 and 4.

HISTORY: CL 1857, 1314, 1315;—CL 1871, 1632, 1633;—How. 1594, 1595.

438.5 Holder in due course; recovery.

Sec. 5. In any action brought on any bill of exchange or promissory note payable in money, and to order or bearer, originally given or made for or upon any usurious consideration or contract, if it shall appear that the plaintiff became, in good faith the indorsee or holder of such bill of exchange or promissory note, for a valuable consideration, before the same became due, then and in such case, unless it shall further appear that the plaintiff, at the time of becoming such indorsee or holder, had actual notice that such bill or note was given for or upon a usurious consideration or contract, he shall be entitled to recover thereon, in the same manner, and to the same extent as if such usury had not been alleged and proved.

HISTORY: CL 1857, 1316;—CL 1871, 1634;—How. 1596;—CL 1897, 4864;—CL 1915, 5995;—CL 1929, 9237;—CL 1948, 438.5.

INTEREST ON JUDGMENTS, VERDICTS ETC.

Sec. 6.

HISTORY: Am. 1855, p. 131, Act 63, Eff. May 15;—CL 1857, 1317;—CL 1871, 1635;—How. 1597;—CL 1897, 4865;—Am. 1903, p. 253, Act 179, Eff. Sept. 17;—Rep. 1915, p. 480, Act 314 (Jud. Act), Eff. Jan. 1, 1916.

This section dealt with interest on judgments and decrees.

438.7 Interest on verdicts.

In all actions founded on contracts express or implied, whenever in the execution thereof any amount in money shall be liquidated or ascertained in favor of either party, by verdict, report of referees, award of arbitrators, or by assessment made by the clerk of the court, or by any other mode of assessment according to law, it shall be lawful, unless such verdict, report, award, or assessment shall be set aside, to allow and receive interest upon such amount so ascertained or liquidated, until payment thereof or until judgment shall be thereupon rendered; and in making up and recording such judgment, the interest on such amount shall be added thereto, and included in the judgment.

HISTORY: CL 1857, 1318;—CL 1871, 1636;—How. 1598;—CL 1897, 4866;—CL 1915, 5096;—CL 1929, 9238;—CL 1948, 438.7.

Act 326, 1966, p. 588; Eff. Mar. 10, 1967.

AN ACT to regulate the rate of interest of money; to provide exceptions; to prescribe the rights of parties; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

438.31 Legal interest rate; scope; limitation; construction; foreign obligations.

Sec. 1. The interest of money shall be at the rate of \$5.00 upon \$100.00 for a year, and at the same rate for a greater or less sum, and for a longer or shorter time, except that in all cases it shall be lawful for the parties to stipulate in writing for the payment of any rate of interest, not exceeding 7% per annum. This act shall not apply to the rate of interest on any note, bond or other evidence of indebtedness issued by any corporation, association or person, the issue and rate of interest of which have been expressly authorized by the public service commission or the securities bureau of the department of commerce, or is regulated by any other law of this state, or of the United States, nor shall it apply to any time price differential which may be charged upon sales of goods or services on credit. This act shall not be construed to repeal section 78 of Act No. 327 of the Public Acts of 1931, as amended, being section 450.78 of the Compiled Laws of 1948. This act shall not render unlawful, the purchase of any note, bond or other evidence of indebtedness theretofore issued by any borrower not then domiciled in this state, which bear any rate of interest which is lawful under the law of the domicile of the borrower at the date of issue thereof, and in such case any such rate of interest may be charged and received by any person, firm, corporation or association in this state.

HISTORY: New 1966, p. 588, Act 326, Eff. Mar. 10, 1967;—Am. 1970, p. 610, Act 227, Imd. Eff. Nov. 25.

CITED IN OTHER SECTIONS: Sections 438.31 to 438.33 are cited in § 500.1501.

438.31a Interest; additional charges authorized.

Sec. 1a. Any state or national bank, except as federal law and regulation provide otherwise, or insurance company, may require borrowers to pay all reasonable and necessary charges which are expenses incurred by the lender in connection with the making, closing, disbursing, extending, readjusting or renewing of loans and such charges shall be in addition to interest authorized by law, and shall not be deemed to be a part of the interest collected or agreed to be paid on such loans within the mean-

ing of any law of this state which limits the rate of interest which may be exacted in any transaction. Reasonable and necessary charges shall consist of recording fees; title examination or title insurance; and preparation of any deed, appraisal and credit reports and such charges shall be paid only once by the borrower to either the seller of the mortgage or the lender.

HISTORY: Add. 1968, p. 464, Act 268, Imd. Eff. Jul. 1;—Am. 1969, p. 485, Act 255, Imd. Eff. Aug. 11.

438.31b Loan settlement statement; contents.

Sec. 1b. Any state or national bank, or insurance company, shall furnish a loan settlement statement to each borrower upon closing of the loan, indicating in detail the charges the borrower has paid or obligated himself to pay the lender or to any other person in connection with the loan. A copy of the statement shall be retained in the records of the lender.

HISTORY: Add. 1968, p. 464, Act 268, Imd. Eff. Jul. 1;—Am. 1969, p. 486, Act 255, Imd. Eff. Aug. 11.

438.31c Customer accounts of security dealers; real property transactions.

Sec. 1c. (1) Interest charged by a broker or dealer registered under the federal securities exchange act of 1934, as amended, for carrying a debit balance in an account for a customer is not subject to the limitations of this act if the debit balance is payable on demand and secured by stocks or bonds.

Real property transactions; conditions.

(2) For the period ending on December 31, 1971 it is lawful for the parties to any note, bond or other evidence of indebtedness, executed after August 11, 1969, the bona fide primary security for which is a first lien against real property, or the parties to any land contract, to agree in writing for the payment of any rate of interest, but no such note, mortgage, contract or other evidence of indebtedness shall provide that the rate of interest initially effective may be increased for any reason whatsoever. In connection with any such transaction, except a loan insured or guaranteed by the federal government or an agency thereof, when any part of the security is a single family dwelling, the lender shall not:

(a) Directly or indirectly require as a condition of the making of the loan any deposit to be maintained by the borrower, other than an escrow account.

(b) Directly or indirectly impose or collect, as a condition of the making of the loan, any payment from any seller or borrower in the nature of a discount, point or similar system.

(c) Charge a prepayment fee or penalty in excess of 1% of the amount of any prepayment made within 3 years of the date of the loan, or any prepayment fee or penalty at all thereafter or prohibit prepayment at any time.

Exceptions.

(3) Subsection (2) shall not impair the validity of any transaction or rate of interest lawful without regard to subsection (2).

Maximum rate.

(4) Nothing contained in subsection (2) shall authorize or permit any rate of interest in excess of the rate set forth in Act No. 259 of the Public Acts of 1968, being sections 438.41 and 438.42 of the Compiled Laws of 1948.

HISTORY: Add. 1969, p. 561, Act 305, Imd. Eff. Aug. 12;—Am. 1970, p. 173, Act 75, Imd. Eff. Jul. 16.

438.32 Violation of act; attorney fees and court costs, recovery.

Sec. 2. Any seller or lender or his assigns who enters into any contract or agreement which does not comply with the provisions of this act or charges interest in excess of that allowed by this act is barred from the recovery of any interest, any official fees, delinquency or collection charge, attorney fees or court costs and the borrower or

buyer shall be entitled to recover his attorney fees and court costs from the seller, lender or assigns.

HISTORY: New 1966, p. 589, Act 326, Eff. Mar. 10, 1967.

438.33 Repeals.

Sec. 3. Act No. 156 of the Public Acts of 1891, as amended, being sections 438.51 to 438.53 of the Compiled Laws of 1948, is repealed.

HISTORY: New 1966, p. 589, Act 326, Eff. Mar. 10, 1967.

Act 259, 1968, p. 448; Eff. Nov. 15.

AN ACT to define and regulate the practice of criminal usury and to provide a penalty.

The People of the State of Michigan enact:

438.41 Criminal usury; definition; penalty.

Sec. 1. A person is guilty of criminal usury when, not being authorized or permitted by law to do so, he knowingly charges, takes or receives any money or other property as interest on the loan or forbearance of any money or other property, at a rate exceeding 25% at simple interest per annum or the equivalent rate for a longer or shorter period. Any person guilty of criminal usury may be imprisoned for a term not to exceed 5 years or fined not more than \$10,000.00, or both.

HISTORY: New 1966, p. 448, Act 259, Eff. Nov. 15.

438.42 Usurious loan records; possession, penalty.

Sec. 2. A person is guilty of possession of usurious loan records when, with knowledge of the contents thereof, he possesses any writing, paper, instrument or article used to record criminally usurious transactions prohibited by this act. Any person guilty of possession of usurious loan records may be imprisoned for a term not to exceed 1 year or fined not more than \$1,000.00, or both.

HISTORY: New 1966, p. 449, Act 259, Eff. Nov. 15.

438.51-438.53 Repealed. 1966, p. 589, Act 326, Eff. Mar. 10, 1967.

Sections regulated interest rates.

Act 52, 1970, p. 143; Imd. Eff. Jul. 10.

AN ACT to exempt loans to business entities from the provisions of the usury statute.

The People of the State of Michigan enact:

438.61 Loans to business entities; rate of interest.

Sec. 1. Notwithstanding the provisions of Act No. 326 of the Public Acts of 1966, as amended, being sections 438.31 to 438.33 of the Compiled Laws of 1948, but subject to the provisions of any other applicable law of this state or of the United States which regulates the rate of interest, it is lawful in connection with any extension of credit to any business entity by any state or national chartered bank or insurance carrier for the parties to agree in writing to any rate of interest. For the purposes of this act "business entity" means (1) any corporation, trust, estate, partnership, cooperative or association, or (2) any natural person who furnishes to the extender of the credit a sworn statement in writing specifying the type of business and business purpose for which the proceeds of the loan will be used, but the exemption provided by this act does not

apply if the extender of credit has notice that the person signing the sworn statement was not engaged in the business indicated.

HISTORY: New 1970, p. 143, Act 52, Imd. Eff. Jul. 10.

Act 11, 1869, p. 12; Eff. Jul. 5.

AN ACT relating to interest upon installments falling due upon written contracts.

The People of the State of Michigan enact:

438.101 Interest on due and unpaid interest; rate.

Sec. 1. That when any installment of interest upon any note, bond, mortgage or other written contract shall have become due and the same shall remain unpaid, interest may be computed and collected on any such installment so due and unpaid, from the time at which it became due at the same rate as specified in any such note bond, mortgage or other written contract, not exceeding 10 per cent and if no rate of interest be specified in such instrument, then at the rate of 7 per centum per annum.

HISTORY: CL 1871, 1837;—How. 1599;—CL 1897, 4859;—CL 1915, 8001;—CL 1929, 9243;—CL 1948, 438.101.

Act 140, 1861, p. 220; Eff. Jun. 16.

AN ACT relative to the interest on contracts between citizens of this state, and other states and countries, payable elsewhere than in this state.

The People of the State of Michigan enact:

438.151 Interest rate; obligations payable out of state.

Sec. 1. That it shall be lawful for any person or corporation, borrowing money in this state, to make notes, bills, bonds, drafts, acceptances, mortgages, or other securities, for the payment of principal or interest, at the rates authorized by the laws of this state, payable at the place where the parties may agree, although the legal rate of interest in such place may be less than in this state; and such notes, bonds, bills, drafts, or other securities, shall not be regarded or held to be usurious, nor shall any securities taken for the same, or upon such loans be invalidated in consequence of the rate of interest of the state, kingdom or country, where the paper is made payable, being less than in this state, nor of any usury or penal law therein.

HISTORY: CL 1871, 1838;—How. 1600;—CL 1897, 4860;—CL 1915, 8002;—CL 1929, 9244;—CL 1948, 438.151.

438.152 Interest valid in this state; defense of usury not available.

Sec. 2. No plea of usury, nor defense founded upon an allegation of usury, shall be sustained in any court in this state, nor shall any security be held invalid on an allegation of usury, where the rate of interest reserved, discounted or taken, does not exceed that allowed by the laws of this state, in consequence of such security being payable in a state, kingdom or country where such rate of interest is not allowed.

HISTORY: CL 1871, 1839;—How. 1601;—CL 1897, 4861;—CL 1915, 8003;—CL 1929, 9245;—CL 1948, 438.152.

438.153 Interest valid in this state; lawful to take, reserve, or discount.

Sec. 3. It shall be lawful for all parties loaning money in this state, to take, reserve or discount interest upon any note, bond, bill, draft, acceptance, or other commercial paper, mortgage, or other security, at any rate authorized by the laws of this state, whether such paper or securities, for principal or interest, be payable in this state, or in any other state, kingdom or country, without regard to the laws of any other state, kingdom or country; and all such notes, bonds, bills, drafts, or acceptances, or other

commercial paper, mortgages or other security, shall be held valid in this state, whether the parties to the same reside in this state or elsewhere.

HISTORY: CL 1871, 1840;—How. 1802;—CL 1897, 4882;—CL 1915, 6004;—CL 1929, 9246;—CL 1948, 438.153.

438.154 Contract made in state or with citizen of state; principal and interest payable out of state; governing law.

Sec. 4. When any contract or loan shall be made in this state or between citizens of this state and any other state or country, bearing interest at any rate which was or shall be lawful according to any law of the state of Michigan, it shall and may be lawful to make the amount of principal and interest of such contract or loan payable in any other state or territory of the United States, or in England; and in all such cases, such contract or loan shall be deemed and considered as governed by the laws of the state of Michigan, and shall not be affected by the laws of the state or country where the same shall be made payable, and no contract or loan, which may have heretofore been made or entered into in this state, or between citizens of this state and of any other country bearing interest at a rate which was legal according to the laws of this state at the time when the same was made or entered into, shall be invalidated or in anywise impaired or affected by reason of the same having been made payable in any other state or country.

HISTORY: CL 1871, 1841;—How. 1803;—CL 1897, 4883;—CL 1915, 6005;—CL 1929, 9247;—CL 1948, 438.154.

CHAPTER 439. UNIFORM NEGOTIABLE INSTRUMENTS LAW

NEGOTIABLE INSTRUMENTS LAW

Act 265 of 1905

439.1-439.191 Repealed.

439.1-439.191 Repealed. 1962, p. 317, Act 174, Eff. Jan. 1, 1964.

Sections related to the "Negotiable instruments law" of 1905.

CHAPTER 440. UNIFORM COMMERCIAL CODE

UNIFORM SALES ACT
Act 100 of 1913

440.1-440.78 Repealed.

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Act 174, 1962, p. 200; Eff. Jan. 1, 1964.

AN ACT to enact the uniform commercial code, relating to certain commercial transactions in or regarding personal property and contracts and other documents concerning them, including sales, commercial paper, bank deposits and collections, letters of credit, bulk transfers, warehouse receipts, bills of lading, other documents of title, investment securities, and secured transactions, including certain sales of accounts, chattel paper and contract rights; to provide for public notice to third parties in certain circumstances; to regulate procedure, evidence and damages in certain court actions involving such transactions, contracts or documents; to make uniform the law with respect thereto; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

ARTICLE 1

GENERAL PROVISIONS

PART 1

SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE ACT

440.1101 Uniform commercial code; short title.

Sec. 1101. This act shall be known and may be cited as "uniform commercial code".

HISTORY: New 1962, p. 200, Act 174, Eff. Jan. 1, 1964.

CITED IN OTHER SECTIONS: Sections 440.1101 to 440.9994 are cited in §§ 125.1506, 257.58b, 318.356, 323.376, and 390.931.

440.1102 Construction of act; purposes; variation by agreement.

Sec. 1102. (1) This act shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this act are

- (a) to simplify, clarify and modernize the law governing commercial transactions;
- (b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this act may be varied by agreement, except as otherwise provided in this act and except that the obligations of good faith, diligence, reasonableness and care prescribed by this act may not be disclaimed by agreement but the parties may by agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this act of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this act unless the context otherwise requires

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

HISTORY: New 1962, p. 200, Act 174, Eff. Jan. 1, 1964.

440.1103 Supplementary principles of law applicable.

Sec. 1103. Unless displaced by the particular provisions of this act, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

HISTORY: New 1962, p. 200, Act 174, Eff. Jan. 1, 1964.

440.1104 Construction of act as to implied repeal by subsequent legislation.

Sec. 1104. This act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

HISTORY: New 1962, p. 200, Act 174, Eff. Jan. 1, 1964.

440.1105 Territorial application of act; parties' power to choose applicable law.

Sec. 1105. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this act applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this act specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods.

Section 2402.

Applicability of the article on bank deposits and collections.

Section 4102.

Bulk transfers subject to the article on bulk transfers.

Section 6102.

Applicability of the article on investment securities.

Section 8106.

Policy and scope of the article on secured transactions.

Sections 9102
and 9103.

HISTORY: New 1962, p. 201, Act 174, Eff. Jan. 1, 1964.

CITED IN OTHER SECTIONS: The above section is cited in § 487.466.

440.1106 Liberal administration of remedies; enforcement.

Sec. 1106. (1) The remedies provided by this act shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this act or by other rule of law.

(2) Any right or obligation declared by this act is enforceable by action unless the provision declaring it specifies a different and limited effect.

HISTORY: New 1962, p. 201, Act 174, Eff. Jan. 1, 1964.

440.1107 Discharge of claim or right after breach; consideration.

Sec. 1107. Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

HISTORY: New 1908, p. 201, Act 174, Eff. Jan. 1, 1904.

PART 2

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

440.1201 Uniform commercial code; definitions.

Sec. 1201. Subject to additional definitions contained in the subsequent articles of this act which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this act:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this act (sections 1205 and 2208). Whether an agreement has legal consequences is determined by the provisions of this act, if applicable; otherwise by the law of contracts (section 1103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing a fact" means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: non-negotiable bill of lading) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this act and any other applicable rules of law. (Compare "agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this act to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed to him or to his order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of a fact when

(a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this act.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(a) it comes to his attention; or
(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this act.

(30) "Person" includes an individual or an organization (see section 1102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its non-existence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 2401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts, chattel paper, or contract rights which is subject to article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under section 2401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (section 2326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instru-

ment to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived, if properly sent, has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing, including a carbon copy of his signature.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (sections 3303, 4208 and 4209) a person gives "value" for rights if he acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a pre-existing claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting or any other intentional reduction to tangible form.

HISTORY: New 1962, p. 201, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 364, Act 250, Eff. Aug. 28.

440.1202 Prima facie evidence by third party documents.

Sec. 1202. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the fact stated in the document by the third party.

HISTORY: New 1962, p. 204, Act 174, Eff. Jan. 1, 1964.

440.1203 Contracts and duties; obligation of good faith in performance or enforcement.

Sec. 1203. Every contract or duty within this act imposes an obligation of good faith in its performance or enforcement.

HISTORY: New 1962, p. 204, Act 174, Eff. Jan. 1, 1964.

440.1204 Time; reasonable time; seasonably, definition.

Sec. 1204. (1) Whenever this act requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

HISTORY: New 1962, p. 204, Act 174, Eff. Jan. 1, 1964.

440.1205 Course of dealing; usage of trade, evidence.

Sec. 1205. (1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter.

HISTORY: New 1962, p. 204, Act 174, Eff. Jan. 1, 1964.

440.1206 Statute of frauds as to personal property not otherwise covered.

Sec. 1206. (1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond \$5,000.00 in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (section 2201) nor of securities (section 8319) nor to security agreements (section 9203).

HISTORY: New 1962, p. 205, Act 174, Eff. Jan. 1, 1964.

440.1207 Performance or acceptance with reservation of rights.

Sec. 1207. A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient.

HISTORY: New 1962, p. 205, Act 174, Eff. Jan. 1, 1964.

440.1208 Right to accelerate or require collateral.

Sec. 1208. A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against whom the power has been exercised.

HISTORY: New 1962, p. 205, Act 174, Eff. Jan. 1, 1964.

SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

440.2101 Uniform commercial code—sales; short title.

Sec. 2101. This article shall be known and may be cited as “uniform commercial code—sales”.

HISTORY: New 1962, p. 205, Act 174, Eff. Jan. 1, 1964.

440.2102 Application of article; security and other transactions excluded.

Sec. 2102. Unless the context otherwise requires, this article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

HISTORY: New 1962, p. 205, Act 174, Eff. Jan. 1, 1964.

440.2103 Uniform commercial code, sales; definitions.

Sec. 2103. (1) In this article unless the context otherwise requires:

- (a) “Buyer” means a person who buys or contracts to buy goods.
 - (b) “Good faith” in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.
 - (c) “Receipt” of goods means taking physical possession of them.
 - (d) “Seller” means a person who sells or contracts to sell goods.
- (2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

“Acceptance”.	Section 2606.
“Banker’s credit”.	Section 2325.
“Between merchants”.	Section 2104.
“Cancellation”.	Section 2106 (4).
“Commercial unit”.	Section 2105.
“Confirmed credit”.	Section 2325.
“Conforming to contract”.	Section 2106.
“Contract for sale”.	Section 2106.
“Cover”.	Section 2712.
“Entrusting”.	Section 2403.
“Financing agency”.	Section 2104.
“Future goods”.	Section 2105.
“Goods”.	Section 2105.
“Identification”.	Section 2501.
“Installment contract”.	Section 2612.
“Letter of credit”.	Section 2325.
“Lot”.	Section 2105.
“Merchant”.	Section 2104.
“Overseas”.	Section 2323.
“Person in position of seller”.	Section 2707.
“Present sale”.	Section 2106.
“Sale”.	Section 2106.
“Sale on approval”.	Section 2326.
“Sale or return”.	Section 2326.
“Termination”.	Section 2106.

(3) The following definitions in other articles apply to this article:

"Check".	Section 3104.
"Consignee".	Section 7102.
"Consignor".	Section 7102.
"Consumer goods".	Section 9109.
"Dishonor".	Section 3507.
"Draft".	Section 3104.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

HISTORY: New 1962, p. 205, Act 174, Eff. Jan. 1, 1964.

440.2104 Merchant; definition.

Sec. 2104. (1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

Financing agency.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the sellers draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (section 2707).

Between merchants.

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

HISTORY: New 1962, p. 206, Act 174, Eff. Jan. 1, 1964.

440.2105 Goods, lot, commercial unit; definitions.

Sec. 2105. (1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (section 2107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine)

or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

HISTORY: New 1962, p. 207, Act 174, Eff. Jan. 1, 1964.

440.2106 Contract, agreement, contract for sale, sale, present sale; definitions.

Sec. 2106. (1) In this article unless the context otherwise requires “contract” and “agreement” are limited to those relating to the present or future sale of goods. “Contract for sale” includes both a present sale of goods and a contract to sell goods at a future time. A “sale” consists in the passing of title from the seller to the buyer for a price (section 2401). A “present sale” means a sale which is accomplished by the making of the contract.

Conforming goods or conduct.

(2) Goods or conduct including any part of a performance are “conforming” or conform to the contract when they are in accordance with the obligations under the contract.

Termination.

(3) “Termination” occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On “termination” all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

Cancellation.

(4) “Cancellation” occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of “termination” except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

HISTORY: New 1962, p. 207, Act 174, Eff. Jan. 1, 1964.

440.2107 Contract for sale of property removable from realty; severance, recording.

Sec. 2107. (1) A contract for the sale of timber, minerals or the like or a structure or its materials to be removed from realty is a contract for the sale of goods within this article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) is a contract for the sale of goods within this article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

HISTORY: New 1962, p. 208, Act 174, Eff. Jan. 1, 1964.

PART 2

FORM, FORMATION AND READJUSTMENT OF CONTRACTS

440.2201 Formal requirements; statute of frauds.

Sec. 2201. (1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500.00 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (section 2606).

HISTORY: New 1962, p. 208, Act 174, Eff. Jan. 1, 1964.

CITED IN OTHER SECTIONS: The above section is cited in § 257.251.

440.2202 Final written expression of agreement; parol or extrinsic evidence.

Sec. 2202. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of dealing or usage of trade (section 1205) or by course of performance (section 2208); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

HISTORY: New 1962, p. 208, Act 174, Eff. Jan. 1, 1964.

440.2203 Seals.

Sec. 2203. The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

HISTORY: New 1962, p. 209, Act 174, Eff. Jan. 1, 1964.

440.2204 Contract for sale; formation, conduct, time, open terms.

Sec. 2204. (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

HISTORY: New 1962, p. 209, Act 174, Eff. Jan. 1, 1964.

440.2205 Firm offers.

Sec. 2205. An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed 3 months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

HISTORY: New 1962, p. 209, Act 174, Eff. Jan. 1, 1964.

440.2206 Offer and acceptance in formation of contract.

Sec. 2206. (1) Unless otherwise unambiguously indicated by the language or circumstances

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or nonconforming goods, but such a shipment of nonconforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

HISTORY: New 1962, p. 209, Act 174, Eff. Jan. 1, 1964.

440.2207 Additional or different terms in acceptance; contract by conduct.

Sec. 2207. (1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this act.

HISTORY: New 1962, p. 209, Act 174, Eff. Jan. 1, 1964.

440.2208 Course of performance; practical construction, waiver, modification.

Sec. 2208. (1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportu-

nity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (section 1205).

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance.

HISTORY: New 1962, p. 210, Act 174, Eff. Jan. 1, 1964.

440.2209 Modification; rescission; waiver, retraction.

Sec. 2209. (1) An agreement modifying a contract within this article needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this article (section 2201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

HISTORY: New 1962, p. 210, Act 174, Eff. Jan. 1, 1964.

440.2210 Delegation of performance; assignment of rights.

Sec. 2210. (1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (section 2609).

HISTORY: New 1962, p. 210, Act 174, Eff. Jan. 1, 1964.

PART 3

GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

440.2301 Obligations of seller and buyer.

Sec. 2301. The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

HISTORY: New 1962, p. 211, Act 174, Eff. Jan. 1, 1964.

440.2302 Unconscionable contract or clause.

Sec. 2302. (1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

HISTORY: New 1962, p. 211, Act 174, Eff. Jan. 1, 1964.

440.2303 Allocation or division of risk or burden.

Sec. 2303. Where this article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden.

HISTORY: New 1962, p. 211, Act 174, Eff. Jan. 1, 1964.

440.2304 Price; payment in money, goods, realty, or otherwise.

Sec. 2304. (1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

HISTORY: New 1962, p. 211, Act 174, Eff. Jan. 1, 1964.

440.2305 Open price term; fixed price.

Sec. 2305. (1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

- (a) nothing is said as to price; or
- (b) the price is left to be agreed by the parties and they fail to agree; or
- (c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must

return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account.

HISTORY: New 1962, p. 211, Act 174, Eff. Jan. 1, 1964.

440.2306 Output of seller; requirement of buyer.

Sec. 2306. (1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

Exclusive dealing.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

HISTORY: New 1962, p. 211, Act 174, Eff. Jan. 1, 1964.

440.2307 Delivery in single lot or several lots; payment.

Sec. 2307. Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

HISTORY: New 1962, p. 212, Act 174, Eff. Jan. 1, 1964.

440.2308 Place for delivery of goods and documents of title.

Sec. 2308. Unless otherwise agreed

(a) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels.

HISTORY: New 1962, p. 212, Act 174, Eff. Jan. 1, 1964.

440.2309 Time of performance; contract termination.

Sec. 2309. (1) The time for shipment or delivery or any other action under a contract if not provided in this article or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

HISTORY: New 1962, p. 212, Act 174, Eff. Jan. 1, 1964.

440.2310 Open time and place for payment or running of credit; shipment under reservation; inspection.

Sec. 2310. Unless otherwise agreed

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their

arrival before payment is due unless such inspection is inconsistent with the terms of the contract (section 2513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but postdating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period.

HISTORY: New 1962, p. 212, Act 174, Eff. Jan. 1, 1964.

440.2311 Specification of performance.

Sec. 2311. (1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of section 2204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

Same; assortment and shipment of goods.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of section 2319 specifications or arrangements relating to shipment are at the seller's option.

Same; remedies for failure to specify.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

HISTORY: New 1962, p. 212, Act 174, Eff. Jan. 1, 1964.

440.2312 Warranties of title; freedom from liens.

Sec. 2312. (1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

HISTORY: New 1962, p. 213, Act 174, Eff. Jan. 1, 1964.

440.2313 Express warranty; creation by affirmation, promise, description, sample; affirmation of value.

Sec. 2313. (1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates

to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

HISTORY: New 1962, p. 213, Act 174, Eff. Jan. 1, 1964.

440.2314 Implied warranty; merchantability, course of dealing, usage of trade.

Sec. 2314. (1) Unless excluded or modified (section 2316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (section 2316) other implied warranties may arise from course of dealing or usage of trade.

HISTORY: New 1962, p. 213, Act 174, Eff. Jan. 1, 1964.

440.2315 Implied warranty; fitness for particular purpose.

Sec. 2315. Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

HISTORY: New 1962, p. 214, Act 174, Eff. Jan. 1, 1964.

440.2316 Warranties; exclusion or modification.

Sec. 2316. (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this article on parol or extrinsic evidence (section 2202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all im-

plied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of this article on liquidation or limitation of damages and on contractual modification of remedy (sections 2718 and 2719).

HISTORY: New 1962, p. 214, Act 174, Eff. Jan. 1, 1964.

440.2317 Warranties; cumulation and conflict.

Sec. 2317. Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

HISTORY: New 1962, p. 214, Act 174, Eff. Jan. 1, 1964.

440.2318 Warranties; third party beneficiaries.

Sec. 2318. A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section.

HISTORY: New 1962, p. 214, Act 174, Eff. Jan. 1, 1964.

440.2319 F.O.B. and F.A.S. terms.

Sec. 2319. (1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this article (section 2504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this article (section 2503);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the

seller must comply with the provisions of this article on the form of bill of lading (section 2323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1) (a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this article (section 2311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

HISTORY: New 1962, p. 215, Act 174, Eff. Jan. 1, 1964.

440.2320 C.I.F. and C. & F. terms.

Sec. 2320. (1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C.&F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C.&F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C.&F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

HISTORY: New 1962, p. 215, Act 174, Eff. Jan. 1, 1964.

440.2321 C.I.F. and C. & F. terms, net landed weights, delivered weights, out turn; warranty of condition on arrival, inspection before payment.

Sec. 2321. Under a contract containing a term C.I.F. or C.&F.

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

HISTORY: New 1962, p. 216, Act 174, Eff. Jan. 1, 1964.

440.2322 Delivery exship.

Sec. 2322. (1) Unless otherwise agreed a term for delivery of goods "exship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

HISTORY: New 1962, p. 216, Act 174, Eff. Jan. 1, 1964.

440.2323 Overseas shipment; bill of lading, form.

Sec. 2323. (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this article on cure of improper delivery (subsection (1) of section 2508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

HISTORY: New 1962, p. 216, Act 174, Eff. Jan. 1, 1964.

440.2324 No arrival, no sale terms.

Sec. 2324. Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the nonarrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (section 2613).

HISTORY: New 1962, p. 217, Act 174, Eff. Jan. 1, 1964.

440.2325 Letter of credit or banker's credit; confirmed credit; definitions.

Sec. 2325. (1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

HISTORY: New 1962, p. 217, Act 174, Eff. Jan. 1, 1964.

440.2326 Sale on approval; sale or return; consignment sales, rights of creditors.

Sec. 2326. (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

- (a) a "sale on approval" if the goods are delivered primarily for use, and
- (b) a "sale or return" if the goods are delivered primarily for resale.

(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign; or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others; or

(c) complies with the filing provisions of the article on secured transactions (article 9).

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this article (section 2201) and as contradicting the sale aspect of the contract within the provisions of this article on parol or extrinsic evidence (section 2202).

HISTORY: New 1962, p. 217, Act 174, Eff. Jan. 1, 1964.

440.2327 Sale on approval; sale or return; special incidents.

Sec. 2327. (1) Under a sale on approval unless otherwise agreed

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense.

HISTORY: New 1962, p. 217, Act 174, Eff. Jan. 1, 1964.

440.2328 Sale by auction; sale with reserve; forced sale.

Sec. 2328. (1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

HISTORY: New 1962, p. 218, Act 174, Eff. Jan. 1, 1964.

PART 4

TITLE, CREDITORS AND GOOD FAITH PURCHASERS

440.2401 Passing of title; reservation for security; limited application of section; rejection.

Sec. 2401. Each provision of this article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provisions refers to such title. Insofar as situations are not covered by the other provisions of this article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (section 2501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this act. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the article on secured transactions (article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale".

HISTORY: New 1962, p. 218, Act 174, Eff. Jan. 1, 1964.

440.2402 Rights of seller's creditors against sold goods.

Sec. 2402. (1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this article (sections 2502 and 2716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this article shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the article on secured transactions (article 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this article constitute the transaction a fraudulent transfer or voidable preference.

HISTORY: New 1962, p. 219, Act 174, Eff. Jan. 1, 1964.

440.2403 Purchasers and transferees; title, rights, and powers to transfer goods; entrusting.

Sec. 2403. (1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser; or

(b) the delivery was in exchange for a check which is later dishonored; or

(c) it was agreed that the transaction was to be a "cash sale"; or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the articles on secured transactions (article 9), bulk transfers (article 6) and documents of title (article 7).

HISTORY: New 1962, p. 219, Act 174, Eff. Jan. 1, 1964.

PART 5 PERFORMANCE

440.2501 Special property and insurable interest in goods; identification of goods.

Sec. 2501. (1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are nonconforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise becoming growing crops or the young are conceived if the contract is for the sale of unborn young to be born within 12 months after contracting or for the sale of crops to be harvested within 12 months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

HISTORY: New 1962, p. 220, Act 174, Eff. Jan. 1, 1964.

440.2502 Special property and insurable interest in goods; insolvency of seller.

Sec. 2502. (1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within 10 days after receipt of the first installment on their price.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

HISTORY: New 1962, p. 220, Act 174, Eff. Jan. 1, 1964.

440.2503 Tender of delivery by seller.

Sec. 2503. (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

Delivery by shipment.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

Delivery at particular destination.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

Goods in possession of bailee.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonally objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

Delivery of documents.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form, except as provided in this article with respect to bills of lading in a set (subsection (2) of section 2323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes nonacceptance or rejection.

HISTORY: New 1962, p. 220, Act 174, Eff. Jan. 1, 1964.

440.2504 Delivery by shipment; contract with carrier, documents, notice.

Sec. 2504. Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment.

Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues.

HISTORY: New 1962, p. 221, Act 174, Eff. Jan. 1, 1964.

440.2505 Shipment with and without reservation by seller.

Sec. 2505. (1) Where the seller has identified goods to the contract by or before shipment

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of section 2507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document.

HISTORY: New 1962, p. 221, Act 174, Eff. Jan. 1, 1964.

440.2506 Financing agency; rights, reimbursement.

Sec. 2506. (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face.

HISTORY: New 1962, p. 221, Act 174, Eff. Jan. 1, 1964.

440.2507 Tender of delivery; conditions, payment.

Sec. 2507. (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due.

HISTORY: New 1962, p. 222, Act 174, Eff. Jan. 1, 1964.

440.2508 Improper delivery; cure, replacement.

Sec. 2508. (1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

HISTORY: New 1962, p. 222, Act 174, Eff. Jan. 1, 1964.

440.2509 Risk of loss; absence of breach.

Sec. 2509. (1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (section 2505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a non-negotiable document of title or other written direction to deliver, as provided in subsection (4)(b) of section 2503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this article on sale on approval (section 2327) and on effect of breach on risk of loss (section 2510).

HISTORY: New 1962, p. 222, Act 174, Eff. Jan. 1, 1964.

440.2510 Risk of loss; effect of breach.

Sec. 2510. (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

HISTORY: New 1962, p. 222, Act 174, Eff. Jan. 1, 1964.

440.2511 Payment by buyer; tender, check.

Sec. 2511. (1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this act on the effect of an instrument on an obligation (section 3802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

HISTORY: New 1962, p. 223, Act 174, Eff. Jan. 1, 1964.

440.2512 Payment by buyer; inspection, nonconforming goods.

Sec. 2512. (1) Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless

(a) the nonconformity appears without inspection; or
 (b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this act (section 5114).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyers right to inspect or any of his remedies.

HISTORY: New 1962, p. 223, Act 174, Eff. Jan. 1, 1964.

440.2513 Inspection by buyer; time, expenses, place, method.

Sec. 2513. (1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this article on C.I.F. contracts (subsection (3) of section 2321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(a) for delivery C.O.D. or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

HISTORY: New 1962, p. 223, Act 174, Eff. Jan. 1, 1964.

440.2514 Documents; delivery to drawee on acceptance or payment.

Sec. 2514. Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment.

HISTORY: New 1962, p. 223, Act 174, Eff. Jan. 1, 1964.

440.2515 Adjustment of dispute; preservation of evidence, inspection.

Sec. 2515. In furtherance of the adjustment of any claim or dispute

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

HISTORY: New 1962, p. 223, Act 174, Eff. Jan. 1, 1964.

PART 6

BREACH, REPUDIATION AND EXCUSE

440.2601 Improper delivery; buyer's rights.

Sec. 2601. Subject to the provisions of this article on breach in installment contracts (section 2612) and unless otherwise agreed under the sections on contractual limitations of remedy (sections 2718 and 2719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(a) reject the whole; or

- (b) accept the whole; or
- (c) accept any commercial unit or units and reject the rest.

HISTORY: New 1962, p. 224, Act 174, Eff. Jan. 1, 1964.

440.2602 Rejection of goods.

Sec. 2602. (1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the 2 following sections on rejected goods (sections 2603 and 2604),

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this article (subsection (3) of section 2711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this article on seller's remedies in general (section 2703).

HISTORY: New 1962, p. 224, Act 174, Eff. Jan. 1, 1964.

440.2603 Rejection of goods; merchant buyer's duties.

Sec. 2603. (1) Subject to any security interest in the buyer (subsection (3) of section 2711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding 10% on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

HISTORY: New 1962, p. 224, Act 174, Eff. Jan. 1, 1964.

440.2604 Rejection of goods; buyer's options.

Sec. 2604. Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

HISTORY: New 1962, p. 224, Act 174, Eff. Jan. 1, 1964.

440.2605 Rejection of goods; failure of buyer to particularize defect; waiver.

Sec. 2605. (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing

for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents.

HISTORY: New 1962, p. 225, Act 174, Eff. Jan. 1, 1964.

440.2606 Acceptance of goods; occurrence.

Sec. 2606. (1) Acceptance of goods occurs when the buyer

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their nonconformity; or

(b) fails to make an effective rejection (subsection (1) of section 2602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

HISTORY: New 1962, p. 225, Act 174, Eff. Jan. 1, 1964.

440.2607 Acceptance of goods; effect; notice of breach; burden of establishing breach; notice of claim or litigation to person answerable.

Sec. 2607. (1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a nonconformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this article for nonconformity.

(3) Where a tender has been accepted

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of section 2312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the 2 litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound

(b) if the claim is one for infringement or the like (subsection (3) of section 2312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of section 2312).

HISTORY: New 1962, p. 225, Act 174, Eff. Jan. 1, 1964.

440.2608 Acceptance of goods; revocation, time, notice, effect.

Sec. 2608. (1) The buyer may revoke his acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to him if he has accepted it

(a) on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(b) without discovery of such nonconformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

HISTORY: New 1962, p. 226, Act 174, Eff. Jan. 1, 1964.

440.2609 Contract for sale; performance; insecurity, demand, assurance of due performance.

Sec. 2609. (1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding 30 days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

HISTORY: New 1962, p. 226, Act 174, Eff. Jan. 1, 1964.

440.2610 Anticipatory repudiation.

Sec. 2610. When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (section 2703 or section 2711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (section 2704).

HISTORY: New 1962, p. 226, Act 174, Eff. Jan. 1, 1964.

440.2611 Anticipatory repudiation; retraction.

Sec. 2611. (1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this article (section 2609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

HISTORY: New 1962, p. 226, Act 174, Eff. Jan. 1, 1964.

440.2612 Installment contract; breach.

Sec. 2612. (1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a nonconforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

HISTORY: New 1962, p. 227, Act 174, Eff. Jan. 1, 1964.

440.2613 Casualty to identified goods; total loss; partial loss, option of buyer.

Sec. 2613. Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (section 2324) then

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

HISTORY: New 1962, p. 227, Act 174, Eff. Jan. 1, 1964.

440.2614 Substituted performance; acceptance, payment.

Sec. 2614. (1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

HISTORY: New 1962, p. 227, Act 174, Eff. Jan. 1, 1964.

440.2615 Failure of presupposed conditions; nondelivery, partial delivery, excuse.

Sec. 2615. Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or nondelivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or nondelivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer.

HISTORY: New 1962, p. 227, Act 174, Eff. Jan. 1, 1964.

440.2616 Procedure on notice claiming excuse.

Sec. 2616. (1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this article relating to breach of installment contracts (section 2612), then also as to the whole,

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding 30 days the contract lapses with respect to any deliveries affected.

(3) The provisions of this section may not be negated by agreement except in so far as the seller has assumed a greater obligation under the preceding section.

HISTORY: New 1962, p. 228, Act 174, Eff. Jan. 1, 1964.

PART 7**REMEDIES****440.2701 Collateral or ancillary contracts; remedies for breach.**

Sec. 2701. Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this article.

HISTORY: New 1962, p. 228, Act 174, Eff. Jan. 1, 1964.

440.2702 Insolvency of buyer; remedies of seller.

Sec. 2702. (1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this article (section 2705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within 10 days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within 3 months before delivery the 10 day limitation does not apply. Except as provided in the subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this article (section 2403). Successful reclamation of goods excludes all other remedies with respect to them.

HISTORY: New 1962, p. 228, Act 174, Eff. Jan. 1, 1964.

440.2703 Buyer's wrongful rejection, revocation of acceptance, or nonpayment; remedies of seller.

Sec. 2703. Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (section 2612), then also with respect to the whole undelivered balance, the aggrieved seller may

- (a) withhold delivery of such goods;
- (b) stop delivery by any bailee as hereafter provided (section 2705);
- (c) proceed under the next section respecting goods still unidentified to the contract;
- (d) resell and recover damages as hereafter provided (section 2706);
- (e) recover damages for nonacceptance (section 2708) or in a proper case the price (section 2709);
- (f) cancel.

HISTORY: New 1962, p. 228, Act 174, Eff. Jan. 1, 1964.

440.2704 Buyer's wrongful rejection, revocation of acceptance, or nonpayment; identification of goods; resale; salvage.

Sec. 2704. (1) An aggrieved seller under the preceding section may

- (a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;
- (b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacturer [sic] and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

HISTORY: New 1962, p. 229, Act 174, Eff. Jan. 1, 1964.

440.2705 Stoppage of delivery in transit or otherwise; notice to bailee.

Sec. 2705. (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (section 2702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

- (2) As against such buyer the seller may stop delivery until
 - (a) receipt of the goods by the buyer; or
 - (b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or
 - (c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or
 - (d) negotiation to the buyer of any negotiable document of title covering the goods.
- (3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

HISTORY: New 1962, p. 229, Act 174, Eff. Jan. 1, 1964.

440.2706 Buyer's wrongful rejection, revocation of acceptance, or nonpayment; resale by seller; recovery of loss; notice to buyer; profit.

Sec. 2706. (1) Under the conditions stated in section 2703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this article (section 2710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (section 2707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of section 2711).

HISTORY: New 1962, p. 229, Act 174, Eff. Jan. 1, 1964.

440.2707 Person in the position of a seller.

Sec. 2707. (1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this article withhold or stop delivery (section 2705) and resell (section 2706) and recover incidental damages (section 2710).

HISTORY: New 1962, p. 230, Act 174, Eff. Jan. 1, 1964.

440.2708 Nonacceptance or repudiation; seller's damages.

Sec. 2708. (1) Subject to subsection (2) and to the provisions of this article with respect to proof of market price (section 2723), the measure of damages for nonacceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this article (section 2710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this article (section 2710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

HISTORY: New 1962, p. 230, Act 174, Eff. Jan. 1, 1964.

440.2709 Nonpayment; action for price, damages.

Sec. 2709. (1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (section 2610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section.

HISTORY: New 1962, p. 230, Act 174, Eff. Jan. 1, 1964.

440.2710 Seller's incidental damages.

Sec. 2710. Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

HISTORY: New 1962, p. 231, Act 174, Eff. Jan. 1, 1964.

440.2711 Nondelivery, repudiation, rejection, or revocation of acceptance; buyer's remedies; security interest in goods.

Sec. 2711. (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (section 2612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(a) “cover” and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for nondelivery as provided in this article (section 2713).

(2) Where the seller fails to deliver or repudiates the buyer may also

(a) if the goods have been identified recover them as provided in this article (section 2502); or

(b) in a proper case obtain specific performance or replevy or recover the goods as provided in this article (section 2716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (section 2706).

HISTORY: New 1962, p. 231, Act 174, Eff. Jan. 1, 1964.

440.2712 Cover; procurement of substitute goods; buyer's damages.

Sec. 2712. (1) After a breach within the preceding section the buyer may “cover” by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (section 2715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

HISTORY: New 1962, p. 231, Act 174, Eff. Jan. 1, 1964.

440.2713 Nondelivery or repudiation; buyer's damages.

Sec. 2713. (1) Subject to the provisions of this article with respect to proof of market price (section 2723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this article (section 2715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

HISTORY: New 1962, p. 231, Act 174, Eff. Jan. 1, 1964.

440.2714 Accepted goods; buyer's damages for breach.

Sec. 2714. (1) Where the buyer has accepted goods and given notification (subsection (3) of section 2607) he may recover as damages for any nonconformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

HISTORY: New 1962, p. 231, Act 174, Eff. Jan. 1, 1964.

440.2715 Buyer's incidental and consequential damages.

Sec. 2715. (1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of

goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

HISTORY: New 1962, p. 232, Act 174, Eff. Jan. 1, 1964.

440.2716 Specific performance; replevin; claim and delivery.

Sec. 2716. (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin or recovery in a claim and delivery proceeding for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

HISTORY: New 1962, p. 232, Act 174, Eff. Jan. 1, 1964.

440.2717 Deduction of damages from price; notice.

Sec. 2717. The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

HISTORY: New 1962, p. 232, Act 174, Eff. Jan. 1, 1964.

440.2718 Liquidation and limitation of damages; restitution to buyers.

Sec. 2718. (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, 20% of the value of the total performance for which the buyer is obligated under the contract or \$500.00, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes

(a) a right to recover damages under the provisions of this article other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2);

but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this article on resale by an aggrieved seller (section 2706).

HISTORY: New 1962, p. 232, Act 174, Eff. Jan. 1, 1964.

440.2719 Contractual modification or limitation of remedies.

Sec. 2719. (1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this article and may limit or alter the measure of damages recoverable under this article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of nonconforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this act.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

HISTORY: New 1962, p. 233, Act 174, Eff. Jan. 1, 1964.

440.2720 Cancellation, rescission, antecedent breach.

Sec. 2720. Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

HISTORY: New 1962, p. 233, Act 174, Eff. Jan. 1, 1964.

440.2721 Remedies for misrepresentation or fraud.

Sec. 2721. Remedies for material misrepresentation or fraud include all remedies available under this article for nonfraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

HISTORY: New 1962, p. 233, Act 174, Eff. Jan. 1, 1964.

440.2722 Right of action against third party for injury to goods.

Sec. 2722. Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern.

HISTORY: New 1962, p. 233, Act 174, Eff. Jan. 1, 1964.

440.2723 Evidence of market price; time, place, surprise.

Sec. 2723. (1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based

on market price (section 2708 or section 2713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

HISTORY: New 1962, p. 233, Act 174, Eff. Jan. 1, 1964.

440.2724 Evidence of market price; market quotations, admissibility.

Sec. 2724. Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

HISTORY: New 1962, p. 234, Act 174, Eff. Jan. 1, 1964.

440.2725 Statute of limitations in contracts for sale; contractual reduction.

Sec. 2725. (1) An action for breach of any contract for sale must be commenced within 4 years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than 1 year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warrant explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within 6 months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this act becomes effective.

HISTORY: New 1962, p. 234, Act 174, Eff. Jan. 1, 1964.

ARTICLE 3

COMMERCIAL PAPER

PART 1

SHORT TITLE, FORM AND INTERPRETATION

440.3101 Uniform commercial code—commercial paper; short title.

Sec. 3101. This article shall be known and may be cited as "uniform commercial code—commercial paper".

HISTORY: New 1962, p. 234, Act 174, Eff. Jan. 1, 1964.

440.3102 Uniform commercial code; commercial paper; definitions.

Sec. 3102. (1) In this article unless the context otherwise requires:

- (a) "Issue" means the first delivery of an instrument to a holder or a remitter.
- (b) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.
- (c) A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.
- (d) "Secondary party" means a drawer or endorser.
- (e) "Instrument" means a negotiable instrument.
- (2) Other definitions applying to this article and the sections in which they appear are:

"Acceptance".	Section 3410.
"Accommodation party".	Section 3415.
"Alteration".	Section 3407.
"Certificate of deposit".	Section 3104.
"Certification".	Section 3411.
"Check".	Section 3104.
"Definite time".	Section 3109.
"Dishonor".	Section 3507.
"Draft".	Section 3104.
"Holder in due course".	Section 3302.
"Negotiation".	Section 3202.
"Note".	Section 3104.
"Notice of dishonor".	Section 3508.
"On demand".	Section 3108.
"Presentment".	Section 3504.
"Protest".	Section 3509.
"Restrictive indorsement".	Section 3205.
"Signature".	Section 3401.
(3) The following definitions in other articles apply to this article:	
"Account".	Section 4104.
"Banking day".	Section 4104.
"Clearing house".	Section 4104.
"Collecting bank".	Section 4105.
"Customer".	Section 4104.
"Depository bank".	Section 4105.
"Documentary draft".	Section 4104.
"Intermediary bank".	Section 4105.
"Item".	Section 4104.
"Midnight deadline".	Section 4104.
"Payor bank".	Section 4105.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

HISTORY: New 1962, p. 234, Act 174, Eff. Jan. 1, 1964.

440.3103 Scope of article; limitations.

Sec. 3103. (1) This article does not apply to money, documents of title or investment securities.

(2) The provisions of this article are subject to the provisions of the article on bank deposits and collections (article 4) and secured transactions (article 9).

HISTORY: New 1962, p. 235, Act 174, Eff. Jan. 1, 1964.

440.3104 Negotiable instruments; terms; draft, check, certificate of deposit, note.

Sec. 3104. (1) Any writing to be a negotiable instrument within this article must

- (a) be signed by the maker or drawer; and
 - (b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this article; and
 - (c) be payable on demand or at a definite time; and
 - (d) be payable to order or to bearer.
- (2) A writing which complies with the requirements of this section is
- (a) a "draft" ("bill of exchange") if it is an order;
 - (b) a "check" if it is a draft drawn on a bank and payable on demand;
 - (c) a "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;
 - (d) a "note" if it is a promise other than a certificate of deposit.

(3) As used in other articles of this act, and as the context may require, the terms "draft", "check", "certificate of deposit" and "note" may refer to instruments which are not negotiable within this article as well as to instruments which are so negotiable.

HISTORY: New 1962, p. 235, Act 174, Eff. Jan. 1, 1964.

440.3105 Unconditional status of promise or order.

Sec. 3105. (1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument

- (a) is subject to implied or constructive conditions; or
- (b) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or
- (c) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or
- (d) states that it is drawn under a letter of credit; or
- (e) states that it is secured, whether by mortgage, reservation of title or otherwise; or
- (f) indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or
- (g) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or
- (h) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

(2) A promise or order is not unconditional if the instrument

- (a) states that it is subject to or governed by any other agreement; or
- (b) states that it is to be paid only out of a particular fund or source except as provided in this section.

HISTORY: New 1962, p. 236, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 366, Act 250, Eff. Aug. 28.

440.3106 Sum certain.

Sec. 3106. (1) The sum payable is a sum certain even though it is to be paid

- (a) with stated interest or by stated installments; or

(b) with stated different rates of interest before and after default or a specified date; or

(c) with a stated discount or addition if paid before or after the date fixed for payment; or

(d) with exchange or less exchange, whether at a fixed rate or at the current rate; or

(e) with costs of collection or an attorney's fee or both upon default.

(2) Nothing in this section shall validate any term which is otherwise illegal.

HISTORY: New 1962, p. 236, Act 174, Eff. Jan. 1, 1964.

440.3107 Money; foreign currency.

Sec. 3107. (1) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.

(2) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency.

HISTORY: New 1962, p. 236, Act 174, Eff. Jan. 1, 1964.

440.3108 Instruments payable on demand.

Sec. 3108. Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated.

HISTORY: New 1962, p. 236, Act 174, Eff. Jan. 1, 1964.

440.3109 Instruments payable at a definite time.

Sec. 3109. (1) An instrument is payable at a definite time if by its terms it is payable

(a) on or before a stated date or at a fixed period after a stated date; or

(b) at a fixed period after sight; or

(c) at a definite time subject to any acceleration; or

(d) at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(2) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred.

HISTORY: New 1962, p. 236, Act 174, Eff. Jan. 1, 1964.

440.3110 Instruments payable to order.

Sec. 3110. (1) An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. It may be payable to the order of

(a) the maker or drawer; or

(b) the drawee; or

(c) a payee who is not maker, drawer or drawee; or

(d) two or more payees together or in the alternative; or

(e) an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or

(f) an office, or an officer by his title as such in which case it is payable to the princi-

pal but the incumbent of the office or his successors may act as if he or they were the holder; or

(g) a partnership or unincorporated association, in which case it is payable to the partnership or association and may be indorsed or transferred by any person thereto authorized.

(2) An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly indorsed".

(3) An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten.

HISTORY: New 1962, p. 237, Act 174, Eff. Jan. 1, 1964.

440.3111 Instruments payable to bearer.

Sec. 3111. An instrument is payable to bearer when by its terms it is payable to

(a) bearer or the order of bearer; or

(b) a specified person or bearer; or

(c) "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee.

HISTORY: New 1962, p. 237, Act 174, Eff. Jan. 1, 1964.

440.3112 Instruments; terms and omissions not affecting negotiability; validation.

Sec. 3112. (1) The negotiability of an instrument is not affected by

(a) the omission of a statement of any consideration or of the place where the instrument is drawn or payable; or

(b) a statement that collateral has been given to secure obligations either on the instrument or otherwise of an obligor on the instrument or that in the case of default on those obligations the holder may realize on or dispose of the collateral; or

(c) a promise or power to maintain or protect collateral or to give additional collateral; or

(d) a term authorizing a confession of judgment on the instrument if it is not paid when due; or

(e) a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or

(f) a term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or

(g) a statement in a draft drawn in a set of parts (section 3801) to the effect that the order is effective only if no other part has been honored.

(2) Nothing in this section shall validate any term which is otherwise illegal.

HISTORY: New 1962, p. 237, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 367, Act 250, Eff. Aug. 28.

440.3113 Seal.

Sec. 3113. An instrument otherwise negotiable is within this article even though it is under a seal.

HISTORY: New 1962, p. 238, Act 174, Eff. Jan. 1, 1964.

440.3114 Instruments; lack of date, antedating, post dating not affecting negotiability.

Sec. 3114. (1) The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.

(2) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

(3) Where the instrument or any signature thereon is dated, the date is presumed to be correct.

HISTORY: New 1962, p. 238, Act 174, Eff. Jan. 1, 1964.

440.3115 Incomplete instruments.

Sec. 3115. (1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

(2) If the completion is unauthorized the rules as to material alteration apply (section 3407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting.

HISTORY: New 1962, p. 238, Act 174, Eff. Jan. 1, 1964.

440.3116 Instruments payable to 2 or more persons.

Sec. 3116. An instrument payable to the order of 2 or more persons

(a) if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;

(b) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them.

HISTORY: New 1962, p. 238, Act 174, Eff. Jan. 1, 1964.

440.3117 Instruments payable with words of description.

Sec. 3117. An instrument made payable to a named person with the addition of words describing him

(a) as agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;

(b) as any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him;

(c) in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties.

HISTORY: New 1962, p. 238, Act 174, Eff. Jan. 1, 1964.

440.3118 Ambiguous terms; rules of construction; interest; consent to extension.

Sec. 3118. The following rules apply to every instrument:

(a) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.

(b) Handwritten terms control typewritten and printed terms, and typewritten control printed.

(c) Words control figures except that if the words are ambiguous figures control.

(d) Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.

(e) Unless the instrument otherwise specifies 2 or more persons who sign as maker, acceptor or drawer or indorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay".

(f) Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not

exercise his option to extend an instrument over the objection of a maker or acceptor or other party who in accordance with section 3604 tenders full payment when the instrument is due.

HISTORY: New 1962, p. 238, Act 174, Eff. Jan. 1, 1964.

440.3119 Other writings affecting an instrument.

Sec. 3119. (1) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

(2) A separate agreement does not affect the negotiability of an instrument.

HISTORY: New 1962, p. 239, Act 174, Eff. Jan. 1, 1964.

440.3120 Instruments payable through a bank.

Sec. 3120. An instrument which states that it is "payable through" a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument.

HISTORY: New 1962, p. 239, Act 174, Eff. Jan. 1, 1964.

440.3121 Instruments payable at a bank.

Sec. 3121. A note or acceptance which states that it is payable at a bank is not of itself an order or authorization to the bank to pay it.

HISTORY: New 1962, p. 239, Act 174, Eff. Jan. 1, 1964.

440.3122 Accrual of cause of action; interest.

Sec. 3122. (1) A cause of action against a maker or an acceptor accrues

(a) in the case of a time instrument on the day after maturity;

(b) in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

(2) A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

(3) A cause of action against a drawer of a draft or an indorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

(4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment

(a) in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

(b) in all other cases from the date of accrual of the cause of action.

HISTORY: New 1962, p. 239, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 367, Act 250, Eff. Aug. 28.

PART 2

TRANSFER AND NEGOTIATION

440.3201 Transfer of instruments; indorsement; rights of transferee.

Sec. 3201. (1) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from the later holder in due course.

(2) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

(3) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the indorsement is made and until that time there is no presumption that the transferee is the owner.

HISTORY: New 1962, p. 239, Act 174, Eff. Jan. 1, 1964.

440.3202 Negotiation of instruments; indorsement, delivery.

Sec. 3202. (1) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.

(2) An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

(3) An indorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

(4) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an indorsement do not affect its character as an indorsement.

HISTORY: New 1962, p. 239, Act 174, Eff. Jan. 1, 1964.

440.3203 Wrong or misspelled name of payee, indorsement.

Sec. 3203. Where an instrument is made payable to a person under a misspelled name or one other than his own he may indorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument.

HISTORY: New 1962, p. 240, Act 174, Eff. Jan. 1, 1964.

440.3204 Special indorsement; blank indorsement.

Sec. 3204. (1) A special indorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially indorsed becomes payable to the order of the special indorsee and may be further negotiated only by his indorsement.

Blank indorsement.

(2) An indorsement in blank specifies no particular indorsee and may consist of a mere signature. An instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially indorsed.

Conversion of blank indorsement into special indorsement.

(3) The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

HISTORY: New 1962, p. 240, Act 174, Eff. Jan. 1, 1964.

440.3205 Restrictive indorsement.

Sec. 3205. An indorsement is restrictive which either

- (a) is conditional; or
- (b) purports to prohibit further transfer of the instrument; or
- (c) includes the words "for collection", "for deposit", "pay any bank", or like terms signifying a purpose of deposit or collection; or
- (d) otherwise states that it is for the benefit or use of the indorser or of another person.

HISTORY: New 1962, p. 240, Act 174, Eff. Jan. 1, 1964.

440.3206 Restrictive indorsement; effect.

Sec. 3206. (1) No restrictive indorsement prevents further transfer or negotiation of the instrument.

(2) An intermediary bank, or a payor bank which is not the depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor or the person presenting for payment.

(3) Except for an intermediary bank, any transferee under an indorsement which is conditional or includes the words "for collection", "for deposit", "pay any bank", or like terms (subparagraphs (a) and (c) of section 3205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of section 3302 on what constitutes a holder in due course.

(4) The first taker under an indorsement for the benefit of the indorser or another person (subparagraph (d) of section 3205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of section 3302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive indorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty (subsection (2) of section 3304).

HISTORY: New 1962, p. 240, Act 174, Eff. Jan. 1, 1964.

440.3207 Negotiation effective although subject to rescission, declaration of constructive trust or other remedy.

Sec. 3207. (1) Negotiation is effective to transfer the instrument although the negotiation is

(a) made by an infant, a corporation exceeding its powers, or any other person without capacity; or

(b) obtained by fraud, duress or mistake of any kind; or

(c) part of an illegal transaction; or

(d) made in breach of duty.

(2) Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law.

HISTORY: New 1962, p. 241, Act 174, Eff. Jan. 1, 1964.

440.3208 Reacquisition of instrument.

Sec. 3208. Where an instrument is returned to or reacquired by a prior party he may cancel any indorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and if his indorsement has been cancelled is discharged as against subsequent holders in due course as well.

HISTORY: New 1962, p. 241, Act 174, Eff. Jan. 1, 1964.

440.3301 Rights of holder.

Sec. 3301. The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in section 3603 on payment or satisfaction, discharge it or enforce payment in his own name.

HISTORY: New 1962, p. 241, Act 174, Eff. Jan. 1, 1964.

440.3302 Holder in due course.

Sec. 3302. (1) A holder in due course is a holder who takes the instrument

- (a) for value; and
- (b) in good faith; and
- (c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

(2) A payee may be a holder in due course.

(3) A holder does not become a holder in due course of an instrument:

- (a) by purchase of it at judicial sale or by taking it under legal process; or
- (b) by acquiring it in taking over an estate; or
- (c) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.

(4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased.

HISTORY: New 1962, p. 241, Act 174, Eff. Jan. 1, 1964.

440.3303 Holder for value.

Sec. 3303. A holder takes the instrument for value

(a) to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or

(b) when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or

(c) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person.

HISTORY: New 1962, p. 241, Act 174, Eff. Jan. 1, 1964.

440.3304 Purchaser; notice of claim or defense.

Sec. 3304. (1) The purchaser has notice of a claim or defense if

(a) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or

(b) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.

(2) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.

(3) The purchaser has notice that an instrument is overdue if he has reason to know

(a) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or

(b) that acceleration of the instrument has been made; or

(c) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be 30 days.

(4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim.

- (a) that the instrument is antedated or postdated;
- (b) that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;
- (c) that any party has signed for accommodation;
- (d) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;
- (e) that any person negotiating the instrument is or was a fiduciary;
- (f) that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

(5) The filing or recording of a document does not of itself constitute notice within the provisions of this article to a person who would otherwise be a holder in due course.

(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it.

HISTORY: New 1962, p. 242, Act 174, Eff. Jan. 1, 1964.

440.3305 Holder in due course; defenses available.

Sec. 3305. To the extent that a holder is a holder in due course he takes the instrument free from

- (1) all claims to it on the part of any person; and
- (2) all defenses of any party to the instrument with whom the holder has not dealt except
 - (a) infancy, to the extent that it is a defense to a simple contract; and
 - (b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and
 - (c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and
 - (d) discharge in insolvency proceedings; and
 - (e) any other discharge of which the holder has notice when he takes the instrument.

HISTORY: New 1962, p. 242, Act 174, Eff. Jan. 1, 1964.

440.3306 One not a holder in due course; defenses available.

Sec. 3306. Unless he has the rights of a holder in due course any person takes the instrument subject to

- (a) all valid claims to it on the part of any person; and
- (b) all defenses of any party which would be available in an action on a simple contract; and
- (c) the defenses of want or failure of consideration, nonperformance of any condition precedent, nondelivery, or delivery for a special purpose (section 3408); and
- (d) the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive indorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party.

HISTORY: New 1962, p. 242, Act 174, Eff. Jan. 1, 1964.

440.3307 Burden of proof; signatures, defenses, holder in due course.

Sec. 3307. (1) Unless specifically denied in the pleading each signature on an instrument is admitted. When the effectiveness of a signature is put in issue

- (a) the burden of establishing it is on the party claiming under the signature; but
- (b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course.

HISTORY: New 1962, p. 243, Act 174, Eff. Jan. 1, 1964.

PART 4**LIABILITY OF PARTIES****440.3401 Liability of parties; signature on instrument.**

Sec. 3401. (1) No person is liable on an instrument unless his signature appears thereon.

(2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature.

HISTORY: New 1962, p. 243, Act 174, Eff. Jan. 1, 1964.

440.3402 Liability of parties; signature, in ambiguous capacity.

Sec. 3402. Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement.

HISTORY: New 1962, p. 243, Act 174, Eff. Jan. 1, 1964.

440.3403 Liability of parties; signature by authorized representative.

Sec. 3403. (1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

- (2) An authorized representative who signs his own name to an instrument
 - (a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;
 - (b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

HISTORY: New 1962, p. 243, Act 174, Eff. Jan. 1, 1964.

440.3404 Signature; ratification when unauthorized.

Sec. 3404. (1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

(2) Any unauthorized signature may be ratified for all purposes of this article. Such ratification does not of itself affect any rights of the person ratifying against the actual signer.

HISTORY: New 1962, p. 244, Act 174, Eff. Jan. 1, 1964.

440.3405 Imposters; signature in name of payee; criminal or civil liability.

Sec. 3405. (1) An indorsement by any person in the name of a named payee is effective if

(a) an imposter by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or

(b) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

(c) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(2) Nothing in this section shall affect the criminal or civil liability of the person so indorsing.

HISTORY: New 1962, p. 244, Act 174, Eff. Jan. 1, 1964.

440.3406 Negligence contributing to alteration or unauthorized signature.

Sec. 3406. Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business.

HISTORY: New 1962, p. 244, Act 174, Eff. Jan. 1, 1964.

440.3407 Alteration, effect.

Sec. 3407. (1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in

(a) the number or relations of the parties; or

(b) an incomplete instrument, by completing it otherwise than as authorized; or

(c) the writing as signed, by adding to it or by removing any part of it.

(2) As against any person other than a subsequent holder in due course

(a) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense;

(b) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed.

HISTORY: New 1962, p. 244, Act 174, Eff. Jan. 1, 1964.

440.3408 Consideration; want, failure, antecedent obligation, other statute, partial failure.

Sec. 3408. Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (section 3305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security

for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this act under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount.

HISTORY: New 1992, p. 244, Act 174, Eff. Jan. 1, 1994.

440.3409 Check or draft; operation as assignment.

Sec. 3409. (1) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance.

HISTORY: New 1992, p. 245, Act 174, Eff. Jan. 1, 1994.

440.3410 Acceptance of draft; definition, operation.

Sec. 3410. (1) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

(2) A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

(3) Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith.

HISTORY: New 1992, p. 245, Act 174, Eff. Jan. 1, 1994.

440.3411 Certification of check.

Sec. 3411. (1) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior indorsers are discharged.

(2) Unless otherwise agreed a bank has no obligation to certify a check.

(3) A bank may certify a check before returning it for lack of proper indorsement. If it does so the drawer is discharged.

HISTORY: New 1992, p. 245, Act 174, Eff. Jan. 1, 1994.

440.3412 Acceptance varying draft.

Sec. 3412. (1) Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance cancelled.

(2) The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at such bank or place.

(3) Where the holder assents to an acceptance varying the terms of the draft each drawer and indorser who does not affirmatively assent is discharged.

HISTORY: New 1992, p. 245, Act 174, Eff. Jan. 1, 1994;—Am. 1994, p. 368, Act 250, Eff. Aug. 28.

440.3413 Contract of maker, drawer and acceptor.

Sec. 3413. (1) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to section 3115 on incomplete instruments.

(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

(3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to indorse.

HISTORY: New 1992, p. 245, Act 174, Eff. Jan. 1, 1994.

440.3414 Contract of indorser; order of liability.

Sec. 3414. (1) Unless the indorsement otherwise specifies (as by such words as "without recourse") every indorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his indorsement to the holder or to any subsequent indorser who takes it up, even though the indorser who takes it up was not obligated to do so.

(2) Unless they otherwise agree indorsers are liable to one another in the order in which they indorse, which is presumed to be the order in which their signatures appear on the instrument.

HISTORY: New 1962, p. 245, Act 174, Eff. Jan. 1, 1964.

440.3415 Contract of accommodation party.

Sec. 3415. (1) An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

(2) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

(3) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

(4) An indorsement which shows that it is not in the chain of title is notice of its accommodation character.

(5) An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party.

HISTORY: New 1962, p. 245, Act 174, Eff. Jan. 1, 1964.

440.3416 Contract of guarantor.

Sec. 3416. (1) "Payment guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.

(2) "Collection guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

(3) Words of guaranty which do not otherwise specify guarantee payment.

(4) No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

(5) When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

(6) Any guaranty written on the instrument is enforceable notwithstanding any statute of frauds.

HISTORY: New 1962, p. 246, Act 174, Eff. Jan. 1, 1964.

440.3417 Warranties on presentment and transfer.

Sec. 3417. (1) Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith

- (i) to a maker with respect to the maker's own signature; or
- (ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or
- (iii) to an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith

- (i) to the maker of a note; or
- (ii) to the drawer of a draft whether or not the drawer is also the drawee; or
- (iii) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or
- (iv) to the acceptor of a draft with respect to an alteration made after the acceptance.

(2) Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by indorsement to any subsequent holder who takes the instrument in good faith that

- (a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and
- (b) all signatures are genuine or authorized; and
- (c) the instrument has not been materially altered; and
- (d) no defense of any party is good against him; and
- (e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

(3) By transferring "without recourse" the transferor limits the obligation stated in subsection (2)(d) to a warranty that he has no knowledge of such a defense.

(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority.

HISTORY: New 1962, p. 246, Act 174, Eff. Jan. 1, 1964.

440.3418 Finality of payment or acceptance.

Sec. 3418. Except for recovery of bank payments as provided in the article on bank deposits and collections (article 4) and except for liability for breach of warranty on presentment under the preceding section, payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment.

HISTORY: New 1962, p. 247, Act 174, Eff. Jan. 1, 1964.

440.3419 Conversion of instrument; innocent representative.

Sec. 3419. (1) An instrument is converted when

- (a) a drawee to whom it is delivered for acceptance refuses to return it on demand; or
- (b) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or
- (c) it is paid on a forged indorsement.

(2) In an action against a drawee under subsection (1) the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (1) the measure of liability is presumed to be the face amount of the instrument.

(3) Subject to the provisions of this act concerning restrictive indorsements a representative, including a depositary or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

(4) An intermediary bank or payor bank which is not a depositary bank is not liable in conversion solely by reason of the fact that proceeds of an item indorsed restrictively (sections 3205 and 3206) are not paid or applied consistently with the restrictive indorsement of an indorser other than its immediate transferor.

HISTORY: New 1962, p. 247, Act 174, Eff. Jan. 1, 1964.

PART 5

PRESENTMENT, NOTICE OF DISHONOR AND PROTEST

440.3501 Presentment, notice of dishonor and protest; necessity.

Sec. 3501. (1) Unless excused (section 3511) presentment is necessary to charge secondary parties as follows:

(a) presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;

(b) presentment for payment is necessary to charge any indorser;

(c) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in section 3502(1)(b).

(2) Unless excused (section 3511)

(a) notice of any dishonor is necessary to charge any indorser;

(b) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in section 3502(1)(b).

(3) Unless excused (section 3511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states and territories of the United States and the District of Columbia. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

(4) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity.

HISTORY: New 1962, p. 247, Act 174, Eff. Jan. 1, 1964.

440.3502 Presentment, notice of dishonor and protest; unexcused delay, discharge.

Sec. 3502. (1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due

- (a) any indorser is discharged; and
- (b) any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(2) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or indorser is discharged.

HISTORY: New 1962, p. 248, Act 174, Eff. Jan. 1, 1964.

440.3503 Presentment; time.

Sec. 3503. (1) Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

- (a) where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;
- (b) where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;
- (c) where an instrument shows the date on which it is payable presentment for payment is due on that date;
- (d) where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;
- (e) with respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

(2) A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

- (a) with respect to the liability of the drawer, 30 days after date or issue whichever is later; and
- (b) with respect to the liability of an indorser, 7 days after his indorsement.

(3) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

(4) Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day.

HISTORY: New 1962, p. 248, Act 174, Eff. Jan. 1, 1964.

440.3504 Presentment; definition, manner and to whom made.

Sec. 3504. (1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(2) Presentment may be made

- (a) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or
- (b) through a clearing house; or
- (c) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(3) It may be made

(a) to any one of 2 or more makers, acceptors, drawees or other payors; or

(b) to any person who has authority to make or refuse the acceptance or payment.

(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(5) In the cases described in section 4210 presentment may be made in the manner and with the result stated in that section.

HISTORY: New 1962, p. 249, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 368, Act 250, Eff. Aug. 28.

440.3505 Presentment; rights of party to whom made.

Sec. 3505. (1) The party to whom presentment is made may without dishonor require

(a) exhibition of the instrument; and

(b) reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and

(c) that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and

(d) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

(2) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance.

HISTORY: New 1962, p. 249, Act 174, Eff. Jan. 1, 1964.

440.3506 Presentment; time allowed for acceptance or payment.

Sec. 3506. (1) Acceptance may be deferred without dishonor until the close of the next business day following presentment. The holder may also in a good faith effort to obtain acceptance and without either dishonor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

(2) Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment.

HISTORY: New 1962, p. 249, Act 174, Eff. Jan. 1, 1964.

440.3507 Dishonor; holder's right of recourse; term allowing presentment.

Sec. 3507. (1) An instrument is dishonored when

(a) a necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (section 4301); or

(b) presentment is excused and the instrument is not duly accepted or paid.

(2) Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

(3) Return of an instrument for lack of proper indorsement is not dishonor.

(4) A term in a draft or an indorsement thereof allowing a stated time for presentment in the event of any dishonor of the draft by nonacceptance if a time draft or by

nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time.

HISTORY: New 1962, p. 249, Act 174, Eff. Jan. 1, 1964.

440.3508 Dishonor; notice.

Sec. 3508. (1) Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

(2) Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

(3) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

(4) Written notice is given when sent although it is not received.

(5) Notice to one partner is notice to each although the firm has been dissolved.

(6) When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

(7) When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

(8) Notice operates for the benefit of all parties who have rights on the instrument against the party notified.

HISTORY: New 1962, p. 250, Act 174, Eff. Jan. 1, 1964.

440.3509 Protest; voting for protest.

Sec. 3509. (1) A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.

(2) The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(3) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(4) Subject to subsection (5) any necessary protest is due by the time that notice of dishonor is due.

(5) If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting.

HISTORY: New 1962, p. 250, Act 174, Eff. Jan. 1, 1964.

440.3510 Dishonor and notice of dishonor; evidence.

Sec. 3510. The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

(a) a document regular in form as provided in the preceding section which purports to be a protest;

(b) the purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;

(c) any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry.

HISTORY: New 1962, p. 250, Act 174, Eff. Jan. 1, 1964.

440.3511 Presentment, protest, notice of dishonor; waiver, excuse, delay.

Sec. 3511. (1) Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

(2) Presentment or notice or protest as the case may be is entirely excused when

(a) the party to be charged has waived it expressly or by implication either before or after it is due; or

(b) such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or

(c) by reasonable diligence the presentment or protest cannot be made or the notice given.

(3) Presentment is also entirely excused when

(a) the maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or

(b) acceptance or payment is refused but not for want of proper presentment.

(4) Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

(5) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(6) Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only.

HISTORY: New 1962, p. 251, Act 174, Eff. Jan. 1, 1964.

PART 6

DISCHARGE

440.3601 Discharge; parties, extent.

Sec. 3601. (1) The extent of the discharge of any party from liability on an instrument is governed by the sections on

(a) payment or satisfaction (section 3603); or

(b) tender of payment (section 3604); or

(c) cancellation or renunciation (section 3605); or

(d) impairment of right of recourse or of collateral (section 3606); or

(e) reacquisition of the instrument by a prior party (section 3208); or

(f) fraudulent and material alteration (section 3407); or

(g) certification of a check (section 3411); or

(h) acceptance varying a draft (section 3412); or

(i) unexcused delay in presentment or notice of dishonor or protest (section 3502).

(2) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument

(a) reacquires the instrument in his own right; or

(b) is discharged under any provision of this article, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (section 3606).

HISTORY: New 1962, p. 251, Act 174, Eff. Jan. 1, 1964.

440.3602 Discharge; holder in due course.

Sec. 3602. No discharge of any party provided by this article is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument.

HISTORY: New 1962, p. 251, Act 174, Eff. Jan. 1, 1964.

440.3603 Discharge; payment or satisfaction.

Sec. 3603. (1) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability

(a) of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or

(b) of a party (other than an intermediary bank or a payor bank which is not a depository bank) who pays or satisfies the holder of an instrument which has been restrictively indorsed in a manner not consistent with the terms of such restrictive indorsement.

(2) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (section 3201).

HISTORY: New 1962, p. 252, Act 174, Eff. Jan. 1, 1964.

440.3604 Discharge; tender of payment.

Sec. 3604. (1) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees.

(2) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

(3) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender.

HISTORY: New 1962, p. 252, Act 174, Eff. Jan. 1, 1964.

440.3605 Discharge; cancellation or renunciation.

Sec. 3605. (1) The holder of an instrument may even without consideration discharge any party

(a) in any manner apparent on the face of the instrument or the indorsement, as by intentionally cancelling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or

(b) by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

(2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto.

HISTORY: New 1962, p. 252, Act 174, Eff. Jan. 1, 1964.

440.3606 Discharge; impairment of recourse or of collateral; express reservation.

Sec. 3606. (1) The holder discharges any party to the instrument to the extent that without such party's consent the holder

(a) without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse or agrees to suspend the right to enforce against such person the instrument or collateral or otherwise discharges such person, except that failure or delay in effecting any required presentment, protest or notice of dishonor with respect to any such person does not discharge any party as to whom presentment, protest or notice of dishonor is effective or unnecessary; or

(b) unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

(2) By express reservation of rights against a party with a right of recourse the holder preserves

(a) all his rights against such party as of the time when the instrument was originally due; and

(b) the right of the party to pay the instrument as of that time; and

(c) all rights of such party to recourse against others.

HISTORY: New 1962, p. 252, Act 174, Eff. Jan. 1, 1964.

PART 7

ADVICE OF INTERNATIONAL SIGHT DRAFT

440.3701 International sight draft; letter of advice.

Sec. 3701. (1) A "letter of advice" is a drawer's communication to the drawee that a described draft has been drawn.

(2) Unless otherwise agreed when a bank receives from another bank a letter of advice of an international sight draft the drawee bank may immediately debit the drawer's account and stop the running of interest pro tanto. Such a debit and any resulting credit to any account covering outstanding drafts leaves in the drawer full power to stop payment or otherwise dispose of the amount and creates no trust or interest in favor of the holder.

(3) Unless otherwise agreed and except where a draft is drawn under a credit issued by the drawee, the drawee of an international sight draft owes the drawer no duty to pay an unadvised draft but if it does so and the draft is genuine, may appropriately debit the drawer's account.

HISTORY: New 1962, p. 253, Act 174, Eff. Jan. 1, 1964.

PART 8

MISCELLANEOUS

440.3801 Drafts in set; negotiation, indorsement, acceptance, payment, discharge.

Sec. 3801. (1) Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the

parts constitutes one draft but a taker of any part may become a holder in due course of the draft.

(2) Any person who negotiates, indorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds.

(3) As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under subsection (2). With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop order (section 4407).

(4) Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged.

HISTORY: New 1962, p. 253, Act 174, Eff. Jan. 1, 1964.

440.3802 Effect of instrument on underlying obligations.

Sec. 3802. (1) Unless otherwise agreed where an instrument is taken for an underlying obligation

(a) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and

(b) in any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

(2) The taking in good faith of a check which is not post-dated does not of itself so extend the time on the original obligation as to discharge a surety.

HISTORY: New 1962, p. 253, Act 174, Eff. Jan. 1, 1964.

440.3803 Notice of litigation to answerable third party.

Sec. 3803. Where a defendant is sued for breach of an obligation for which a third person is answerable over under this article he may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over to him under this article. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will in any action against him by the person giving the notice be bound by any determination of the fact common to the two litigations, then unless after reasonable receipt of the notice the person notified does come in and defend he is so bound.

HISTORY: New 1962, p. 254, Act 174, Eff. Jan. 1, 1964.

440.3804 Lost, destroyed or stolen instruments.

Sec. 3804. The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument.

HISTORY: New 1962, p. 254, Act 174, Eff. Jan. 1, 1964.

440.3805 Instruments not payable to order or bearer.

Sec. 3805. This article applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this article but which is not payable to or

der or to bearer, except that there can be no holder in due course of such an instrument.

HISTORY: New 1962, p. 254, Act 174, Eff. Jan. 1, 1964.

ARTICLE 4

BANK DEPOSITS AND COLLECTIONS

PART 1

GENERAL PROVISIONS AND DEFINITIONS

440.4101 Uniform commercial code—bank deposits and collections; short title.

Sec. 4101. This article shall be known and may be cited as uniform commercial code—bank deposits and collections.

HISTORY: New 1962, p. 254, Act 174, Eff. Jan. 1, 1964.

440.4102 Conflict of laws; provisions applicable.

Sec. 4102. (1) To the extent that items within this article are also within the scope of articles 3 and 8, they are subject to the provisions of those articles. In the event of conflict the provisions of this article govern those of article 3 but the provisions of article 8 govern those of this article.

(2) The liability of a bank for action or non-action with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

HISTORY: New 1962, p. 254, Act 174, Eff. Jan. 1, 1964.

440.4103 Variation by agreement; measure of damages; action constituting ordinary care.

Sec. 4103. (1) The effect of the provisions of this article may be varied by agreement except that no agreement can disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or can limit the measure of damages for such lack or failure; but the parties may by agreement determine the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

(2) Federal Reserve regulations and operating letters, clearing house rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or non-action approved by this article or pursuant to Federal Reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing house rules and the like or with a general banking usage not disapproved by this article, prima facie constitutes the exercise of ordinary care.

(4) The specification or approval of certain procedures by this article does not constitute disapproval of other procedures which may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which could not have been realized by the use of ordinary care, and where there is bad faith it includes other damages, if any, suffered by the party as a proximate consequence.

HISTORY: New 1962, p. 254, Act 174, Eff. Jan. 1, 1964.

440.4104 Uniform commercial code—bank deposits and collections; definitions.

Sec. 4104. (1) In this article unless the context otherwise requires

(a) “Account” means any account with a bank and includes a checking, time, interest or savings account;

(b) “Afternoon” means the period of a day between noon and midnight;

(c) “Banking day” means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) “Clearing house” means any association of banks or other payors regularly clearing items;

(e) “Customer” means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank;

(f) “Documentary draft” means any negotiable or non-negotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;

(g) “Item” means any instrument for the payment of money even though it is not negotiable but does not include money;

(h) “Midnight deadline” with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(i) “Properly payable” includes the availability of funds for payment at the time of decision to pay or dishonor;

(j) “Settle” means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final;

(k) “Suspends payments” with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this article and the sections in which they appear are:

“Collecting bank”.	Section 4105.
“Depository bank”.	Section 4105.
“Intermediary bank”.	Section 4105.
“Payor bank”.	Section 4105.
“Presenting bank”.	Section 4105.
“Remitting bank”.	Section 4105.
(3) The following definitions in other articles apply to this article:	
“Acceptance”.	Section 3410.
“Certificate of deposit”.	Section 3104.
“Certification”.	Section 3411.
“Check”.	Section 3104.
“Draft”.	Section 3104.
“Holder in due course”.	Section 3302.
“Notice of dishonor”.	Section 3508.
“Presentment”.	Section 3504.
“Protest”.	Section 3509.
“Secondary party”.	Section 3102.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

HISTORY: New 1962, p. 255, Act 174, Eff. Jan. 1, 1964.

440.4105 Depositary bank, payor bank, intermediary bank, collecting bank, presenting bank and remitting bank; definitions.

Sec. 4105. In this article unless the context otherwise requires:

(a) "Depositary bank" means the first bank to which an item is transferred for collection even though it is also the payor bank.

(b) "Payor bank" means a bank by which an item is payable as drawn or accepted;

(c) "Intermediary bank" means any bank to which an item is transferred in course of collection except the depositary or payor bank;

(d) "Collecting bank" means any bank handling the item for collection except the payor bank;

(e) "Presenting bank" means any bank presenting an item except a payor bank;

(f) "Remitting bank" means any payor or intermediary bank remitting for an item.

HISTORY: New 1962, p. 256, Act 174, Eff. Jan. 1, 1964.

440.4106 Bank branch or separate office as separate bank.

Sec. 4106. A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this article and under article 3.

HISTORY: New 1962, p. 256, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 368, Act 250, Eff. Aug. 28.

440.4107 Time of receipt of items.

Sec. 4107. (1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of 2 P.M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(2) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

HISTORY: New 1962, p. 256, Act 174, Eff. Jan. 1, 1964.

440.4108 Delay by collecting bank; excuse.

Sec. 4108. (1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this act for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this act or by instructions is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require.

HISTORY: New 1962, p. 256, Act 174, Eff. Jan. 1, 1964.

440.4109 Process of posting; definition.

Sec. 4109. The "process of posting" means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including 1 or more of the following or other steps as determined by the bank:

(a) verification of any signature;

(b) ascertaining that sufficient funds are available;

- (c) affixing a "paid" or other stamp;
- (d) entering a charge or entry to a customer's account;
- (e) correcting or reversing an entry or erroneous action with respect to the item.

HISTORY: Add. 1964, p. 368, Act 250, Eff. Aug. 28.

PART 2

COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

440.4201 Agency status of banks; provisional status of credits; applicability of article; indorsement, pay any bank.

Sec. 4201. (1) Unless a contrary intent clearly appears and prior to the time that a settlement given by a collecting bank for an item is or becomes final (subsection (3) of section 4211 and sections 4212 and 4213) the bank is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and valid rights of setoff. When an item is handled by banks for purposes of presentment, payment and collection, the relevant provisions of this article apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

Indorsement pay any bank.

(2) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder

- (a) until the item has been returned to the customer initiating collection; or
- (b) until the item has been specially indorsed by a bank to a person who is not a bank.

HISTORY: New 1962, p. 256, Act 174, Eff. Jan. 1, 1964.

440.4202 Collecting bank; duty, reasonable action.

Sec. 4202. (1) A collecting bank must use ordinary care in

- (a) presenting an item or sending it for presentment; and
- (b) sending notice of dishonor or nonpayment or returning an item other than a documentary draft to the bank's transferor or directly to the depositary bank under subsection (2) of section 4212 after learning that the item has not been paid or accepted, as the case may be; and
- (c) settling for an item when the bank receives final settlement; and
- (d) making or providing for any necessary protest; and
- (e) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.

(3) Subject to subsection (1) (a), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in transit or in the possession of others.

HISTORY: New 1962, p. 257, Act 174, Eff. Jan. 1, 1964.

440.4203 Collecting bank; instructions from transferor.

Sec. 4203. Subject to the provisions of article 3 concerning conversion of instruments (section 3419) and the provisions of both article 3 and this article concerning restrictive indorsements only a collecting bank's transferor can give instructions which

affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor.

HISTORY: New 1962, p. 257, Act 174, Eff. Jan. 1, 1964.

440.4204 Collecting bank; methods of sending items, presentment.

Sec. 4204. (1) A collecting bank must send items by reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of such items on hand, and the cost of collection involved and the method generally used by it or others to present such items.

(2) A collecting bank may send

(a) any item direct to the payor bank;

(b) any item to any non-bank payor if authorized by its transferor; and

(c) any item other than documentary drafts to any non-bank payor, if authorized by federal reserve regulation or operating letter, clearing house rule or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made.

HISTORY: New 1962, p. 257, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 368, Act 250, Eff. Aug. 28.

440.4205 Depository bank; supplying missing indorsement; no notice from prior indorsement.

Sec. 4205. (1) A depository bank which has taken an item for collection may supply any indorsement of the customer which is necessary to title unless the item contains the words "payee's indorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depository bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's indorsement.

Intermediary or payor bank, restrictive indorsement.

(2) An intermediary bank, or payor bank which is not a depository bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor.

HISTORY: New 1962, p. 257, Act 174, Eff. Jan. 1, 1964.

440.4206 Transfer between banks.

Sec. 4206. Any agreed method which identifies the transferor bank is sufficient for the item's further transfer to another bank.

HISTORY: New 1962, p. 258, Act 174, Eff. Jan. 1, 1964.

440.4207 Warranties of customer and collecting bank on transfer or presentment of items; time for claims.

Sec. 4207. (1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

- (i) to the maker of a note; or
- (ii) to the drawer of a draft whether or not the drawer is also the drawee; or
- (iii) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or
- (iv) to the acceptor of an item with respect to an alteration made after the acceptance.

(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that

- (a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and
- (b) all signatures are genuine or authorized; and
- (c) the item has not been materially altered; and
- (d) no defense of any party is good against him; and
- (e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.

In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.

(3) The warranties and the engagement to honor set forth in the 2 preceding subsections arise notwithstanding the absence of indorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim.

HISTORY: New 1962, p. 258, Act 174, Eff. Jan. 1, 1964.

440.4208 Security interest of collecting bank in items, accompanying documents or proceeds.

Sec. 4208. (1) A bank has a security interest in an item and any accompanying documents or the proceeds of either

- (a) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;
- (b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or
- (c) if it makes an advance on or against the item.

(2) When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up pos-

session of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of article 9 except that

(a) no security agreement is necessary to make the security interest enforceable (subsection (1)(b) of section 9203); and

(b) no filing is required to perfect the security interest; and

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds.

HISTORY: New 1962, p. 259, Act 174, Eff. Jan. 1, 1964.

440.4209 Bank with security interest as holder in due course.

Sec. 4209. For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of section 3302 on what constitutes a holder in due course.

HISTORY: New 1962, p. 259, Act 174, Eff. Jan. 1, 1964.

440.4210 Presentment by notice of item not payable by, through, or at a bank; liability of secondary parties.

Sec. 4210. (1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under section 3505 by the close of the bank's next banking day after it knows of the requirement.

(2) Where presentment is made by notice and neither honor nor request for compliance with a requirement under section 3505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts.

HISTORY: New 1962, p. 259, Act 174, Eff. Jan. 1, 1964.

440.4211 Remittance; media; provisional and final settlement.

Sec. 4211. (1) A collecting bank may take in settlement of an item

(a) a check of the remitting bank or of another bank on any bank except the remitting bank; or

(b) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing house or group as the collecting bank; or

(c) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

(d) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.

(2) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.

(3) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement

(a) if the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight

deadline in presenting, forwarding for collection or paying the instrument or authorization,—at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;

(b) if the person receiving the settlement has authorized remittance by a non-bank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (1)(b),—at the time of the receipt of such remittance check or obligation; or

(c) if in a case not covered by sub-paragraphs (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline,—at such midnight deadline.

HISTORY: New 1962, p. 259, Act 174, Eff. Jan. 1, 1964.

440.4212 Right to charge-back or refund.

Sec. 4212. (1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge-back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (subsection (3) of section 4211 and subsections (2) and (3) of section 4213).

(2) Within the time and manner prescribed by this section and section 4301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depositary bank and may send for collection a draft on the depositary bank and obtain reimbursement. In such case, if the depositary bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.

(3) A depositary bank which is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (section 4301).

(4) The right to charge-back is not affected by

(a) prior use of the credit given for the item; or
(b) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

(5) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency the dollar amount of any charge-back or refund shall be calculated on the basis of the buying sight rate for the foreign currency prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

HISTORY: New 1962, p. 260, Act 174, Eff. Jan. 1, 1964.

440.4213 Final payment of items by payor bank; final credit; availability of credit for withdrawal.

Sec. 4213. (1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

- (a) paid the item in cash; or
- (b) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement; or
- (c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or
- (d) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing house rule or agreement.

Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(3) If a collecting bank receives a settlement for an item which is or becomes final (subsection (3) of section 4211, subsection (2) of section 4213) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(4) Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its customer becomes available for withdrawal as of right:

(a) in any case where the bank has received a provisional settlement for the item,—when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final;

(b) in any case where the bank is both a depository bank and a payor bank and the item is finally paid,—at the opening of the bank's second banking day following receipt of the item.

(5) A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit.

HISTORY: New 1962, p. 261, Act 174, Eff. Jan. 1, 1964.

440.4214 Insolvency and preference.

Sec. 4214. (1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (subsection (3) of section 4211, subsections (1)(d), (2) and (3) of section 4213).

(4) If a collecting bank receives from subsequent parties settlement for an item

which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank.

HISTORY: New 1962, p. 261, Act 174, Eff. Jan. 1, 1964.

PART 3

COLLECTION OF ITEMS: PAYOR BANKS

440.4301 Demand items; recovery of payment; time of dishonor; return of items.

Sec. 4301. (1) Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment (subsection (1) of section 4213) and before its midnight deadline it

(a) returns the item; or

(b) sends written notice of dishonor or nonpayment if the item is held for protest or is otherwise unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

(3) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(4) An item is returned:

(a) as to an item received through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with its rules; or

(b) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions.

HISTORY: New 1962, p. 262, Act 174, Eff. Jan. 1, 1964.

440.4302 Payor bank; responsibility for late return of item.

Sec. 4302. In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of section 4207), settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of

(a) a demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(b) any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents.

HISTORY: New 1962, p. 262, Act 174, Eff. Jan. 1, 1964.

440.4303 Payor bank; items subject to notice, stop-order, legal process, setoff; order in which items may be handled.

Sec. 4303. (1) Any knowledge, notice or stop-order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend or

modify such right or duty if the knowledge, notice, stop-order or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any of the following:

- (a) accepted or certified the item;
 - (b) paid the item in cash;
 - (c) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement;
 - (d) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or
 - (e) become accountable for the amount of the item under subsection (1) (d) of section 4213 and section 4302 dealing with the payor bank's responsibility for late return of items.
- (2) Subject to the provisions of subsection (1) items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank.

HISTORY: New 1962, p. 262, Act 174, Eff. Jan. 1, 1964.

PART 4

RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

440.4401 Payor bank; charge against customer's account.

Sec. 4401. (1) As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.

(2) A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to

- (a) the original tenor of his altered item; or
- (b) the tenor of his completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper.

HISTORY: New 1962, p. 263, Act 174, Eff. Jan. 1, 1964.

440.4402 Payor bank; wrongful dishonor; liability to customer.

Sec. 4402. A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited to actual damages proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

HISTORY: New 1962, p. 263, Act 174, Eff. Jan. 1, 1964.

440.4403 Customer's right to stop payment; burden of proof of loss.

Sec. 4403. (1) A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in section 4303.

(2) An oral order is binding upon the bank only for 14 calendar days unless confirmed in writing within that period. A written order is effective for only 6 months unless renewed in writing.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer.

HISTORY: New 1962, p. 263, Act 174, Eff. Jan. 1, 1964.

440.4404 Payment of checks more than 6 months old.

Sec. 4404. A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than 6 months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

HISTORY: New 1962, p. 263, Act 174, Eff. Jan. 1, 1964.

440.4405 Death or incompetence of customer.

Sec. 4405. (1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for 10 days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account.

HISTORY: New 1962, p. 263, Act 174, Eff. Jan. 1, 1964.

440.4406 Customer's duty to discover and report unauthorized signature or alteration.

Sec. 4406. (1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1) the customer is precluded from asserting against the bank

(a) his unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) an unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period not exceeding 14 calendar days and before the bank receives notification from the customer of any such unauthorized signature or alteration.

(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

(4) Without regard to care or lack of care of either the customer or the bank a customer who does not within 1 year from the time the statement and items are made available to the customer (subsection (1)) discover and report his unauthorized signature of any alteration on the face or back of the item or does not within 3 years from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to

assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim.

HISTORY: New 1962, p. 264, Act 174, Eff. Jan. 1, 1964.

440.4407 Improper payment; subrogation of payor bank.

Sec. 4407. If a payor bank has paid an item over the stop payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights

- (a) of any holder in due course on the item against the drawer or maker; and
- (b) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and
- (c) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

HISTORY: New 1962, p. 264, Act 174, Eff. Jan. 1, 1964.

PART 5

COLLECTION OF DOCUMENTARY DRAFTS

440.4501 Documentary draft; presentment, notice of dishonor.

Sec. 4501. A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right.

HISTORY: New 1962, p. 264, Act 174, Eff. Jan. 1, 1964.

440.4502 Documentary draft; presentment on arrival of goods, refusal for non-arrival; notice to transferor.

Sec. 4502. When a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

HISTORY: New 1962, p. 265, Act 174, Eff. Jan. 1, 1964.

440.4503 Documentary draft; responsibility of presenting bank for documents and goods; report of reasons for dishonor; referees; expenses.

Sec. 4503. Unless otherwise instructed and except as provided in article 5 a bank presenting a documentary draft

- (a) must deliver the documents to the drawee on acceptance of the draft if it is payable more than 3 days after presentment; otherwise, only on payment; and
- (b) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor and must request instructions.

But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has

a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses.

HISTORY: New 1962, p. 265, Act 174, Eff. Jan. 1, 1964.

440.4504 Documentary draft; presenting bank's right to deal with goods; lien for expenses.

Sec. 4504. (1) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

HISTORY: New 1962, p. 265, Act 174, Eff. Jan. 1, 1964.

ARTICLE 5

LETTERS OF CREDIT

440.5101 Uniform commercial code—letters of credit; short title.

Sec. 5101. This article shall be known and may be cited as uniform commercial code—letters of credit.

HISTORY: New 1962, p. 265, Act 174, Eff. Jan. 1, 1964.

440.5102 Scope of article.

Sec. 5102. (1) This article applies

(a) to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and

(b) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and

(c) to a credit issued by a bank or other person if the credit is not within subparagraphs (a) or (b) but conspicuously states that it is a letter of credit or is conspicuously so entitled.

(2) Unless the engagement meets the requirements of subsection (1), this article does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

(3) This article deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this act or may hereafter develop. The fact that this article states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this article.

HISTORY: New 1962, p. 265, Act 174, Eff. Jan. 1, 1964.

440.5103 Uniform commercial code; letters of credit; definitions.

Sec. 5103. (1) In this article unless the context otherwise requires

(a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this article (section 5102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

(b) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

- (c) An "issuer" is a bank or other person issuing a credit.
 - (d) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.
 - (e) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.
 - (f) A "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.
 - (g) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.
- (2) Other definitions applying to this article and the sections in which they appear are:

"Notation of credit".	Section 5108.
"Presenter".	Section 5112(3).
(3) Definitions in other articles applying to this article and the sections in which they appear are:	
"Accept" or "Acceptance".	Section 3410.
"Contract for sale".	Section 2106.
"Draft".	Section 3104.
"Holder in due course".	Section 3302.
"Midnight deadline".	Section 4104.
"Security".	Section 8102.

- (4) In addition, article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

HISTORY: New 1962, p. 266, Act 174, Eff. Jan. 1, 1964.

440.5104 Formal requirements; signing.

Sec. 5104. (1) Except as otherwise required in subsection (1) (c) of section 5102 on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.

(2) A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing.

HISTORY: New 1962, p. 266, Act 174, Eff. Jan. 1, 1964.

440.5105 Consideration.

Sec. 5105. No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms.

HISTORY: New 1962, p. 266, Act 174, Eff. Jan. 1, 1964.

440.5106 Credit; establishment, time, effect, revocation.

Sec. 5106. (1) Unless otherwise agreed a credit is established

- (a) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and
- (b) as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.

(2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and

once it is established as regards the beneficiary it can be modified or revoked only with his consent.

(3) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.

(4) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer.

HISTORY: New 1962, p. 267, Act 174, Eff. Jan. 1, 1964.

440.5107 Advice of credit; confirmation; error in statement of terms; transmission risks.

Sec. 5107. (1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

(3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

(4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit.

HISTORY: New 1962, p. 267, Act 174, Eff. Jan. 1, 1964.

440.5108 Notation of credit; exhaustion of credit.

Sec. 5108. (1) A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advice of credit is a "notation of credit".

(2) Under a notation credit

(a) a person paying the beneficiary or purchasing a draft or demand for payment from him acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents under the credit such a person warrants to the issuer that the notation has been made; and

(b) unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding 30 days to obtain such evidence.

(3) If the credit is not a notation credit

(a) the issuer may honor complying drafts or demands for payment presented to it in the order in which they are presented and is discharged pro tanto by honor of any such draft or demand;

(b) as between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored.

HISTORY: New 1962, p. 267, Act 174, Eff. Jan. 1, 1964.

440.5109 Issuer's obligation to customer.

Sec. 5109. (1) An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility

(a) for performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or

(b) for any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or

(c) based on knowledge or lack of knowledge of any usage of any particular trade.

(2) An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.

(3) A non-bank issuer is not bound by any banking usage of which it has no knowledge.

HISTORY: New 1962, p. 268, Act 174, Eff. Jan. 1, 1964.

440.5110 Availability of credit in portions; presenter's reservation of claim.

Sec. 5110. (1) Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

(2) Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand noncomplying.

HISTORY: New 1962, p. 268, Act 174, Eff. Jan. 1, 1964.

440.5111 Warranties on transfer or presentment.

Sec. 5111. (1) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warrants arising under articles 3, 4, 7 and 8.

(2) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under article 4 and any such bank transferring a document warrants only the matters warranted by an intermediary under articles 7 and 8.

HISTORY: New 1962, p. 268, Act 174, Eff. Jan. 1, 1964.

440.5112 Time allowed for honor or rejection; withholding honor or rejection by consent; presenter.

Sec. 5112. (1) A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand or credit

(a) defer honor until the close of the third banking day following receipt of the documents; and

(b) further defer honor if the presenter has expressly or impliedly consented thereto. Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit except as otherwise provided in subsection (4) of section 5114 on conditional payment.

(2) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return

the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.

(3) "Presenter" means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization.

HISTORY: New 1962, p. 288, Act 174, Eff. Jan. 1, 1964.

440.5113 Indemnity to induce honor, negotiation or reimbursement.

Sec. 5113. (1) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.

(2) An indemnity agreement inducing honor, negotiation or reimbursement

(a) unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and

(b) unless a longer time is explicitly agreed expires at the end of 10 business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline.

HISTORY: New 1962, p. 268, Act 174, Eff. Jan. 1, 1964.

440.5114 Issuer's duty and privilege to honor; reimbursement; rejection of documents.

Sec. 5114. (1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (section 7507) or of a security (section 8306) or is forged or fraudulent or there is fraud in the transaction

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (section 3302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (section 7502) or a bona fide purchaser of a security (section 8302); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

(4) When a credit provides for payment by the issuer on receipt of notice that the required documents are in the possession of a correspondent or other agent of the issuer

(a) any payment made on receipt of such notice is conditional; and

(b) the issuer may reject documents which do not comply with the credit if it does so within 3 banking days following its receipt of the documents; and

(c) in the event of such rejection, the issuer is entitled by charge back or otherwise to return of the payment made.

(5) In the case covered by subsection (4) failure to reject documents within the time specified in sub-paragraph (b) constitutes acceptance of the documents and makes the payment final in favor of the beneficiary.

HISTORY: New 1962, p. 269, Act 174, Eff. Jan. 1, 1964.

440.5115 Wrongful dishonor; damages.

Sec. 5115. (1) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (section 2707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under section 2710 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

Anticipatory repudiation.

(2) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under section 2610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor.

HISTORY: New 1962, p. 269, Act 174, Eff. Jan. 1, 1964.

440.5116 Transfer or assignment of right to draw under a credit.

Sec. 5116. (1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of a contract right under article 9 on secured transactions and is governed by that article except that

(a) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under article 9; and

(b) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

(c) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit.

HISTORY: New 1962, p. 270, Act 174, Eff. Jan. 1, 1964.

440.5117 Insolvency of issuer or bank holding funds for documentary credit.

Sec. 5117. (1) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this article is made applicable by paragraphs (a) or (b) of section 5102 (1) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(a) to the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and

(b) on expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and

(c) a charge to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

(2) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved.

HISTORY: New 1962, p. 270, Act 174, Eff. Jan. 1, 1964.

ARTICLE 6

BULK TRANSFERS

440.6101 Uniform commercial code—bulk transfers; short title.

Sec. 6101. This article shall be known and may be cited as uniform commercial code—bulk transfers.

HISTORY: New 1962, p. 271, Act 174, Eff. Jan. 1, 1964.

440.6102 Bulk transfer; definition.

Sec. 6102. (1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (section 9109) of an enterprise subject to this article.

Enterprise making bulk transfers.

(2) A transfer of a substantial part of the equipment (section 9109) of such an enterprise is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

Enterprise subject to article.

(3) The enterprises subject to this article are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

Bulk transfers of goods within state.

(4) Except as limited by the following section all bulk transfers of goods located within this state are subject to this article.

HISTORY: New 1962, p. 271, Act 174, Eff. Jan. 1, 1964.

440.6103 Transfers excepted from article; public notice.

Sec. 6103. The following transfers are not subject to this article:

(1) Those made to give security for the performance of an obligation;

- (2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;
- (3) Transfers in settlement or realization of a lien or other security interests;
- (4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;
- (5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;
- (6) Transfers to a person maintaining a known place of business in this state who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;
- (7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;
- (8) Transfers of property which is exempt from execution.

Public notice under subsection (6) or subsection (7) may be given by publishing once a week for 2 consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in this state an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer.

HISTORY: New 1962, p. 271, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 369, Act 250, Eff. Aug. 28.

440.6104 List of creditors; schedule of property.

Sec. 6104. (1) Except as provided with respect to auction sales (section 6108), a bulk transfer subject to this article is ineffective against any creditor of the transferor unless:

- (a) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and
- (b) The parties prepare a schedule of the property transferred sufficient to identify it; and
- (c) The transferee preserves the list and schedule for 6 months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the secretary of state.

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge.

HISTORY: New 1962, p. 271, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 369, Act 250, Eff. Aug. 28.

440.6105 Notice to creditors.

Sec. 6105. In addition to the requirements of the preceding section, any bulk transfer subject to this article except one made by auction sale (section 6108) is ineffective against any creditor of the transferor unless at least 10 days before he takes possession

of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (section 6107).

HISTORY: New 1992, p. 272, Act 174, Eff. Jan. 1, 1994.

440.6106 Bulk transfers; governmental tax unit as creditor.

Sec. 6106. The county, school district and township, city or village and any other taxing unit having the right to assess and collect a personal property tax against any property which is the subject of a bulk transfer coming within the purview of this article shall be deemed a creditor, whether or not the amount of the personal property tax has been fixed or determined. The treasurer whose duty it is to collect any such tax shall be notified by the transferee as required in section 6107.

HISTORY: Add. 1993, p. 346, Act 223, Eff. Sep. 6.

440.6107 Notice to creditors; contents, delivery.

Sec. 6107. (1) The notice to creditors (section 6105) shall state:

- (a) that a bulk transfer is about to be made; and
- (b) the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within 3 years last past so far as known to the transferee; and
- (c) whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

- (a) the location and general description of the property to be transferred and the estimated total of the transferor's debts;
- (b) the address where the schedule of property and list of creditors (section 6104) may be inspected;
- (c) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing; and
- (d) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment.

(3) The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor (section 6104) and to all other persons who are known to the transferee to hold or assert claims against the transferor.

HISTORY: New 1992, p. 272, Act 174, Eff. Jan. 1, 1994;—Am. 1994, p. 369, Act 250, Eff. Aug. 28.

440.6108 Bulk transfer by sale at auction; auctioneer, duties, liability.

Sec. 6108. (1) A bulk transfer is subject to this article even though it is by sale at auction, but only in the manner and with the result stated in this section.

(2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (section 6104).

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer". The auctioneer shall:

- (a) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this article (section 6104); and
- (b) give notice of the auction personally or by registered or certified mail at least 10 days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor.

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the credi-

tors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several.

HISTORY: New 1962, p. 272, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 370, Act 250, Eff. Aug. 28.

440.6109 Creditors protected.

Sec. 6109. The creditors of the transferor mentioned in this article are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (sections 6105 and 6107) are not entitled to notice.

HISTORY: New 1962, p. 273, Act 174, Eff. Jan. 1, 1964.

440.6110 Subsequent transfers.

Sec. 6110. When the title of a transferee to property is subject to a defect by reason of his non-compliance with the requirements of this article, then:

- (1) a purchaser of any of such property from such transferee who pays no value or who takes with notice of such non-compliance takes subject to such defect, but
- (2) a purchaser for value in good faith and without such notice takes free of such defect.

HISTORY: New 1962, p. 273, Act 174, Eff. Jan. 1, 1964.

440.6111 Limitation of actions and levies.

Sec. 6111. No action under this article shall be brought nor levy made more than 6 months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within 6 months after its discovery.

HISTORY: New 1962, p. 273, Act 174, Eff. Jan. 1, 1964.

ARTICLE 7

WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

PART 1

GENERAL

440.7101 Uniform commercial code—documents of title; short title.

Sec. 7101. This article shall be known and may be cited as uniform commercial code—documents of title.

HISTORY: New 1962, p. 273, Act 174, Eff. Jan. 1, 1969.

440.7102 Uniform commercial code; documents of title; definitions.

Sec. 7102. (1) In this article, unless the context otherwise requires:

- (a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.
- (b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.
- (c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.
- (d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.
- (e) "Document" means document of title as defined in the general definitions in article 1 (section 1201).
- (f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

"Duly negotiate".	Section 7501.
"Person entitled under the document".	Section 7403(4).
(3) Definitions in other articles applying to this article and the sections in which they appear are:	
"Contract for sale".	Section 2106.
"Overseas".	Section 2323.
"Receipt" of goods.	Section 2103.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

HISTORY: New 1962, p. 273, Act 174, Eff. Jan. 1, 1964.

440.7103 Article subject to governmental treaty, statute, tariff, classification or regulation.

Sec. 7103. To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this article are subject thereto.

HISTORY: New 1962, p. 274, Act 174, Eff. Jan. 1, 1964.

440.7104 Negotiable and nonnegotiable warehouse receipt, bill of lading or other document of title.

Sec. 7104. (1) A warehouse receipt, bill of lading or other document of title is negotiable

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is non-negotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person.

HISTORY: New 1962, p. 274, Act 174, Eff. Jan. 1, 1964.

440.7105 Warehouse receipts and bills of lading; construction against negative implication.

Sec. 7105. The omission from either part 2 or part 3 of this article of a provision corresponding to a provision made in the other part does not imply that a corresponding rule of law is not applicable.

HISTORY: New 1962, p. 274, Act 174, Eff. Jan. 1, 1964.

PART 2
WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

440.7201 Warehouse receipts; issuance.

Sec. 7201. (1) A warehouse receipt may be issued by any warehouseman.

Storage under government bond.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman.

HISTORY: New 1962, p. 274, Act 174, Eff. Jan. 1, 1964.

440.7202 Terms of receipt; essential, optional, contrary; form.

Sec. 7202. (1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

- (a) the location of the warehouse where the goods are stored;
- (b) the date of issue of the receipt;
- (c) the consecutive number of the receipt;
- (d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;
- (e) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;
- (f) a description of the goods or of the packages containing them;
- (g) the signature of the warehouseman, which may be made by his authorized agent;
- (h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and
- (i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (section 7209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this act and do not impair his obligation of delivery (section 7403) or his duty of care (section 7204). Any contrary provisions shall be ineffective.

HISTORY: New 1962, p. 274, Act 174, Eff. Jan. 1, 1964.

440.7203 Liability for nonreceipt or misdescription.

Sec. 7203. A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice.

HISTORY: New 1962, p. 275, Act 174, Eff. Jan. 1, 1964.

440.7204 Duty of care; contractual limitation of warehouseman's liability.

Sec. 7204. (1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

HISTORY: New 1962, p. 275, Act 174, Eff. Jan. 1, 1964.

440.7205 Fungible goods; buyer's title.

Sec. 7205. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated.

HISTORY: New 1962, p. 275, Act 174, Eff. Jan. 1, 1964.

440.7206 Termination of storage at warehouseman's option; removal or sale.

Sec. 7206. (1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than 30 days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (section 7210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than 1 week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this article upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods.

HISTORY: New 1962, p. 276, Act 174, Eff. Jan. 1, 1964.

440.7207 Separation of goods; fungible goods.

Sec. 7207. (1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

Fungible goods, commingling, overissued receipts.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of overissue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated.

HISTORY: New 1962, p. 276, Act 174, Eff. Jan. 1, 1964.

440.7208 Alteration of warehouse receipts.

Sec. 7208. Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor.

HISTORY: New 1962, p. 276, Act 174, Eff. Jan. 1, 1964.

440.7209 Lien of warehouseman; security interest; loss of lien.

Sec. 7209. (1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the article on secured transactions (article 9).

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under section 7503.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

HISTORY: New 1962, p. 276, Act 174, Eff. Jan. 1, 1964.

440.7210 Lien of warehouseman; enforcement procedure, liability for non-compliance.

Sec. 7210. (1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

- (a) All persons known to claim an interest in the goods must be notified.
- (b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.
- (c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.
- (d) The sale must conform to the terms of the notification.
- (e) The sale must be held at the nearest suitable place to that where the goods are held or stored.
- (f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for 2 weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than 6 conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this article.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite non-compliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

HISTORY: New 1962, p. 277, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 370, Act 250, Eff. Aug. 28.

PART 3

BILLS OF LADING: SPECIAL PROVISIONS

440.7301 Negotiable bill of lading; issuer's liability for misdating, nonreceipt, misdescription.

Sec. 7301. (1) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

Goods loaded by common carrier issuer.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

Bulk freight.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

Shipper's weight, load and count.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

Shipper's guarantee to issuer, indemnity; issuer's liability.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

HISTORY: New 1962, p. 278, Act 174, Eff. Jan. 1, 1964.

440.7302 Through bills of lading and similar documents; variance as to overseas undertaking.

Sec. 7302. (1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such

other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

Obligations of persons other than issuer.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

Obligations of persons to issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor.

HISTORY: New 1962, p. 279, Act 174, Eff. Jan. 1, 1964.

440.7303 Diversion; reconsignment; change of instructions.

Sec. 7303. (1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from

- (a) the holder of a negotiable bill; or
- (b) the consignor on a non-negotiable bill notwithstanding contrary instructions from the consignee; or
- (c) the consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or
- (d) the consignee on a non-negotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms.

HISTORY: New 1962, p. 279, Act 174, Eff. Jan. 1, 1964.

440.7304 Bills of lading in a set.

Sec. 7304. (1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes 1 bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with Part 4 of this article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill.

HISTORY: New 1962, p. 279, Act 174, Eff. Jan. 1, 1964.

440.7305 Destination and substitute bills.

Sec. 7305. (1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request.

HISTORY: New 1962, p. 280, Act 174, Eff. Jan. 1, 1964.

440.7306 Altered bills of lading.

Sec. 7306. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

HISTORY: New 1962, p. 280, Act 174, Eff. Jan. 1, 1964.

440.7307 Lien of carrier.

Sec. 7307. (1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver.

HISTORY: New 1962, p. 280, Act 174, Eff. Jan. 1, 1964.

440.7308 Lien of carrier; enforcement, procedure; liability for noncompliance.

Sec. 7308. (1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to

ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this article.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of section 7210.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion.

HISTORY: New 1962, p. 290, Act 174, Eff. Jan. 1, 1964.

440.7309 Carrier's duty of care; contractual provisions as to liability.

Sec. 7309. (1) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances. This subsection does not repeal or change any law or rule of law which imposes liability upon a common carrier for damages not caused by its negligence.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff.

HISTORY: New 1962, p. 281, Act 174, Eff. Jan. 1, 1964.

PART 4

WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

440.7401 Irregularities in issue of document of title or conduct of issuer.

Sec. 7401. The obligations imposed by this article on an issuer apply to a document of title regardless of the fact that

(a) the document may not comply with the requirements of this article or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of his business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt.

HISTORY: New 1962, p. 281, Act 174, Eff. Jan. 1, 1964.

440.7402 Duplicate document of title; overissue.

Sec. 7402. Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face.

HISTORY: New 1962, p. 281, Act 174, Eff. Jan. 1, 1964.

440.7403 Delivery by warehouseman or carrier; excuses.

Sec. 7403. (1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

- (a) Delivery of the goods to a person whose receipt was rightful as against the claimant;
- (b) Damages to or delay, loss or destruction of the goods for which the bailee is not liable;
- (c) Previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;
- (d) The exercise by a seller of his right to stop delivery pursuant to the provisions of the article on sales (section 2705);
- (e) A diversion, reconsignment or other disposition pursuant to the provisions of this article (section 7303) or tariff regulating such right;
- (f) Release, satisfaction or any other fact affording a personal defense against the claimant;
- (g) Any other lawful excuse.

Satisfaction of bailee's lien.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

Cancellation or notation of partial delivery.

(3) Unless the person claiming is one against whom the document confers no right under section 7503 (1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

Person entitled under the document, definition.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a non-negotiable document.

HISTORY: New 1962, p. 282, Act 174, Eff. Jan. 1, 1964.

440.7404 Bailee's delivery in good faith pursuant to document of title.

Sec. 7404. A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this article is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them.

HISTORY: New 1962, p. 282, Act 174, Eff. Jan. 1, 1964.

PART 5

WAREHOUSE RECEIPTS AND BILLS OF LADING:
NEGOTIATION AND TRANSFER**440.7501 Negotiation; indorsement; delivery; transfer; notice of arrival.**

Sec. 7501. (1) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer;

(b) When a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods.

HISTORY: New 1962, p. 282, Act 174, Eff. Jan. 1, 1964.

440.7502 Negotiation; rights acquired.

Sec. 7502. (1) Subject to the following section and to the provisions of section 7205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) Title to the document;

(b) Title to the goods;

(c) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this article. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person.

HISTORY: New 1962, p. 283, Act 174, Eff. Jan. 1, 1964.

440.7503 Documents of title to goods; defeat in certain cases.

Sec. 7503. (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this article (section 7403) or with power of disposition under this act (sections 2403 and 9307) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with part 4 of this article pursuant to its own bill of lading discharges the carrier's obligation to deliver.

HISTORY: New 1962, p. 283, Act 174, Eff. Jan. 1, 1964.

440.7504 Documents of title; transfer by delivery in absence of due negotiation, effect.

Sec. 7504. (1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

Nonnegotiable document, defeat of transfer.

(2) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated

(a) by those creditors of the transferor who could treat the sale as void under section 2402; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) as against the bailee by good faith dealings of the bailee with the transferor.

Consignor's diversion or change of shipping instructions.

(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

Seller's stoppage of delivery.

(4) Delivery pursuant to a non-negotiable document may be stopped by a seller under section 2705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense.

HISTORY: New 1962, p. 284, Act 174, Eff. Jan. 1, 1964.

440.7505 Documents of title; liability of indorser.

Sec. 7505. The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers.

HISTORY: New 1962, p. 284, Act 174, Eff. Jan. 1, 1964.

440.7506 Documents of title; delivery without indorsement; right to compel indorsement.

Sec. 7506. The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied.

HISTORY: New 1962, p. 284, Act 174, Eff. Jan. 1, 1964.

440.7507 Documents of title; warranties on negotiation or transfer for value.

Sec. 7507. Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods

- (a) that the document is genuine; and
- (b) that he has no knowledge of any fact which would impair its validity or worth; and
- (c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents.

HISTORY: New 1962, p. 284, Act 174, Eff. Jan. 1, 1964.

440.7508 Documents of title; warranties of collecting bank.

Sec. 7508. A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected.

HISTORY: New 1962, p. 284, Act 174, Eff. Jan. 1, 1964.

440.7509 Documents of title; adequacy as contract for sale or conditions of a credit, applicable law.

Sec. 7509. The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the articles on sales (article 2) and on letters of credit (article 5).

HISTORY: New 1962, p. 285, Act 174, Eff. Jan. 1, 1964.

PART 6

WAREHOUSE RECEIPTS AND BILLS OF LADING:
MISCELLANEOUS PROVISIONS

440.7601 Lost, stolen or destroyed documents of title; delivery of goods, indemnity.

Sec. 7601. (1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of nonsurrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within 1 year after the delivery.

HISTORY: New 1962, p. 285, Act 174, Eff. Jan. 1, 1964.

440.7602 Judicial process; surrender of document of title; innocent purchaser for value.

Sec. 7602. Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of

any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

HISTORY: New 1962, p. 285, Act 174, Eff. Jan. 1, 1964.

440.7603 Conflicting claims; interpleader.

Sec. 7603. If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for nondelivery of the goods, or by original action, whichever is appropriate.

HISTORY: New 1962, p. 285, Act 174, Eff. Jan. 1, 1964.

ARTICLE 8

INVESTMENT SECURITIES

PART 1

SHORT TITLE AND GENERAL MATTERS

440.8101 Uniform commercial code—investment securities; short title.

Sec. 8101. This article shall be known and may be cited as “uniform commercial code—investment securities”.

HISTORY: New 1962, p. 285, Act 174, Eff. Jan. 1, 1964.

440.8102 Uniform commercial code; investment securities; definitions.

Sec. 8102. (1) In this article unless the context otherwise requires

- (a) a “security” is an instrument which
 - (i) is issued in bearer or registered form; and
 - (ii) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
 - (iii) is either one of a class or series or by its terms is divisible into a class or series of instruments; and
 - (iv) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.
- (b) A writing which is a security is governed by this article and not by uniform commercial code—commercial paper even though it also meets the requirements of that article. This article does not apply to money.
- (c) A security is in “registered form” when it specifies a person entitled to the security or the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states
- (d) A security is in “bearer form” when it runs to bearer according to its terms and not by reason of any indorsement.
- (2) A “subsequent purchaser” is a person who takes other than by original issue.
- (3) A “clearing corporation” is a corporation all of the capital stock of which is held by or for a national securities exchange or association registered under a statute of the United States such as the securities exchange act of 1934.
- (4) A “custodian bank” is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

(5) Other definitions applying to this article or to specified parts thereof and the sections in which they appear are:

"Adverse claim".	Section 8301.
"Bona fide purchaser".	Section 8302.
"Broker".	Section 8303.
"Guarantee of the signature".	Section 8402.
"Intermediary bank".	Section 4105.
"Issuer".	Section 8201.
"Overissue".	Section 8104.

(6) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

HISTORY: New 1962, p. 286, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 371, Act 250, Eff. Aug. 28.

440.8103 Issuer's lien upon a security.

Sec. 8103. A lien upon a security in favor of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security.

HISTORY: New 1962, p. 286, Act 174, Eff. Jan. 1, 1964.

CITED IN OTHER SECTIONS: The above section is cited in § 450.25.

440.8104 Effect of overissue.

Sec. 8104. (1) The provisions of this article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue; but

(a) if an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a security to him against surrender of the security, if any, which he holds; or

(b) if a security is not so available for purchase, the person entitling to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

(2) "Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue.

HISTORY: New 1962, p. 286, Act 174, Eff. Jan. 1, 1964.

440.8105 Securities negotiable; signatures; presumptions; burden of proof.

Sec. 8105. (1) Securities governed by this article are negotiable instruments.

(2) In any action on a security

(a) unless specifically denied in the pleadings, each signature on the security or in a necessary indorsement is admitted;

(b) when the effectiveness of a signature is put in issue the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

(c) when signatures are admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and

(d) after it is shown that a defense or defect exists the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (section 8202).

HISTORY: New 1962, p. 286, Act 174, Eff. Jan. 1, 1964.

440.8106 Validity of security; applicable law.

Sec. 8106. The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer.

HISTORY: New 1962, p. 287, Act 174, Eff. Jan. 1, 1964.

440.8107 Investment securities; delivery; seller's remedies.

Sec. 8107. (1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or indorsed to him or in blank.

(2) When the buyer fails to pay the price as it comes due under a contract of sale the seller may recover the price

(a) of securities accepted by the buyer; and

(b) of other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale.

HISTORY: Add. 1964, p. 372, Act 250, Eff. Aug. 28.

PART 2

ISSUE—ISSUER

440.8201 Issuer; definition.

Sec. 8201. (1) With respect to obligations on or defenses to a security “issuer” includes a person who

(a) places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar, transfer agent or the like) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security; or

(b) directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced by securities; or

(c) becomes responsible for or in place of any other person described as an issuer in this section.

(2) With respect to obligations on or defenses to a security a guarantor is an issuer to the extent of his guaranty whether or not his obligation is noted on the security.

(3) With respect to registration of transfer (part 4 of this article) “issuer” means a person on whose behalf transfer books are maintained.

HISTORY: New 1962, p. 287, Act 174, Eff. Jan. 1, 1964.

440.8202 Issuer; responsibility and defenses; notice of defect or defense.

Sec. 8202. (1) Even against a purchaser for value and without notice, the terms of a security include those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a constitution, statute, ordinance, rule, regulation, order or the like to the extent that the terms so referred to do not conflict with the stated terms. Such a reference does not of itself charge a purchaser for value with notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.

(2) (a) A security other than one issued by a government or governmental agency or unit even though issued with a defect going to its validity is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of constitutional provisions in which case the security is valid in the hands of a subsequent purchaser for value and without notice of the defect.

(b) The rule of subparagraph (a) applies to an issuer which is a government or governmental agency or unit only if either there has been substantial compliance with the

legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in the case of certain unauthorized signatures on issue (section 8205), lack of genuineness of a security is a complete defense even against a purchaser for value and without notice.

(4) All other defenses of the issuer including nondelivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defense.

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security which is the subject of the contract or in the plan or arrangement pursuant to which such security is to be issued or distributed.

HISTORY: New 1962, p. 287, Act 174, Eff. Jan. 1, 1964.

440.8203 Staleness as notice of defect or defense.

Sec. 8203. (1) After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer

(a) if the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than 1 year after that date; and

(b) if the act or event is not covered by paragraph (a) and he takes the security more than 2 years after the date set for surrender or presentation or the date on which such performance became due.

(2) A call which has been revoked is not within subsection (1).

HISTORY: New 1962, p. 288, Act 174, Eff. Jan. 1, 1964.

440.8204 Issuer's restriction on transfer.

Sec. 8204. Unless noted conspicuously on the security a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it.

HISTORY: New 1962, p. 288, Act 174, Eff. Jan. 1, 1964.

CITED IN OTHER SECTIONS: The above section is cited in § 450.25.

440.8205 Unauthorized signatures.

Sec. 8205. An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that the signature is effective in favor of a purchaser for value and without notice of the lack of authority if the signing has been done by

(a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing; or

(b) an employee of the issuer or of any of the foregoing entrusted with responsible handling of the security.

HISTORY: New 1962, p. 288, Act 174, Eff. Jan. 1, 1964.

440.8206 Completion or alteration of instrument.

Sec. 8206. (1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

(2) A complete security which has been improperly altered even though fraudulently remains enforceable but only according to its original terms.

HISTORY: New 1962, p. 288, Act 174, Eff. Jan. 1, 1964.

440.8207 Issuer's rights with respect to registered owners.

Sec. 8207. (1) Prior to due presentment for registration of transfer of a security in registered form the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner.

(2) Nothing in this article shall be construed to affect the liability of the registered owner of a security for calls, assessments or the like.

HISTORY: New 1962, p. 288, Act 174, Eff. Jan. 1, 1964.

440.8208 Indorsement; manner of making.

Sec. 8208. (1) A person placing his signature upon a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that

- (a) the security is genuine; and
- (b) his own participation in the issue of the security is within his capacity and within the scope of the authorization received by him from the issuer; and
- (c) he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue,

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects.

HISTORY: New 1962, p. 289, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 372, Act 250, Eff. Aug. 28.

PART 3

PURCHASE

440.8301 Purchaser, bona fide purchaser and limited interest purchaser; rights acquired; adverse claims.

Sec. 8301. (1) Upon delivery of a security the purchaser acquires the rights in the security which his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(2) A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

HISTORY: New 1962, p. 289, Act 174, Eff. Jan. 1, 1964.

440.8302 Bona fide purchaser; definition.

Sec. 8302. A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank.

HISTORY: New 1962, p. 289, Act 174, Eff. Jan. 1, 1964.

440.8303 Broker, definition.

Sec. 8303. "Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, or buys a security from or sells a security to a customer. Nothing in this article determines the capacity in which a person acts for purposes of any other statute or rule to which such person is subject.

HISTORY: New 1982, p. 289, Act 174, Eff. Jan. 1, 1984.

440.8304 Notice to purchaser and broker of adverse claims.

Sec. 8304. (1) A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) of a security is charged with notice of adverse claims if

- (a) the security whether in bearer or registered form has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or
- (b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(2) The fact that the purchaser (including a broker for the seller or buyer) has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims.

HISTORY: New 1982, p. 289, Act 174, Eff. Jan. 1, 1984.

440.8305 Notice to purchaser; staleness.

Sec. 8305. An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase

- (a) after 1 year from any date set for such presentment or surrender for redemption or exchange; or
- (b) after 6 months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

HISTORY: New 1982, p. 290, Act 174, Eff. Jan. 1, 1984.

440.8306 Warranties on presentment, transfer, and delivery.

Sec. 8306. (1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange. But a purchaser for value without notice of adverse claims who receives a new, reissued or re-registered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature (section 8311) in a necessary indorsement.

(2) A person by transferring a security to a purchaser for value warrants only that

- (a) his transfer is effective and rightful; and
- (b) the security is genuine and has not been materially altered; and
- (c) he knows no fact which might impair the validity of the security.

(3) Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.

(4) A pledgee or other holder for security who redelivers the security received, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under subsection (3).

(5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer.

HISTORY: New 1962, p. 290, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 372, Act 250, Eff. Aug. 28.

440.8307 Delivery without indorsement; effect, right to compel indorsement.

Sec. 8307. Where a security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

HISTORY: New 1962, p. 290, Act 174, Eff. Jan. 1, 1964.

440.8308 Indorsement; manner of making.

Sec. 8308. (1) An indorsement of a security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

Blank or special indorsement.

(2) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies the person to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

Appropriate person to indorse.

(3) "An appropriate person" in subsection (1) means

(a) the person specified by the security or by special indorsement to be entitled to the security; or

(b) where the person so specified is described as a fiduciary but is no longer serving in the described capacity,—either that person or his successor; or

(c) where the security or indorsement so specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity,—the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified; or

(d) where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise,—his executor, administrator, guardian or like fiduciary; or

(e) where the security or indorsement so specifies more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign,—the survivor or survivors; or

(f) a person having power to sign under applicable law or controlling instrument; or

(g) to the extent that any of the foregoing persons may act through an agent,—his authorized agent.

Indorser as guarantor.

(4) Unless otherwise agreed the indorser by his indorsement assumes no obligation that the security will be honored by the issuer.

Indorsement of part of security.

(5) An indorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

Appropriate person as indorser; change of circumstances.

(6) Whether the person signing is appropriate is determined as of the date of signing and an indorsement by such a person does not become unauthorized for the purposes of this article by virtue of any subsequent change of circumstances.

Fiduciary's indorsement; compliance with agreement and applicable law.

(7) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his indorsement unauthorized for the purposes of this article.

HISTORY: New 1962, p. 290, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 373, Act 250, Eff. Aug. 28.

440.8309 Indorsement ineffective to transfer without delivery.

Sec. 8309. An indorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the indorsement is on a separate document until delivery of both the document and the security.

HISTORY: New 1962, p. 291, Act 174, Eff. Jan. 1, 1964.

440.8310 Indorsement of security in bearer form.

Sec. 8310. An indorsement of a security in bearer form may give notice of adverse claims (section 8304) but does not otherwise affect any right to registration the holder may possess.

HISTORY: New 1962, p. 291, Act 174, Eff. Jan. 1, 1964.

440.8311 Unauthorized indorsement; rights and liabilities.

Sec. 8311. Unless the owner has ratified an unauthorized indorsement or is otherwise precluded from asserting its ineffectiveness

(a) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or re-registered security on registration of transfer; and

(b) an issuer who registers the transfer of a security upon the unauthorized indorsement is subject to liability for improper registration (section 8404).

HISTORY: New 1962, p. 291, Act 174, Eff. Jan. 1, 1964.

440.8312 Warranties of indorser's guarantor.

Sec. 8312. (1) Any person guaranteeing a signature of an indorser of a security warrants that at the time of signing

(a) the signature was genuine; and

(b) the signer was an appropriate person to indorse (section 8308); and

(c) the signer had legal capacity to sign.

But the guarantor does not otherwise warrant the rightfulness of the particular transfer.

(2) Any person may guarantee an indorsement of a security and by so doing warrants not only the signature (subsection 1) but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of indorsement as a condition to registration of transfer.

(3) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties.

HISTORY: New 1962, p. 292, Act 174, Eff. Jan. 1, 1964.

440.8313 Delivery to purchaser; purchaser's broker as holder; fungible bulk, notice of adverse claim.

Sec. 8313. (1) Delivery to a purchaser occurs when

- (a) he or a person designated by him acquires possession of a security; or
 - (b) his broker acquires possession of a security specially indorsed to or issued in the name of the purchaser; or
 - (c) his broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser; or
 - (d) with respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser.
- (e) Appropriate entries on the books of a clearing corporation are made under section 8320.

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in subparagraphs (b), (c) and (e) of subsection (1) where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received.

HISTORY: New 1962, p. 292, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 374, Act 250, Eff. Aug. 28.

440.8314 Delivery of security; completion.

Sec. 8314. (1) Unless otherwise agreed where a sale of a security is made on an exchange or otherwise through brokers

(a) the selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or if requested causes an acknowledgment to be made to the selling broker that it is held for him; and

(b) the selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him. Unless made on an exchange a sale to a broker purchasing for his own account is within this subsection and not within subsection (1).

HISTORY: New 1962, p. 292, Act 174, Eff. Jan. 1, 1964.

440.8315 Wrongful transfer; action by injured party.

Sec. 8315. (1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(2) If the transfer is wrongful because of an unauthorized indorsement, the owner may also reclaim or obtain possession of the security or new security even from a bona fide purchaser if the ineffectiveness of the purported indorsement can be asserted

against him under the provisions of this article on unauthorized indorsements (section 8311).

(3) The right to obtain or reclaim possession of a security may be specifically enforced and its transfer enjoined and the security impounded pending the litigation.

HISTORY: New 1962, p. 293, Act 174, Eff. Jan. 1, 1964.

440.8316 Purchaser's rights as to proof of authority and requisites for transfer.

Sec. 8316. Unless otherwise agreed the transferor must on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite which may be necessary to obtain registration of the transfer of the security but if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses. Failure to comply with a demand made within a reasonable time gives the purchaser the right to reject or rescind the transfer.

HISTORY: New 1962, p. 293, Act 174, Eff. Jan. 1, 1964.

440.8317 Remedies against security.

Sec. 8317. (1) No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a security which has been surrendered to the issuer may be attached or levied upon at the source.

(2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process.

HISTORY: New 1962, p. 293, Act 174, Eff. Jan. 1, 1964.

440.8318 Good faith delivery by agent or bailee; liability for conversion.

Sec. 8318. An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to dispose of them.

HISTORY: New 1962, p. 293, Act 174, Eff. Jan. 1, 1964.

440.8319 Statute of frauds.

Sec. 8319. A contract for the sale of securities is not enforceable by way of action or defense unless

(a) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or

(b) delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

(c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under paragraph (a) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within 10 days after its receipt; or

(d) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price.

HISTORY: New 1962, p. 293, Act 174, Eff. Jan. 1, 1964.

440.8320 Transfer of securities through clearing corporation; effect.

Sec. 8320. (1) If a security

(a) is in the custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

(b) is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

(c) is shown on the account of a transferor or pledgor on the books of the clearing corporation;

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

(2) Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly indorsed in blank (section 8301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (sections 9304 and 9305). A transferee or pledgee under this section is a holder.

(4) A transfer or pledge under this section does not constitute a registration of transfer under part 4 of this article.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate, does not affect the validity or effect of the entries, nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

HISTORY: Add. 1964, p. 374, Act 250, Eff. Aug. 28.

PART 4

REGISTRATION

440.8401 Issuer's duties and liabilities.

Sec. 8401. (1) Where a security in registered form is presented to the issuer with a request to register transfer, the issuer is under a duty to register the transfer as requested if

(a) the security is indorsed by the appropriate person or persons (section 8308); and

(b) reasonable assurance is given that those indorsements are genuine and effective (section 8402); and

(c) the issuer has no duty to inquire into adverse claims or has discharged any such duty (section 8403); and

(d) any applicable law relating to the collection of taxes has been complied with; and

(e) the transfer is in fact rightful or is to a bona fide purchaser.

(2) Where an issuer is under a duty to register a transfer of a security the issuer is

also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer.

HISTORY: New 1962, p. 294, Act 174, Eff. Jan. 1, 1964.

440.8402 Assurance that indorsements are genuine and effective.

Sec. 8402. (1) The issuer may require the following assurance that each necessary indorsement (section 8308) is genuine and effective

(a) in all cases, a guarantee of the signature (subsection (1) of section 8312) of the person indorsing; and

(b) where the indorsement is by an agent, appropriate assurance of authority to sign;

(c) where the indorsement is by a fiduciary, appropriate evidence of appointment or incumbency;

(d) where there is more than one fiduciary, reasonable assurance that all who are required to sign have done so;

(e) where the indorsement is by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(2) A "guarantee of the signature" in subsection (1) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility provided such standards are not manifestly unreasonable.

(3) "Appropriate evidence of appointment or incumbency" in subsection (1) means

(a) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 60 days before the date of presentation for transfer; or

(b) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to such evidence provided such standards are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

(4) The issuer may elect to require reasonable assurance beyond that specified in this section but if it does so and for a purpose other than that specified in subsection (3) (b) both requires and obtains a copy of a will, trust, indenture, articles of copartnership, bylaws or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer.

HISTORY: New 1962, p. 294, Act 174, Eff. Jan. 1, 1964.

440.8403 Adverse claims; issuer's duty of inquiry.

Sec. 8403. (1) An issuer to whom a security is presented for registration is under a duty to inquire into adverse claims if

(a) a written notification of an adverse claim is received at a time and in a manner which affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or re-registered security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or

(b) the issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of section 8402.

(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered mail, or certified mail, if the receipt of

mailing is postmarked, at the address furnished by him or if there be no such address at his residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within 30 days from the date of mailing the notification, either

(a) an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

(b) an indemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved, from any loss which it or they may suffer by complying with the adverse claim is filed with the issuer.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of section 8402 or receives notification of an adverse claim under subsection (1) of this section, where a security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular

(a) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) an issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the indorsement of a fiduciary to the fiduciary himself or to his nominee.

HISTORY: New 1962, p. 295, Act 174, Eff. Jan. 1, 1964.

440.8404 Issuer's liability for registration of transfer.

Sec. 8404. (1) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if

(a) there were on or with the security the necessary indorsements (section 8308); and

(b) the issuer had no duty to inquire into adverse claims or has discharged any such duty (section 8403).

(2) Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless

(a) the registration was pursuant to subsection (1); or

(b) the owner is precluded from asserting any claim for registering the transfer under subsection (1) of the following section; or

(c) such delivery would result in overissue, in which case the issuer's liability is governed by section 8104.

HISTORY: New 1962, p. 295, Act 174, Eff. Jan. 1, 1964.

440.8405 Lost, destroyed, or stolen securities.

Sec. 8405. (1) Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving such a notification, the owner is precluded from asserting against the issuer any claim

for registering the transfer under the preceding section or any claim to a new security under this section.

(2) Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer must issue a new security in place of the original security if the owner

(a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser; and

(b) files with the issuer a sufficient indemnity bond; and

(c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of the new security, a bona fide purchaser of the original security presents it for registration of transfer, the issuer must register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by section 8104. In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom it was issued or any person taking under him except a bona fide purchaser.

HISTORY: New 1962, p. 296, Act 174, Eff. Jan. 1, 1964.

440.8406 Authenticating trustee, transfer agent, registrar; duties, notice.

Sec. 8406. (1) Where a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities

(a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(b) he has with regard to the particular functions he performs the same obligation to the holder or owner of the security and has the same rights and privileges as the issuer has in regard to those functions.

(2) Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent.

HISTORY: New 1962, p. 296, Act 174, Eff. Jan. 1, 1964.

ARTICLE 9

SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

PART 1

SHORT TITLE, APPLICABILITY AND DEFINITIONS

440.9101 Uniform commercial code—secured transactions; short title.

Sec. 9101. This article shall be known and may be cited as "uniform commercial code—secured transactions".

HISTORY: New 1962, p. 296, Act 174, Eff. Jan. 1, 1964.

440.9102 Applicability of article.

Sec. 9102. (1) Except as otherwise provided in section 9103 on multiple state transactions and in section 9104 on excluded transactions, this article applies so far as concerns any personal property and fixtures within the jurisdiction of this state

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also

(b) to any sale of accounts, contract rights or chattel paper.

(2) This article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or con-

signment intended as security. This article does not apply to statutory liens except as provided in section 9310.

(3) The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

HISTORY: New 1962, p. 296, Act 174, Eff. Jan. 1, 1964.

440.9103 Law applicable to validity, perfection and filing of security interest.

Sec. 9103. (1) If the office where the assignor of accounts or contract rights keeps his records concerning them is in this state, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this article; otherwise by the law (including the conflict of laws rules) of the jurisdiction where such office is located.

Same; location of debtor's place of business; airplanes.

(2) If the chief place of business of a debtor is in this state, this article governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in more than one jurisdiction (such as automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in this state. For the purpose of determining the validity and perfection of a security interest in an airplane, the chief place of business of a debtor who is a foreign air carrier under the federal aviation act of 1958, as amended, is the designated office of the agent upon whom service of process may be made on behalf of the debtor.

Same; property subject to security interest brought into state.

(3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into this state, the validity of the security interest in this state is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in this state and it was brought into this state within 30 days after the security interest attached for purposes other than transportation through this state, then the validity of the security interest in this state is to be determined by the law of this state. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, the security interest continues perfected in this state for 4 months and also thereafter if within the 4-month period it is perfected in this state. The security interest may also be perfected in this state after the expiration of the 4-month period; in such case perfection dates from the time of perfection in this state. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, it may be perfected in this state; in such case perfection dates from the time of perfection in this state.

Same; property covered by statutory certificate of title.

(4) Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of this state or any other jurisdiction which re-

quires indication on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

Same; alien assignor of accounts or contract rights within jurisdiction of this state.

(5) Notwithstanding subsection (1) and section 9302, if the office where the assignor of accounts or contract rights keeps his records concerning them is not located in a jurisdiction which is a part of the United States, its territories or possessions, and the accounts or contract rights are within the jurisdiction of this state or the transaction which creates the security interest otherwise bears an appropriate relation to this state, this article governs the validity and perfection of the security interest and the security interest may only be perfected by notification to the account debtor.

HISTORY: New 1962, p. 297, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 375, Act 250, Eff. Aug. 28.

440.9104 Transactions and interests excluded from article.

Sec. 9104. This article does not apply

(a) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) to a landlord's lien; or

(c) to a lien given by a statute or other rule of law for services or materials except as provided in section 9310 on priority of such liens; or

(d) to a transfer of a claim for wages, salary or other compensation of an employee; or

(e) to an equipment trust covering railway rolling stock; or

(f) to a sale of accounts, contract rights or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts, contract rights or chattel paper which is for the purpose of collection only, or a transfer of a contract right to an assignee who is also to do the performance under the contract; or

(g) to a transfer of an interest or claim in or under any policy of insurance; or

(h) to a right represented by a judgment; or

(i) to any right of setoff; or

(j) except to the extent that provision is made for fixtures in section 9313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(k) to a transfer in whole or in part of any of the following: any claim arising out of tort; any deposit, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization.

HISTORY: New 1962, p. 298, Act 174, Eff. Jan. 1, 1964.

440.9105 Uniform commercial code; secured transactions; definitions.

Sec. 9105. (1) In this article unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper, contract right or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts, contract rights and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes

the seller of accounts, contract rights or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Document" means document of title as defined in the general definitions of article 1 (section 1201);

(f) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (section 9313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. "Goods" also include the unborn young of animals and growing crops;

(g) "Instrument" means a negotiable instrument (defined in section 3104), or a security (defined in section 8102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

(h) "Security agreement" means an agreement which creates or provides for a security interest;

(i) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(2) Other definitions applying to this article and the sections in which they appear are:

"Account".	Section 9106.
"Consumer goods".	Section 9109(1).
"Contract right".	Section 9106.
"Equipment".	Section 9109(2).
"Farm products".	Section 9109(3).
"General intangibles".	Section 9106.
"Inventory".	Section 9109(4).
"Lien creditor".	Section 9301 (3).
"Proceeds".	Section 9306(1).
"Purchase money security interest".	Section 9107.
(3) The following definitions in other articles apply to this article:	
"Check".	Section 3104.
"Contract for sale".	Section 2106.
"Holder in due course".	Section 3302.
"Note".	Section 3104.
"Sale".	Section 2106.

(4) In addition article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

HISTORY: New 1962, p. 296, Act 174, Eff. Jan. 1, 1964.

440.9106 Account, contract right, general intangibles; definitions.

Sec. 9106. "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. "Contract right" means any right to payment under a contract not yet earned by performance

and not evidenced by an instrument or chattel paper. "General intangibles" means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments.

HISTORY: New 1962, p. 299, Act 174, Eff. Jan. 1, 1964.

440.9107 Purchase money security interest; definition.

Sec. 9107. A security interest is a "purchase money security interest" to the extent that it is

- (a) taken or retained by the seller of the collateral to secure all or part of its price; or
- (b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used.

HISTORY: New 1962, p. 299, Act 174, Eff. Jan. 1, 1964.

440.9108 After acquired, collateral as security for antecedent debt.

Sec. 9108. Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given.

HISTORY: New 1962, p. 299, Act 174, Eff. Jan. 1, 1964.

440.9109 Consumer goods, equipment, farm products, inventory; definitions.

Sec. 9109. Goods are

- (1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;
- (2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a nonprofit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;
- (3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;
- (4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment.

HISTORY: New 1962, p. 299, Act 174, Eff. Jan. 1, 1964.

440.9110 Description of property; sufficiency.

Sec. 9110. For the purposes of this article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described.

HISTORY: New 1962, p. 300, Act 174, Eff. Jan. 1, 1964.

440.9111 Security interest; bulk transfer.

Sec. 9111. The creation of a security interest is not a bulk transfer under article 6 (see section 6103).

HISTORY: New 1962, p. 300, Act 174, Eff. Jan. 1, 1964.

440.9112 Collateral not owned by debtor; owner's rights.

Sec. 9112. Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under section 9502(2) or under section 9504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor

- (a) to receive statements under section 9208;
- (b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under section 9505;
- (c) to redeem the collateral under section 9506;
- (d) to obtain injunctive or other relief under section 9507(1); and
- (e) to recover losses caused to him under section 9208(2).

HISTORY: New 1962, p. 300, Act 174, Eff. Jan. 1, 1964.

440.9113 Security interests arising under article on sales.

Sec. 9113. A security interest arising solely under the article on sales (article 2) is subject to the provisions of this article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

- (a) no security agreement is necessary to make the security interest enforceable; and
- (b) no filing is required to perfect the security interest; and
- (c) the rights of the secured party on default by the debtor are governed by the article on sales (article 2).

HISTORY: New 1962, p. 300, Act 174, Eff. Jan. 1, 1964.

PART 2

VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

440.9201 Validity of security agreement.

Sec. 9201. Except as otherwise provided by this act a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto.

HISTORY: New 1962, p. 300, Act 174, Eff. Jan. 1, 1964.

440.9202 Title to collateral.

Sec. 9202. Each provision of this article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor.

HISTORY: New 1962, p. 301, Act 174, Eff. Jan. 1, 1964.

440.9203 Enforceability of security interest; proceeds, application of other laws.

Sec. 9203. (1) Subject to the provisions of section 4208 on the security interest of a collecting bank and section 9113 on a security interest arising under the article on sales, a security interest is not enforceable against the debtor or third parties unless

- (a) the collateral is in the possession of the secured party; or
- (b) the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned. In describing collateral, the word "proceeds" is sufficient without further description to cover proceeds of any character.

(2) A transaction, although subject to this article, is also subject to Act No. 21 of the Public Acts of 1939, as amended, being sections 493.1 to 493.26 of the Compiled Laws

of 1948, Act No. 305 of the Public Acts of 1939, as amended, being sections 566.301 to 566.314 of the Compiled Laws of 1948, and Act No. 27 of the Public Acts of the Extra Session of 1950, as amended, being sections 492.101 to 492.140 of the Compiled Laws of 1948, and in the case of conflict between the provisions of this article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein.

HISTORY: New 1962, p. 301, Act 174, Eff. Jan. 1, 1964.

440.9204 Attachment of security interest; after-acquired property; future advances.

Sec. 9204. (1) A security interest cannot attach until there is agreement (subsection (3) of section 1201) that it attach, and value is given, and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have taken place unless explicit agreement postpones the time of attaching.

(2) For the purposes of this section the debtor has no rights

(a) in crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;

(b) in fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;

(c) in a contract right until the contract has been made;

(d) in an account until it comes into existence.

(3) Except as provided in subsection (4) a security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement.

(4) No security interest attaches under an after-acquired property clause

(a) to crops which become such more than 1 year after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase or improvement transaction evidenced by a contract, mortgage or deed of trust may if so agreed attach to crops to be grown on the land concerned during the period of such real estate transaction;

(b) to consumer goods other than accessions (section 9314) when given as additional security unless the debtor acquires rights in them within 10 days after the secured party gives value.

(5) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment.

HISTORY: New 1962, p. 301, Act 174, Eff. Jan. 1, 1964.

440.9205 Disposition of collateral without accounting; possession.

Sec. 9205. A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts, contract rights or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee.

HISTORY: New 1962, p. 301, Act 174, Eff. Jan. 1, 1964.

440.9206 Agreement not to assert defenses against assignees; sales warranties where security agreement exists.

Sec. 9206. (1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or

lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the article on commercial paper (article 3). A buyer who as part of one transaction signs both a negotiable instrument and a security agreement makes such an agreement.

(2) When a seller retains a purchase money security interest in goods the article on sales (article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties.

HISTORY: New 1962, p. 302, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 376, Act 250, Eff. Aug. 28.

440.9207 Collateral in secured party's possession; rights, duties, and liabilities.

Sec. 9207. (1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral for the purpose of preserving the collateral or its value or pursuant to the order of a court of appropriate jurisdiction or, except in the case of consumer goods, in the manner and to the extent provided in the security agreement.

HISTORY: New 1962, p. 302, Act 174, Eff. Jan. 1, 1964.

440.9208 Statement of account; list of collateral.

Sec. 9208. (1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within 2 weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons mis-

led by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every 6 months without charge. The secured party may require payment of a charge not exceeding \$10.00 for each additional statement furnished.

HISTORY: New 1962, p. 302, Act 174, Eff. Jan. 1, 1964.

PART 3

RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY

440.9301 Unperfected security interest; rights of third parties; priorities; lien creditors.

Sec. 9301. (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

- (a) persons entitled to priority under section 9312;
- (b) a person who becomes a lien creditor without knowledge of the security interest and before it is perfected;
- (c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;
- (d) in the case of accounts, contract rights, and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within 10 days after the collateral comes into possession of the debtor, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. Unless all the creditors represented had knowledge of the security interests such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest.

HISTORY: New 1962, p. 303, Act 174, Eff. Jan. 1, 1964.

440.9302 Security interest; filing of financing statement, nonapplication of filing requirement; certain public utilities.

Sec. 9302. (1) A financing statement must be filed to perfect all security interests except the following:

- (a) a security interest in collateral in possession of the secured party under section 9305;
- (b) a security interest temporarily perfected in instruments or documents without delivery under section 9304 or in proceeds for a 10-day period under section 9306;
- (c) a purchase money security interest in farm equipment having a purchase price not in excess of \$2,500.00; but filing is required for a fixture under section 9313 or for a vehicle for which a certificate of title is required to be issued under the provisions of

section 222 of Act No. 300 of the Public Acts of 1949, as amended, being section 257.222 of the Compiled Laws of 1948, or an accessory as defined in that act;

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under section 9313 or for a vehicle for which a certificate of title is required to be issued under the provisions of section 222 of Act No. 300 of the Public Acts of 1949, as amended, or an accessory as defined in that act;

(e) an assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;

(f) a security interest of a collecting bank (section 4208) or arising under the article on sales (see section 9113) or covered in subsection (3) of this section.

(2) If a secured party assigns a perfected security interest, no filing under this article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing provisions of this article do not apply to a security interest in property subject to a statute

(a) of the United States which provides for a national registration or filing of all security interests in such property; or

(b) of this state which provides for central filing of security interests in such property, or a vehicle which is not inventory held for sale for which a certificate of title is required to be issued under the provisions of section 222 of Act No. 300 of the Public Acts of 1949, being section 257.222 of the Compiled Laws of 1948, as amended.

(4) A security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute; except that in the case of a security interest in a vehicle which is not inventory held for sale as referred to in subsection (3) or an accessory as referred to therein, the filing required to perfect, such security interest is not only the filing with the secretary of state of an application for a certificate of title containing a statement with regard to such security interest as provided in section 217 of Act No. 300 of the Public Acts of 1949, as amended, but in addition the filing of a financing statement with the register of deeds as provided in section 9401 (1) the effective time of the filing required for the perfection of such security interest is determined by the time of filing with the secretary of state and the register of deeds, whichever occurs later.

(5) Except as provided in this subsection, the filing provisions of this article do not apply to a security interest in property of any description or any interest therein created by a mortgage made by a corporation which is a railroad company or union depot company or by a corporation, domestic or foreign, organized or existing for the purpose of constructing, acquiring, owning or operating a railroad or union depot in this state, or any corporation engaged in transmitting, conveying, distributing or supplying steam, electricity or gas, natural or manufactured, or telephonic or telegraphic communication or crude oil or petroleum or products derived therefrom but a mortgage made by any of the corporations aforesaid shall be recorded and filed in accordance with the following requirements:

(a) the mortgage shall be recorded in the office of the register of deeds of each county in this state in which any real estate described in the mortgage is situated; and

(b) shall be filed in the office of the secretary of state if the mortgage includes any rolling stock, movable equipment, machinery or any other personal property or fixtures.

In lieu of recording or filing an original of any mortgage or of any supplement or amendment thereto, a copy thereof may be recorded or filed when there is annexed thereto an affidavit of the mortgagor or the mortgagees, or an agent of either, that it is

a true copy. Any mortgage filed in the office of the secretary of state shall perfect a security interest in the rolling stock, movable equipment, machinery and other personal property and fixtures included therein from the date of the filing. If any mortgage, filed as provided herein, by its terms provides for a security interest in any property which may thereafter be acquired by the mortgagor, the mortgage shall perfect a security interest in the after acquired property. For each mortgage and for each supplement and amendment to a mortgage filed with the secretary of state, he shall charge and collect a fee of \$1.00. The secretary of state shall then indorse on each mortgage, supplement or amendment the date and time of filing thereof in his office and shall maintain an appropriate index of the filing thereof. When any mortgage is satisfied or canceled and evidence thereof has been filed in the office of the secretary of state, he shall enter the date of satisfaction or cancellation thereof in an appropriate record in his office. The secretary of state shall furnish a certificate of filing to the person filing any mortgage, supplement or amendment thereto or evidence of satisfaction or cancellation thereof.

To the extent that any mortgage heretofore executed has been filed or recorded as provided herein, it need not be refiled or re-recorded hereunder, and nothing herein shall be deemed to impair the lien or effect of any mortgage heretofore executed which has been recorded or filed in accordance with the laws of this state applicable thereto prior to the effective date of this subsection.

HISTORY: New 1962, p. 303, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 317, Act 235, Eff. Aug. 28.

440.9303 Security interest; time when perfected.

Sec. 9303. (1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in sections 9302, 9304, 9305 and 9306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this article and is subsequently perfected in some other way under this article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this article.

HISTORY: New 1962, p. 304, Act 174, Eff. Jan. 1, 1964.

440.9304 Security interest; permissive filing; possession; temporary perfection without filing.

Sec. 9304. (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5).

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of 21 days from the time it attaches to the extent that it arises for a new value given under a written security agreement.

(5) A security interest remains perfected for a period of 21 days without filing where a secured party having a perfected security interest in an instrument, a negotiable doc-

ument or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange; or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the 21-day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this article.

HISTORY: New 1962, p. 304, Act 174, Eff. Jan. 1, 1964.

440.9305 Security interest; possession of collateral.

Sec. 9305. A security interest in letters of credit and advices of credit (subsection (2)(a) of section 5116), goods, instruments, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this article. The security interest may be otherwise perfected as provided in this article before or after the period of possession by the secured party.

HISTORY: New 1962, p. 305, Act 174, Eff. Jan. 1, 1964.

440.9306 Proceeds; definition.

Sec. 9306. (1) "Proceeds" includes whatever is received when collateral or proceeds are sold, exchanged, collected or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks and the like are "cash proceeds". All other proceeds are "noncash proceeds".

Security interest; continuance in collateral or identifiable proceeds.

(2) Except where this article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof by the debtor unless his action was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

Same; temporary continuance in proceeds.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected 10 days after receipt of the proceeds by the debtor unless

(a) a filed financing statement covering the original collateral also covers proceeds; or

(b) the security interest in the proceeds is perfected before the expiration of the 10-day period.

Same; insolvency of debtor.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest

(a) in identifiable noncash proceeds;

(b) in identifiable cash proceeds in the form of money which is not commingled with other money or deposited in a bank account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a bank account prior to the insolvency proceedings; and

(d) In all cash and bank accounts of the debtor, if other cash proceeds have been commingled or deposited in a bank account, but the perfected security interest under this paragraph (d) is

(i) subject to any right of setoff; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within 10 days before the institution of the insolvency proceedings and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the debtor and paid over to the secured party during the 10-day period.

Same; sale of goods or transfer of chattel paper or accounts; priorities.

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under section 9308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods.

HISTORY: New 1982, p. 305, Act 174, Eff. Jan. 1, 1984.

440.9307 Perfected security interest; buyer in ordinary course of business; farm products.

Sec. 9307. (1) A buyer in ordinary course of business (subsection (9) of section 1201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

Consumer goods, farm equipment not over \$2,500; filed financing statement.

(2) In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of \$2,500.00 (other than fixtures, see section 9313), a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods.

HISTORY: New 1982, p. 306, Act 174, Eff. Jan. 1, 1984.

440.9308 Perfected security; purchaser of chattel paper or nonnegotiable instrument for new value with possession; priority.

Sec. 9308. A purchaser of chattel paper or a non-negotiable instrument who gives new value and takes possession of it in the ordinary course of his business and without knowledge that the specific paper or instrument is subject to a security interest has priority over a security interest which is perfected under section 9304 (permissive filing and temporary perfection). A purchaser of chattel paper who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in chattel paper which is claimed merely as proceeds of inventory subject to a security interest (section 9306), even though he knows that the specific paper is subject to the security interest.

HISTORY: New 1962, p. 306, Act 174, Eff. Jan. 1, 1964.

440.9309 Holders and purchasers; priority over earlier security interest.

Sec. 9309. Nothing in this article limits the rights of a holder in due course of a negotiable instrument (section 3302) or a holder to whom a negotiable document of title has been duly negotiated (section 7501) or a bona fide purchaser of a security (section 8301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this article does not constitute notice of the security interest to such holders or purchasers.

HISTORY: New 1962, p. 306, Act 174, Eff. Jan. 1, 1964.

440.9310 Priority of lien arising by operation of law.

Sec. 9310. When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest unless the lien is statutory and the statute expressly provides otherwise.

HISTORY: New 1962, p. 307, Act 174, Eff. Jan. 1, 1964.

440.9311 Transfer of debtor's rights in collateral.

Sec. 9311. The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default.

HISTORY: New 1962, p. 307, Act 174, Eff. Jan. 1, 1964.

440.9312 Priorities among conflicting security interests in same collateral.

Sec. 9312. (1) The rules of priority stated in the following sections shall govern where applicable: section 4208 with respect to the security interest of collecting banks in items being collected, accompanying documents and proceeds; section 9301 on certain priorities; section 9304 on goods covered by documents; section 9306 on proceeds and repossessions; section 9307 on buyers of goods; section 9308 on possessory against non-possessory interests in chattel paper or non-negotiable instruments; section 9309 on security interests in negotiable instruments, documents or securities; section 9310 on priorities between perfected security interests and liens by operation of law; section 9313 on security interests in fixtures as against interests in real estate; section 9314 on security interests in accessions as against interest in goods; section 9315 on conflicting security interests where goods lose their identity or become part of a product; and section 9316 on contractual subordination.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than 3 months before the crops becoming growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obli-

gations due more than 6 months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A purchase money security interest in inventory collateral has priority over a conflicting security interest in the same collateral if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the collateral; and

(b) any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory, has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest; and

(c) such notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within 10 days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined as follows:

(a) in the order of filing if both are perfected by filing, regardless of which security interest attached first under section 9204(1) and whether it attached before or after filing;

(b) in the order of perfection unless both are perfected by filing, regardless of which security interest attached first under section 9204(1) and, in the case of a filed security interest, whether it attached before or after filing; and

(c) in the order of attachment under section 9204(1) so long as neither is perfected.

(6) For the purpose of the priority rules of the immediately preceding subsection, a continuously perfected security interest shall be treated at all times as if perfected by filing if it was originally so perfected, and it shall be treated at all times as if perfected otherwise than by filing if it was originally perfected otherwise than by filing.

HISTORY: New 1962, p. 307, Act 174, Eff. Jan. 1, 1964.

440.9313 Fixtures; priority of security interests, removal.

Sec. 9313. (1) The rules of this section do not apply to goods incorporated into a structure in the manner of lumber, bricks, tile, cement, glass, metal work and the like, and no security interest in them exists under this article unless the structure remains personal property under applicable law. The law of this state other than this act determines whether and when other goods become fixtures. This act does not prevent creation of an encumbrance upon fixtures or real estate pursuant to the law applicable to real estate.

(2) A security interest which attaches to goods before they become fixtures takes priority as to the goods over the claims of all persons who have an interest in the real estate except as stated in subsection (4).

(3) A security interest which attaches to goods after they become fixtures is valid against all persons subsequently acquiring interests in the real estate except as stated in subsection (4) but is invalid against any person with an interest in the real estate at

the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as fixtures.

(4) The security interests described in subsections (2) and (3) do not take priority over

(a) a subsequent purchaser for value of any interest in the real estate; or

(b) a creditor with a lien on the real estate subsequently obtained by judicial proceedings; or

(c) a creditor with a prior encumbrance of record on the real estate to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings is obtained, or the subsequent advance under the prior encumbrance is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the real estate at a foreclosure sale other than an encumbrancer purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(5) When under subsections (2) or (3) and (4) a secured party has priority over the claims of all persons who have interests in the real estate, he may, on default, subject to the provisions of part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

HISTORY: New 1962, p. 306, Act 174, Eff. Jan. 1, 1964.

440.9314 Accessions; priority of security interests, removal.

Sec. 9314. (1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to section 9315(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over

(a) a subsequent purchaser for value of any interest in the whole; or

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not

the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation.

HISTORY: New 1982, p. 306, Act 174, Eff. Jan. 1, 1984.

440.9315 Commingled or processed goods; ratio of security.

Sec. 9315. (1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if

(a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under section 9314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass.

HISTORY: New 1982, p. 309, Act 174, Eff. Jan. 1, 1984.

440.9316 Subordination of priority by agreement.

Sec. 9316. Nothing in this article prevents subordination by agreement by any person entitled to priority.

HISTORY: New 1982, p. 309, Act 174, Eff. Jan. 1, 1984.

440.9317 Liability of secured party for debtor's acts or omissions.

Sec. 9317. The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions.

HISTORY: New 1982, p. 309, Act 174, Eff. Jan. 1, 1984.

440.9318 Assigned accounts; defenses against assignee; notice of assignment.

Sec. 9318. (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in section 9206 the rights of an assignee are subject to

(a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

Modification or substitution of contract.

(2) So far as the right to payment under an assigned contract right has not already become an account, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

Payment; notice of assignment.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the account has been assigned and that payment is to be made

to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

Prohibition assignment of account or contract right.

(4) A term in any contract between an account debtor and an assignor which prohibits assignment of an account or contract right to which they are parties is ineffective.

HISTORY: New 1962, p. 309, Act 174, Eff. Jan. 1, 1964.

PART 4

FILING

440.9401 Place of filing to perfect security interest; error; change of residence of debtor or location of collateral.

Sec. 9401. (1) The proper place to file in order to perfect a security interest is as follows:

(a) When the collateral is equipment used in farming operations, or farm products, or accounts, contract rights or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the register of deeds in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the register of deeds in the county where the goods are kept, and in addition when the collateral is crops in the office of the register of deeds in the county where the land on which the crops are growing or to be grown is located;

(b) when the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded;

(c) when the collateral is a vehicle which is not inventory held for sale for which a certificate of title is required to be issued under the provisions of section 222 of Act No. 300 of the Public Acts of 1949, as amended, being section 257.222 of the Compiled Laws of 1948, then in the office of the register of deeds in the county of the debtor's residence or if the debtor has no residence in this state, in the office of the register of deeds in the county where the chief place of business of the debtor is located in this state, or if the debtor has no residence or place of business in this state, in the office of the register of deeds in the county where the vehicle is kept;

(d) in all other cases, in the office of the secretary of state.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) If collateral is brought into this state from another jurisdiction, the rules stated in section 9103 determine whether filing is necessary in this state.

HISTORY: New 1962, p. 310, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 376, Act 250, Eff. Aug. 28.

440.9402 Financing statement; formal requisites, amendments.

Sec. 9402. (1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A fi-

financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

(2) A financing statement which otherwise complies with subsection (1) is sufficient although it is signed only by the secured party when it is filed to perfect a security interest in

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state. Such a financing statement must state that the collateral was brought into this state under such circumstances.

(b) proceeds under section 9306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor)
 Address
 Name of secured party (or assignee)
 Address

1. This financing statement covers the following types (or items) of property:

(Describe)

2. (If collateral is crops) The above described crops are growing or are to be grown on: (Describe real estate)

3. (If collateral is goods which are or are to become fixtures) The above described goods are affixed or to be affixed to:

(Describe real estate)

4. (If proceeds or products of collateral are claimed) Proceeds—products of the collateral are also covered.

Signature of debtor (or assignor)

Signature of secured party (or assignee)

(4) The term “financing statement” as used in this article means the original financing statement and any amendments but if any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment.

(5) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.

HISTORY: New 1962, p. 310, Act 174, Eff. Jan. 1, 1964.

440.9403 Financing statement; filing, fee, duration; continuation statement; public inspection; index.

Sec. 9403. (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article.

(2) A filed financing statement which states a maturity date of the obligation secured of 5 years or less is effective until such maturity date and thereafter for a period of 60 days. Any other filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such 60-day period after a stated maturity date or on the expiration of such 5-year period, unless a continuation statement is filed prior to the lapse. Upon such lapse

the security interest becomes unperfected. A filed financing statement which states that the obligation secured is payable on demand is effective for 5 years from the date of filing.

(3) A continuation statement may be filed by the secured party (i) within 6 months before and 60 days after a stated maturity date of 5 years or less, and (ii) otherwise within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the financing statement is continued for 5 years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the financing statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.

(4) A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fee for filing, indexing and furnishing filing data for an original or a continuation statement or any amendment of either shall be \$1.00.

HISTORY: New 1962, p. 311, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 376, Act 250, Eff. Aug. 28;—Am. 1969, p. 134, Act 74, Imd. Eff. Jul. 21.

CITED IN OTHER SECTIONS: The above section is cited in §§ 211.674 and 211.684.

440.9404 Financing statement; termination statement, filing, fee.

Sec. 9404. (1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement thereof shall be \$1.00. If the affected secured party fails to send such a termination statement within 10 days after proper demand therefor he shall be liable to the debtor for \$100.00, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. The filing officer shall remove from the files, mark "terminated" and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto.

(3) The uniform fee for filing and indexing a termination statement including sending or delivering the financing statement shall be \$1.00.

HISTORY: New 1962, p. 312, Act 174, Eff. Jan. 1, 1964.

440.9405 Financing statement; assignment before or after filing, fee.

Sec. 9405. (1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in section

9403(4). The uniform fee for filing, indexing and furnishing filing data for a financing statement so indicating an assignment shall be \$1.00.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment shall be \$1.00.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record.

HISTORY: New 1962, p. 312, Act 174, Eff. Jan. 1, 1964.

440.9406 Financing statement; release of collateral, filing, fee.

Sec. 9406. A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release shall be \$1.00.

HISTORY: New 1962, p. 313, Act 174, Eff. Jan. 1, 1964.

440.9407 Information from filing officer; fees.

Sec. 9407. (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be \$1.00 plus fifty cents for each financing statement and for each statement of assignment reported therein. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of fifty cents per page.

HISTORY: New 1962, p. 313, Act 174, Eff. Jan. 1, 1964.

440.9408 Chattel instruments, financing statements; filing fees.

Sec. 9408. Registers of deeds need not accept at standard rates after January 1, 1964 chattel instruments or financing statements for filing unless prepared on paper 8 1/2x13 inches in size, with a 1/2 inch in length and width allowed for tolerance before such papers shall be deemed nonstandard, and of not less than 16 pound weight. Nonstandard chattel papers in size or weight may be filed by paying 50 cents extra for each paper so filed.

HISTORY: Add. 1963, p. 346, Act 223, Eff. Sep. 6.

PART 5

DEFAULT

440.9501 Default; security agreement on both realty and personalty; secured party's rights.

Sec. 9501. (1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents, or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in section 9207. The rights and remedies referred to in this subsection are cumulative.

(2) After default, the debtor has the rights and remedies provided in this part, those provided in the security agreement and those provided in section 9207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (1) of section 9505) and with respect to redemption of collateral (section 9506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) subsection (2) of section 9502 and subsection (2) of section 9504 insofar as they require accounting for surplus proceeds of collateral;

(b) subsection (3) of section 9504 and subsection (1) of section 9505 which deal with disposition of collateral;

(c) subsection (2) of section 9505 which deals with acceptance of collateral as discharge of obligation;

(d) section 9506 which deals with redemption of collateral; and

(e) subsection (1) of section 9507 which deals with the secured party's liability for failure to comply with this part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this part do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

HISTORY: New 1962, p. 313, Act 174, Eff. Jan. 1, 1964.

440.9502 Secured party; collection rights; surplus, deficiency.

Sec. 9502. (1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under section 9306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reason-

able manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

HISTORY: New 1962, p. 314, Act 174, Eff. Jan. 1, 1964.

440.9503 Secured party; right to possession of collateral after default.

Sec. 9503. Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under section 9504.

HISTORY: New 1962, p. 314, Act 174, Eff. Jan. 1, 1964.

440.9504 Secured party; permissive disposition of collateral; sales law applicable, disposition of proceeds.

Sec. 9504. (1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the article on sales (article 2). The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

Security interest securing indebtedness; surplus, deficiency.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

Disposition of collateral at public or private proceedings.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or who is known by the secured party to have a se-

curity interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

Rights acquired by purchaser.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this part or of any judicial proceedings

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

Transfer of collateral to guarantor, indorser, or repurchaser.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this article.

HISTORY: New 1962, p. 314, Act 174, Eff. Jan. 1, 1964.

CITED IN OTHER SECTIONS: The above section is cited in § 487.501.

440.9505 Secured party; mandatory disposition of collateral.

Sec. 9505. (1) If the debtor has paid 60% of the cash price in the case of a purchase money security interest in consumer goods or 60% of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this part a secured party who has taken possession of collateral must dispose of it under section 9504, and if he fails to do so within 90 days after he takes possession the debtor at his option may recover in conversion or under section 9507(1) on secured party's liability.

Retention of collateral in satisfaction of debtor's obligation.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor and except in the case of consumer goods to any other secured party who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or is known by the secured party in possession to have a security interest in it. If the debtor or other person entitled to receive notification objects in writing within 30 days from the receipt of the notification or if any other secured party objects in writing within 30 days after the secured party obtains possession the secured party must dispose of the collateral under section 9504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

HISTORY: New 1962, p. 315, Act 174, Eff. Jan. 1, 1964.

440.9506 Redemption of collateral.

Sec. 9506. At any time before the secured party has disposed of collateral or entered into a contract for its disposition under section 9504 or before the obligation has been discharged under section 9505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably in-

curred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorney's fees and legal expenses.

HISTORY: New 1962, p. 316, Act 174, Eff. Jan. 1, 1964.

440.9507 Disposition of collateral; secured party's noncompliance; remedies.

Sec. 9507. (1) If it is established that the secured party is not proceeding in accordance with the provisions of this part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus 10% of the principal amount of the debt or the time price differential plus 10% of the cash price.

Same; commercially reasonable manner.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the 2 preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable.

HISTORY: New 1962, p. 316, Act 174, Eff. Jan. 1, 1964.

EFFECTIVE DATE AND REPEALER

440.9991 Effective date of act; application to future transactions.

Sec. 9991. This act shall become effective on January 1, 1964. It applies to transactions entered into and events occurring after that date.

HISTORY: New 1962, p. 317, Act 174, Eff. Jan. 1, 1964.

440.9992 Repeal.

Sec. 9992. The following acts and parts of acts, as amended, are hereby repealed:

(1) Revised Statutes of 1846.

Chapter	Section Numbers	Compiled Law Sections (1948)
81	7 to 16	566.137 to 566.146
(2) Public Acts.		
Year of Act	Public Act Number	Section Numbers
1877	57	566.191
1881	117	566.201 and 566.202
1893	81	469.291 to 469.293
1895	220	444.2 to 444.6

Year of Act	Public Act Number	Section Numbers	Compiled Law Sections (1948)
1895	220	8	444.8
1895	220	11	444.11
1895	220	12	444.12
1895	220	14 to 22	444.14 to 444.22
1899	84		442.301 to 442.303
1901	236		468.321
1905	223		442.1 to 442.3
1905	265		439.1 to 439.191
1907	95		487.661
1909	303	1 to 49	443.1 to 443.49
1909	303	56 to 58	443.56 to 443.58
1911	165	1 to 43	482.1 to 482.43
1911	165	51 to 56	482.51 to 482.56
1913	100		440.1 to 440.78
1913	106		441.1 to 441.25
1915	64		442.101
1919	386		487.641
1919	378		487.671
1925	348		487.681 and 487.682
1925	390		487.621
1929	200		442.51 to 442.53
1931	327	26	450.26
1931	240		487.601 to 487.617
1933	154		442.151
1937	341	48	487.48
1937	341	154	487.154
1937	341	213	487.213
1939	290		566.401 to 566.412
1939	305	3 to 14	566.303 to 566.314
1943	187		566.501
1947	180		570.501 to 570.512
1950	(Ex. Sess.) 27	23 to 27	492.123 to 492.127
1952	19		555.401 to 555.419
1961	236	2150	600.2150
1961	236	5401 to 5445	600.5401 to 600.5445

HISTORY: New 1962, p. 317, Act 174, Eff. Jan. 1, 1964.

440.9993 Saving clause.

Sec. 9993. Transactions validly entered into before the effective date specified in section 9991 and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this act as though such repeal or amendment had not occurred.

HISTORY: New 1962, p. 318, Act 174, Eff. Jan. 1, 1964.

440.9994 Laws not repealed by documents of title article.

Sec. 9994. (1) The article on documents of title (article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not af-

fect the status of a document of title which otherwise complies with the definition of a document of title (section 1201).

Fiduciary security transfers; construction of statutes.

(2) This act does not repeal Act No. 239 of the Public Acts of 1959, being sections 441.101 to 441.112 of the Compiled Laws of 1948, known and cited as the uniform act for the simplification of fiduciary security transfers, and if in any respect there is any inconsistency between that act and the article of this act on investment securities (article 8) the provisions of Act No. 239 of the Public Acts of 1959 shall control.

HISTORY: New 1962, p. 318, Act 174, Eff. Jan. 1, 1964;—Am. 1964, p. 377, Act 250, Eff. Aug. 28.

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CHAPTER 441. SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS

UNIFORM STOCK TRANSFER ACT		441.105	Fiduciary security transfers; adverse claims.
Act 106 of 1913		441.106	Fiduciary security transfers; corporation or transfer agent, nonliability.
441.1-441.25	Repealed.	441.107	Fiduciary security transfers; third persons, nonliability.
UNIFORM ACT FOR THE SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS		441.108	Fiduciary security transfers; territorial application.
Act 239 of 1959		441.109	Fiduciary security transfers; tax obligations.
441.101	Uniform Fiduciary security transfer simplification act; definitions.	441.110	Construction of act.
441.102	Fiduciary security transfers; registration.	441.111	Uniform act for the simplification of fiduciary security transfers; short title.
441.103	Fiduciary security transfers; assignment by fiduciary.	441.112	Effective date of act.
441.104	Fiduciary security transfers; evidence of appointment or incumbency.		

441.1-441.25 Repealed. 1962, p. 317, Act 174, Eff. Jan. 1, 1964.

Sections related to uniform stock transfer act of 1913.

Act 239, 1959, p. 353; Eff. Mar. 19, 1960.

AN ACT to provide for the simplification of fiduciary security transfers; and to make uniform the law in relation thereto.

The People of the State of Michigan enact:

441.101 Uniform Fiduciary security transfer simplification act; definitions.

Sec. 1. In this act, unless the context otherwise requires:

(a) "Assignment" means any written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer.

(b) "Claim of beneficial interest" means a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties.

(c) "Corporation" means a private or public corporation, association or trust issuing a security.

(d) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian or nominee.

(e) "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

(f) "Security" includes any share of stock, bond, debenture, note or other security issued by a corporation which is registered as to ownership on the books of the corporation.

(g) "Transfer" means a change on the books of a corporation in the registered ownership of a security.

(h) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

HISTORY: New 1959, p. 353, Act 239, Eff. Mar. 19, 1960.

CITED IN OTHER SECTIONS: Sections 441.101 to 441.112 are cited in § 440.9994.

441.102 Fiduciary security transfers; registration.

Sec. 2. A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent or correct description of the fiduciary relationship; and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

HISTORY: New 1959, p. 353, Act 239, Eff. Mar. 19, 1960.

441.103 Fiduciary security transfers; assignment by fiduciary.

Sec. 3. Except as otherwise provided in this act, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

(a) May assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

(b) May assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) Is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession.

HISTORY: New 1959, p. 353, Act 239, Eff. Mar. 19, 1960.

441.104 Fiduciary security transfers; evidence of appointment or incumbency.

Sec. 4. A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(a) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 60 days before the transfer; or

(b) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

HISTORY: New 1959, p. 353, Act 239, Eff. Mar. 19, 1960.

441.105 Fiduciary security transfers; adverse claims.

Sec. 5. (a) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner, and the issue, of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this act relieves the corporation or transfer agent of any liability for making or refusing to make the transfer

after it is so put on notice, unless it proceeds in the manner authorized in subsection (b).

(b) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice, it shall withhold the transfer for 30 days after the mailing and shall then make the transfer unless restrained by a court order.

HISTORY: New 1959, p. 354, Act 239, Eff. Mar. 19, 1960.

441.106 Fiduciary security transfers; corporation or transfer agent, nonliability.

Sec. 6. A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this act.

HISTORY: New 1959, p. 354, Act 239, Eff. Mar. 19, 1960.

441.107 Fiduciary security transfers; third persons, nonliability.

Sec. 7. (a) No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary, including a person who guarantees the signature of the fiduciary, is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(b) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this act incurs no liability.

(c) This section does not impose any liability upon the corporation or its transfer agent.

HISTORY: New 1959, p. 354, Act 239, Eff. Mar. 19, 1960.

441.108 Fiduciary security transfers; territorial application.

Sec. 8. (a) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

(b) This act applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment or transfer of a security by or to a fiduciary and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction.

HISTORY: New 1959, p. 354, Act 239, Eff. Mar. 19, 1960.

441.109 Fiduciary security transfers; tax obligations.

Sec. 9. This act does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession or other taxes imposed by the laws of this state.

HISTORY: New 1959, p. 355, Act 239, Eff. Mar. 19, 1960.

441.110 Construction of act.

Sec. 10. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

HISTORY: New 1959, p. 355, Act 239, Eff. Mar. 19, 1960.

441.111 Uniform act for the simplification of fiduciary security transfers; short title.

Sec. 11. This act shall be known and may be cited as the "Uniform act for the simplification of fiduciary security transfers".

HISTORY: New 1959, p. 355, Act 239, Eff. Mar. 19, 1960.

441.112 Effective date of act.

Sec. 12. This act shall take effect January 1, 1960.

HISTORY: New 1959, p. 355, Act 239, Eff. Mar. 19, 1960.

CHAPTER 442. CONDUCT OF CLOSING OUT AND OTHER SALES

BULK SALES		442.221	Conduct of sales; purchase of goods prior to sale prohibited; evidence.
Act 223 of 1905		442.222	Conduct of sales; addition of goods during sale, false description or inventory prohibited.
442.1-442.3 Repealed.		442.223	Advertisement before compliance with act, penalty.
BULK MORTGAGES		442.224	Violation of act; misdemeanor, penalty.
Act 200 of 1929		442.225	Persons exempt from act.
442.51-442.53 Repealed.		442.226	Repeal.
CONDITIONAL SALE OF CERTAIN PERSONALTY		SALE OF COLLATERAL	
Act 64 of 1915		Act 84 of 1899	
442.101 Repealed.		442.301-442.303 Repealed.	
TITLE RETAINING CONTRACTS, EQUIPMENT		FINE ART SALES	
Act 154 of 1933		Act 90 of 1970	
442.151 Repealed.		442.311	Artists and art dealers; definitions.
LICENSES TO CONDUCT CERTAIN SALES		442.312	Consignment of fine arts; effect of delivery and acceptance.
Act 319 of 1917		442.313	Waiver of provisions of act void; exception.
442.201-442.209 Repealed.		442.314	Effect of act as to existing contracts or arrangements.
CONDUCT OF CERTAIN SALES		442.315	Effective date of act.
Act 39 of 1961		Act 121 of 1970	
442.211	Conduct of certain sales; definitions.	442.321	Art sales warranties; definitions.
442.212	Conduct of certain sales; license required; application of act.	442.322	Warranties by art merchant; written statement; terminology.
442.213	Licenses; application, contents.	442.323	Language; construction.
442.214	Licenses; issuance, restrictions.	442.324	Rights and liabilities; additional; merchant's liability.
442.215	Conduct of certain sales; conditions.	442.325	Effective date.
442.216	Licenses; terms, renewal, fees.		
442.217	Licenses; application, inventory, posting; advertisement, announcement; contents.		
442.218	Licenses; application, clerk's records.		
442.219	Licenses; false statement, penalty.		
442.220	Licenses; scope; goods, removal; effect.		

442.1-442.209 Repealed. 1961, p. 42, Act 39, Eff. Sep. 8; 1962, p. 317, Act 174, Eff. Jan. 1964.

Sections related to bulk sales and other transfers.

Act 39, 1961, p. 38; Eff. Sep. 8.

AN ACT to regulate insurance, bankruptcy, mortgage, insolvent, assignee's, executor's, administrator's, receiver's, trustee's removal and closing out sales, and sales of goods, wares and merchandise damaged by fire, smoke, water or otherwise; to provide penalties for the violation hereof; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

442.211 Conduct of certain sales; definitions.

Sec. 1. As used in this act:

(a) "Going out of business sale" means any sale, whether described by such name or by any other name such as, but not limited to, "closing out sales", "liquidation sales", "lost our lease sale", "forced to vacate sale", held in such a manner as to indicate a belief that upon disposal of the stock of goods on hand, the business will cease and discontinue at the premises where the sale is conducted.

(b) "Goods" means all goods, wares, merchandise and other personal property, excepting, choses in action and money.

(c) "Person" includes a person, firm, corporation, partnership, association or 2 or more persons having a joint or common interest.

(d) "Removal sale" means any sale held in such a manner as to induce a belief that upon disposal of the stock of goods on hand, the business will cease and discontinue at the premises where the sale is conducted, and thereafter will be moved to and occupy another location.

HISTORY: New 1981, p. 38, Act 39, Eff. Sep. 8.

442.212 Conduct of certain sales; license required; application of act.

Sec. 2. No person shall advertise, represent or hold out that any sale of goods is an insurance, bankruptcy, mortgage, insolvent, assignee's, executor's, administrator's, receiver's, trustee's, removal or sale, going out of business or sale of goods damaged by fire, smoke, water or otherwise, unless he first obtains a license to conduct the sale from the clerk of the city, village or township in which he proposes to conduct a sale. This act shall not apply to any sales by a person regularly engaged in insurance or salvage sale of goods, or the sale of goods which have been damaged by fire, smoke, water or otherwise, who acquired the goods for the account of others as a result of fire or other casualty.

HISTORY: New 1981, p. 38, Act 39, Eff. Sep. 8.

442.213 Licenses; application, contents.

Sec. 3. Any applicant for a license under this act shall file an application in writing and under oath with the appropriate clerk setting out the following facts and information regarding such a proposed sale:

(a) The name and address of the applicant for the license, who must be the owner of the goods to be sold, and in addition, if the applicant is a partnership, corporation, firm or association, the name and the position of the individual filing such application.

(b) The name and style in which such sale is to be conducted, and the address where the sale is to be conducted.

(c) The dates and period of time during which the sale is to be conducted.

(d) The name and address of the person who will be in charge and responsible for the conduct of the sale.

(e) A full explanation with regard to the condition or necessity which is the occasion for the sale, including a statement of the descriptive name of the sale and the reasons why the name is truthfully descriptive of the sale. If the application is for a license to conduct a going out of business sale, it shall also contain a statement that the business will be discontinued at the premises where the sale is to be conducted upon termination of the sale. If the application is for a license to conduct a removal sale, it shall also contain a statement that the business will be discontinued at the premises where the sale is to be conducted upon termination of the sale, in addition to the location of the premises to which the business is to be moved. If the application is for a license to conduct a sale of goods damaged by fire, smoke, water or otherwise, it shall also contain a statement as to the time, location and cause of the damage.

(f) A full, detailed and complete inventory of the goods that are to be sold, which inventory shall:

(1) Itemize the goods to be sold and contain sufficient information concerning each item, including make and brand name, if any, to clearly identify it.

(2) List separately any goods which were purchased during a 60-day period immediately prior to the date of making application for the license.

(3) Show the cost price of each item in the inventory together with the name and address of the seller of the items to the applicant, the date of the purchase, the date of the delivery of each item to the applicant and the total value of the inventory at cost.

(4) In no case exceed 200% of the total value of merchandise upon which personal property tax was paid by the applicant or his predecessor as evidenced by a copy of the last personal property tax receipt issued.

(g) A statement that no goods will be added to the inventory after the application is made or during the sale and that the inventory contains no goods received on consignment.

HISTORY: New 1961, p. 39, Act 39, Eff. Sep. 8;—Am. 1963, p. 328, Act 219, Eff. Sep. 6.

442.214 Licenses; issuance, restrictions.

Sec. 4. (1) The clerk, upon receipt of an application giving fully and completely the information under oath as required by section 3 and upon receipt of the fee provided for in section 6, may issue a license to the applicant, authorizing the applicant to advertise, represent, and sell the particular goods so inventoried at the time and place stated in the application and in true accordance with the provisions of this act. The license shall be issued in duplicate and shall bear a number and date of its expiration. A license issued under this act shall be granted and valid only for the sale of the inventoried goods which are the property of the licensee. The license shall apply only to the premises specified in the application, and it may not be transferred or assigned. If a licensee under this act is engaged in business in other locations, advertising or offering of goods on behalf of such location shall not represent or imply any participation in or cooperation with the sale on the premises specified in the license, nor shall any advertising or other offering of goods on behalf of the premises where the licensed sale is being conducted represent or imply any participation in or cooperation with such sale at other locations. No license under this act shall be issued to any person:

(a) To conduct a sale in the trade name or style of a person in whose goods the applicant for the license has acquired a right or title thereto within 6 months prior to the time of making application for such a license.

(b) To continue a sale in the name of a licensee under this act in whose goods such person acquired a right or title while such a sale is in progress.

(c) To conduct a sale, other than an insurance sale, a salvage sale or a sale of damaged goods, on the same premises within 1 year from the conclusion of a prior sale of the nature covered by this act.

(2) Subdivisions (a), (b) and (c) shall not apply to any person who has acquired a right, title or interest in goods as an heir, devisee or legatee or pursuant to an order or process of a court of competent jurisdiction.

HISTORY: New 1961, p. 39, Act 39, Eff. Sep. 8.

442.215 Conduct of certain sales; conditions.

Sec. 5. No person shall advertise or otherwise to represent, for sale, or sell, any goods as a bankruptcy, executor's, administrator's, receiver's, or trustee's sales, except pursuant to, and in compliance with, federal or state statutory authority or judicial process, or as an assignee's or insolvent sale except where there is a bona fide assignment for the benefit of creditors.

HISTORY: New 1961, p. 40, Act 39, Eff. Sep. 8.

442.216 Licenses; terms, renewal, fees.

Sec. 6. A license to conduct a sale issued pursuant to this act shall not be issued or valid for a period of more than 30 days from the start of the sale, and the sale may be conducted only during the period set forth in the license. The license may be renewed not more than twice for a period not to exceed 30 days for each renewal upon affidavit of the licensee that the goods listed in the inventory have not been disposed of and that no new goods have been or will be added to the inventory previously filed pursuant to this act, by purchase, acquisition on consignment or otherwise. The applica-

tion for renewal of the license shall be made not more than 13 days prior to the time of the expiration of the license and shall contain a new inventory of goods remaining on hand at the time the application for renewal is made, which new inventory shall be prepared and furnished in the same manner and form as the original inventory. No renewal shall be granted if any goods have been added to the stock listed in the inventory since the date of the issuance of the license. A fee of \$50.00 shall accompany an application for the license and for the renewal of a license.

HISTORY: New 1961, p. 40, Act 39, Eff. Sep. 8;—Am. 1963, p. 329, Act 219, Eff. Sep. 6.

442.217 Licenses; application, inventory, posting; advertisement, announcement; contents.

Sec. 7. A copy of the application for a license to conduct a sale under this act, including the inventory filed herewith, shall be posted in a conspicuous place in the sales room or place where the inventoried goods are to be sold, so that the public may be informed of the facts relating to the goods before purchasing same, but the copy need not show the purchase price of the goods. The duplicate copy of a license shall be attached to the front door of the premises where the sale is conducted in such a manner that it be clearly visible from the street. Any advertisement or announcement published in connection with the sale shall conspicuously show on its face the number of license and the date of its expiration.

HISTORY: New 1961, p. 40, Act 39, Eff. Sep. 8.

442.218 Licenses; application, clerk's records.

Sec. 8. Every city, village or township clerk to whom application is made, shall indorse upon the application the date of its filing, shall preserve the same as a record of his office, and shall make an abstract of the facts set forth in the application in a book kept for that purpose, properly indexed, containing the name of the person asking such license, the nature of the proposed sale, the place where the sale is to be conducted, its duration, the inventory of the goods to be sold and a general statement as to where the same came from and shall make in the book a notation as to the issuance or refusal of the license applied for together with the date of the same. The clerk shall indorse on the application the date the license is granted or refused, and the application and abstract shall be prima facie evidence of all statements therein contained.

HISTORY: New 1961, p. 40, Act 39, Eff. Sep. 8.

442.219 Licenses; false statement, penalty.

Sec. 9. Any person making a false statement in the application provided for in this act is guilty of perjury and shall be imprisoned in the state prison for not more than 5 years.

HISTORY: New 1961, p. 41, Act 39, Eff. Sep. 8.

442.220 Licenses; scope; goods, removal; effect.

Sec. 10. The license as provided for in section 2 of this act shall be valid only for a sale of the goods inventoried and described in the application for such license, in the manner and at the time and place set forth in the application. Any removal of the goods so inventoried and described in the application from the place of sale mentioned in the application shall cause the goods to lose their identity as an insurance, bankrupt, mortgaged, insolvent's, assignee's, executor's, administrator's, receiver's or trustee's stock of goods or a stock of goods being removed or closed out, or a stock of goods damaged by fire, smoke or water, or otherwise, and no license shall be issued for the conducting of a sale of any of such goods removed from the place described in the application, under the provisions of this act, at any other place or places.

HISTORY: New 1961, p. 41, Act 39, Eff. Sep. 8.

442.221 Conduct of sales; purchase of goods prior to sale prohibited; evidence.

Sec. 11. No person in contemplation of conducting an insurance, bankrupt, mortgage, insolvent, assignee's, executor's, administrator's, receiver's, trustee's, removal or going out of business sale, or a sale of goods damaged by fire, smoke, water or otherwise, under a license as provided in this act shall order any goods for the purpose of selling and disposing of the same at such sale. Any unusual purchase and additions to the stock of goods within 60 days prior to the filing of the application for license to conduct the sale shall be presumptive evidence that the purchases and additions to stock were made in contemplation of the sale and for the purpose of selling the same at the sale.

HISTORY: New 1961, p. 41, Act 39, Eff. Sep. 8.

442.222 Conduct of sales; addition of goods during sale, false description or inventory prohibited.

Sec. 12. No person carrying on or conducting an insurance, bankrupt, mortgage, insolvent, assignee's, executor's, administrator's, receiver's, trustee's, removal or going out of business sale, or sale of goods damaged by fire, smoke, water or otherwise, under a license as provided in this act shall add, during the continuance of the sale, any goods to the stock of goods described and inventoried in his original application for the license. No goods shall be sold at or during the sale, excepting the goods described and inventoried in the original application. Every addition of goods to the stock of goods described and inventoried in the application and each sale of goods not inventoried and described in the application, shall constitute a separate offense under this act, and shall void any license issued to conduct a sale under this act.

HISTORY: New 1961, p. 41, Act 39, Eff. Sep. 8.

442.223 Advertisement before compliance with act, penalty.

Sec. 13. Any person who advertises, represents or holds out any sale of goods to be an insurance, bankrupt, mortgage, insolvent, assignee's, executor's, administrators, receiver's, trustee's, removal or going out of business sale, or a sale of goods damaged by fire, water, smoke or otherwise, without having first complied with the provisions of this act, is guilty of a misdemeanor and shall be fined in a sum not less than \$100.00 nor more than \$500.00 or shall be imprisoned in the county jail for not less than 10 days and not more than 6 months, or both.

HISTORY: New 1961, p. 41, Act 39, Eff. Sep. 8.

442.224 Violation of act; misdemeanor, penalty.

Sec. 14. Any person who holds, conducts, or carries on any sale of goods as an insurance, bankrupt, mortgage, insolvent's, assignee's, executor's, administrator's, receiver's, trustee's, removal or going out of business sale, or sale of goods damaged by fire, smoke, water, or otherwise, contrary to the provisions of this act, or who violates any of the provisions of this act is guilty of a misdemeanor, and shall be fined in a sum of not less than \$100.00 nor more than \$500.00 or shall be imprisoned in the county jail for not less than 10 days and not more than 6 months, or both.

HISTORY: New 1961, p. 41, Act 39, Eff. Sep. 8.

442.225 Persons exempt from act.

Sec. 15. The provisions of this act shall not apply to sheriffs, constables, or other public or court officers, or to any other person or persons acting under the license, direction or authority of any court, state or federal, selling goods, wares or merchandise in the course of their official duties.

HISTORY: New 1961, p. 42, Act 39, Eff. Sep. 8.

442.226 Repeal.

Sec. 16. Act No. 319 of the Public Acts of 1917, as amended, being sections 442.201 to 442.209 of the Compiled Laws of 1948, is hereby repealed.

HISTORY: New 1961, p. 42, Act 39, Eff. Sep. 8.

442.301-442.303 Repealed. 1962, p. 317, Act 174, Eff. Jan. 1, 1964.

Sections related to sale of personal property pledged as collateral.

Act 90, 1970, p. 265; Imd. Eff. Jan. 1, 1971.

AN ACT relating to the relationship between artists and art dealers in sales of fine art; regulating consignment sales thereof; establishing trust property and trust funds; and limiting waivers of rights.

The People of the State of Michigan enact:

442.311 Artists and art dealers; definitions.

Sec. 1. As used in this act:

(a) "Art dealer" means a person engaged in the business of selling works of fine art, other than a person exclusively engaged in the business of selling goods at public auction.

(b) "Artist" means the creator of a work of fine art or, if he be deceased, his heirs or personal representatives.

(c) "Fine art" means a painting, sculpture, drawing or work of graphic art.

(d) "On consignment" means that no title to or estate in the goods or right to possession thereof superior to that of the consignor vests in the consignee, except that the consignee retains the power or authority to transfer and convey, to a third person, all of the right, title and interest of the consignor, in and to such goods.

(e) "Person" means an individual, partnership, corporation, association or other group, however organized.

HISTORY: New 1970, p. 265, Act 90, Imd. Eff. Jan. 1, 1971.

442.312 Consignment of fine arts; effect of delivery and acceptance.

Sec. 2. Any custom, practice or usage of the trade to the contrary notwithstanding:

(a) When an artist delivers or causes to be delivered a work of fine art of his own creation to an art dealer for the purpose of sale on a commission, fee or other basis of compensation, the delivery to and acceptance thereof by the art dealer is deemed to be on consignment and the art dealer shall thereafter, with respect to the work of fine art, be deemed to be the agent of the artist.

(b) The work of fine art is trust property in the hands of the consignee for the benefit of the consignor.

(c) Any proceeds due the artist from the sale of the work of fine art are trust funds in the hands of the consignee for the benefit of the consignor.

(d) A work of fine art initially received on consignment shall be deemed to remain trust property notwithstanding the subsequent purchase thereof by the consignee directly or indirectly for his own account until the price is paid in full to the consignor. If the work is thereafter resold to a bona fide third party before the consignor has been paid in full, the proceeds of the resale are trust funds in the hands of the consignee for the benefit of the consignor to the extent necessary to pay any balance still due to the consignor and the trusteeship shall continue until the fiduciary obligation of the consignee with respect to a transaction is discharged in full.

HISTORY: New 1970, p. 265, Act 90, Imd. Eff. Jan. 1, 1971.

442.313 Waiver of provisions of act void; exception.

Sec. 3. Any provision of a contract or agreement whereby the consignor waives any provision of this act is void except as hereinafter provided. A consignor may lawfully waive that part of section 2 which provides that any proceeds from the sale of the work of fine art are trust funds in the hands of the consignee for the benefit of the consignor, if the waiver is clear, conspicuous, in writing and subscribed by the consignor. A waiver shall not be valid with respect to the first \$2,500.00 of gross proceeds of sales received in any 12-month period commencing with the date of the execution of the waiver, nor with respect to the proceeds of a work of fine art initially received on consignment but subsequently purchased by the consignee directly or indirectly for his own account.

HISTORY: New 1970, p. 206, Act 90, Imd. Eff. Jan. 1, 1971.

442.314 Effect of act as to existing contracts or arrangements.

Sec. 4. This act does not affect any written or oral contract or arrangement in existence before the effective date of this act nor to any extensions or renewals thereof except by the mutual written consent of the parties.

HISTORY: New 1970, p. 206, Act 90, Imd. Eff. Jan. 1, 1971.

442.315 Effective date of act.

Sec. 5. This act shall take effect on January 1, 1971.

HISTORY: New 1970, p. 206, Act 90, Imd. Eff. Jan. 1, 1971.

Act 121, 1970, p. 376; Imd. Eff. Jan. 1, 1971.

AN ACT to provide for the creation and negation of express warranties in the sales of works of fine art.

The People of the State of Michigan enact:

442.321 Art sales warranties; definitions.

Sec. 1. As used in this act:

(a) "Art merchant" means a person who deals in works of fine art or by his occupation holds himself out as having knowledge or skill peculiar to works of fine art or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill. It includes an auctioneer who sells works of fine art at public auction as well as the auctioneer's consignor or principal.

(b) "Author" or "authorship" refers to the creator of a work of fine art or to the period, culture, source or origin with which the creation of the work is identified in the description of the work.

(c) "Counterfeit" means a work of fine art made or altered, with intent to deceive, in a manner that it appears to have an authorship which it does not in fact possess. It includes any work of fine art made, altered or copied in a manner that it appears to have an authorship which it does not in fact possess even though the work may not have been made with intent to deceive.

(d) "Fine art" means a painting, sculpture, drawing or work of graphic art.

(e) "Person" means an individual, partnership, corporation, association or other group however organized.

(f) "Written instrument" means a written or printed agreement, bill of sale, or any other written or printed note or memorandum of the sale or exchange of a work of fine art by an art merchant and includes a written or printed catalog or other prospectus of

a forthcoming sale as well as any written or printed corrections or amendments thereof.

HISTORY: New 1970, p. 376, Act 121, Imd. Eff. Jan. 1, 1971.

442.322 Warranties by art merchant; written statement; terminology.

Sec. 2. Any provision in any other law to the contrary notwithstanding:

(a) When an art merchant, in selling or exchanging a work of fine art, furnishes to a buyer of such work who is not an art merchant, a written instrument which, in describing the work, identifies it with any author or authorship, the description shall be presumed to be part of the basis of the bargain and shall create an express warranty of the authenticity of the authorship as of the date of the sale or exchange. The warranty shall not be negated or limited because the art merchant in the written instrument did not use formal words such as "warrant" or "guarantee" or because he did not have a specific intention or authorization to make a warranty or because any statement relevant to authorship is, or purports to be, or is capable of being merely the art merchant's opinion.

(b) In construing the degree of authenticity of authorship warranted, due regard shall be given to the terminology used in describing the authorship and the meaning accorded to such terminology by the customs and usage of the trade at the time and in the locality where the sale or exchange took place. A written instrument delivered pursuant to a sale which took place in this state which, in describing the work, states, for example:

(i) That the work is by a named author or has a named authorship, without any other limiting words, means, unequivocally, that the work is by the named author or has the named authorship.

(ii) That the work is attributed to a named author means a work of the period of the author, attributed to him, but not with certainty by him.

(iii) That the work is of the school of a named author means a work of the period of the author, by a pupil or close follower of the author but not by the author.

HISTORY: New 1970, p. 376, Act 121, Imd. Eff. Jan. 1, 1971.

442.323 Language; construction.

Sec. 3. Words relevant to the creation of an express warranty of authenticity of authorship of a work of fine art and words tending to negate or limit warranty shall be construed where reasonable as consistent with each other; but subject to the provisions of section 2202 of Act No. 174 of the Public Acts of 1962, being section 440.2202 of the Compiled Laws of 1948, on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable. Subject to the limitations hereinafter set forth, the construction shall be deemed unreasonable in any of the following cases:

(a) The language tending to negate or limit the warranty is not conspicuous, written and contained in a provision, separate and apart from any language relevant to the creation of the warranty, in words which would clearly and specifically apprise the buyer that the seller assumes no risk, liability or responsibility for the authenticity of the authorship of a work of fine art. Words of general disclaimer like "all warranties, express or implied, are excluded" are not sufficient to negate or limit an express warranty of authenticity of the authorship of a work of fine art, created under section 2 or otherwise.

(b) The work of fine art is proved to be a counterfeit, and this was not clearly indicated in the description of the work.

(c) The work of fine art is unqualifiedly stated to be the work of a named author or authorship and it is proved that, as of the date of sale or exchange, the statement was false, mistaken or erroneous.

HISTORY: New 1970, p. 377, Act 121, Imd. Eff. Jan. 1, 1971.

442.324 Rights and liabilities; additional; merchant's liability.

Sec. 4. (1) The rights and liabilities created by this act shall be construed to be in addition to and not in substitution, exclusion or displacement of other rights and liabilities provided by law, including the law of principal and agent, except where the construction would, as a matter of law, be unreasonable.

(2) An art merchant who, as buyer, is excluded from obtaining the benefits of an express warranty under this act shall not be deprived of the benefits of any other provision of law.

(3) An art merchant whose warranty of authenticity of authorship was made in good faith shall not be liable for damages beyond the return of the purchase price which he received.

HISTORY: New 1970, p. 377, Act 121, Imd. Eff. Jan. 1, 1971.

442.325 Effective date.

Sec. 5. This act shall take effect on January 1, 1971.

HISTORY: New 1970, p. 377, Act 121, Imd. Eff. Jan. 1, 1971.

CHAPTER 443. UNIFORM WAREHOUSE RECEIPTS ACT

UNIFORM WAREHOUSE RECEIPTS ACT Act 303 of 1909	
443.1-443.49 Repealed.	443.53 Warehouse receipts; issuance for warehouseman's own goods without stating, penalty.
443.50 Warehouse receipts; issuance for goods not received, penalty.	443.54 Warehouse receipts; delivery of goods without obtaining, penalty.
443.51 Warehouse receipts; false statement, penalty.	443.55 Warehouse receipts; negotiation by depositor without title, penalty.
443.52 Warehouse receipts; issuance of duplicate not marked, penalty.	443.56-443.58 Repealed.

Act 303, 1909, p. 737; Eff. Sep. 1.

AN ACT to provide for uniform warehouse receipts, to fix the punishment for violations of this act, and to repeal all acts or parts of acts inconsistent herewith.

The People of the State of Michigan enact:

443.1-443.49 Repealed. 1962, p. 317, Act 174, Eff. Jan. 1, 1964.

Sections related to uniform warehouse receipts act of 1909.

443.50 Warehouse receipts; issuance for goods not received, penalty.

Sec. 50. A warehouseman, or any officer, agent or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 5 years or by a fine not exceeding 5,000 dollars, or by both.

HISTORY: CL 1915, 6612;—CL 1929, 9613;—CL 1948, 443.50.

ISSUANCE FOR GOODS NOT RECEIVED: Penalty: See Compilers' § 482.44; brine pipe line corporation, see Compilers' § 483.227.

443.51 Warehouse receipts; false statement, penalty.

Sec. 51. A warehouseman, or any officer, agent or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 1 year or by fine not exceeding 1,000 dollars, or by both.

HISTORY: CL 1915, 6613;—CL 1929, 9614;—CL 1948, 443.51.

BILLS OF LADING: Similar provisions, see Compilers' § 482.45.

443.52 Warehouse receipts; issuance of duplicate not marked, penalty.

Sec. 52. A warehouseman, or any officer, agent or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods, knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in section 14, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 5 years or by a fine not exceeding 5,000 dollars, or by both.

HISTORY: CL 1915, 6614;—CL 1929, 9615;—CL 1948, 443.52.

BILLS OF LADING: Similar provisions, see Compilers' § 482.46.

443.53 Warehouse receipts; issuance for warehouseman's own goods without stating, penalty.

Sec. 53. Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or

any of his officers, agents or servants who, knowing his ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 1 year, or by a fine not exceeding 1,000 dollars, or by both.

HISTORY: CL 1915, 6615;—CL 1929, 9616;—CL 1948, 443.53.

443.54 Warehouse receipts; delivery of goods without obtaining, penalty.

Sec. 54. A warehouseman, or any officer, agent or servant of a warehouseman, who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt, the negotiation of which would transfer the right to the possession of such goods, is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 14 and 36, be found guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 1 year, or by a fine not exceeding 1,000 dollars, or by both.

HISTORY: CL 1915, 6616;—CL 1929, 9617;—CL 1948, 443.54.

443.55 Warehouse receipts; negotiation by depositor without title, penalty.

Sec. 55. Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 1 year, or by a fine not exceeding 1,000 dollars, or by both.

HISTORY: CL 1915, 6617;—CL 1929, 9618;—CL 1948, 443.55.

BILLS OF LADING: Similar provisions, see Compilers' § 482.47.

443.56-443.58 Repealed. 1962, p. 317, Act 174, Eff. Jan. 1, 1964.

Sections related to uniform warehouse receipts act of 1909.

Sec. 59. (This was a repeal section.)

HISTORY: CL 1915, 6621;—CL 1929, 9622;—Rep. 1945, p. 404, Act 267, Imd. Eff. May 25.

CHAPTER 444. WAREHOUSEMEN AND WAREHOUSE RECEIPTS

WAREHOUSEMEN AND WAREHOUSE RECEIPTS

Act 220 of 1895

- 444.1 Warehouseman; definition.
 444.2-444.6 Repealed.
 444.7 Warehouseman; records and receipts, contents.
 444.8 Repealed.
 444.9 Warehouse receipts; issuance for property not stored.
 444.10 Warehouse receipts; issuance as security for loans or debts.
 444.11, 444.12 Repealed.
 444.13 Violation of act; misdemeanor, penalty; civil liability.
 444.14-444.22 Repealed.
 444.23 Warehouseman; rights as to mistaken or fraudulent delivery.
 444.24 Warehouseman; notice to owner of property subject to legal process, delivery, effect.
 444.25 Warehouseman; fire loss, liability.
 444.26 Examination of property; rights of interested persons, time, facilities.

- 444.27 Examination of property; warehouseman, refusal to allow, penalty.

Act 147 of 1905

- 444.101 Warehouse receipts for certain merchandise; issuance, terms.
 444.102 Warehouse receipts for certain merchandise; declaration, elevator, warehouse owners; contents, filing.
 444.103 Warehouse receipts for certain merchandise; filing declaration, statement; issuance, transfer.
 444.104 Warehouse receipts for certain merchandise; register; inspection.
 444.105 Warehouse receipts for certain merchandise; unlawful issuance; endorsement, necessity.
 444.106 Violation of act; civil recovery.
 444.107 Violations of act; penalty.
 444.108 Construction of act as to mingling of fungible goods.
 444.109 Saving clause.

Act 220, 1895, p. 508; Eff. Aug. 30.

AN ACT relating to warehousemen and warehouse receipts, to establish the lien of warehousemen in certain cases, and to provide penalties for the violation of the provisions hereof. Am. 1909, p. 30, Act 24, Eff. Sep. 1.

*The People of the State of Michigan enact:***444.1 Warehouseman; definition.**

Sec. 1. That every person, firm, company, association, warehouse company or other corporation, lawfully engaged in the business of storing for hire goods, wares, merchandise, grain, flour, provisions, or other products, commodity or personal property, excepting persons or companies engaged in the business of storing grain in elevators, shall be deemed and held to be a warehouseman under this act.

HISTORY: CL 1897, 5030;—CL 1915, 6536;—CL 1929, 9623;—CL 1948, 444.1.

UNIFORM WAREHOUSE RECEIPTS: See Compilers' § 443.1 et seq.

WAREHOUSE RECEIPTS: Regulating issuing of, in certain cases, see Compilers' §§ 444.101 to 444.109.

444.2-444.6 Repealed. 1962, p. 317, Act 174, Eff. Jan. 1, 1964.

Sections related to warehousemen and warehouse receipts.

444.7 Warehouseman; records and receipts, contents.

Sec. 7. Every warehouseman shall keep a record book, in which shall be entered immediately upon its receipt, a description of all property deposited with him for storage, including the brand or distinguishing marks on such property, together with the date of the reception of said property and the name and address of the owner thereof. And every receipt given for any such property shall also contain the same particulars, and shall be evidence in any action against said warehouseman.

HISTORY: CL 1897, 5036;—CL 1915, 6542;—CL 1929, 9629;—CL 1948, 444.7.

444.8 Repealed. 1962, p. 317, Act 174, Eff. Jan. 1, 1964.

Section related to negotiability, warehouse receipts.

444.9 Warehouse receipts; issuance for property not stored.

Sec. 9. No warehouseman shall issue any receipt or voucher for any goods, wares, merchandise or other personal property to any person or persons purporting to be the owner or owners thereof, unless such property shall have been actually received into store or upon the premises of such warehouseman, and shall be in store or on the premises as aforesaid, and under his control, at the time of issuing such receipt or voucher.

HISTORY: CL 1897, 5038;—CL 1915, 6544;—CL 1929, 9831;—CL 1948, 444.9.

PENALTY: See Compilers' § 750.278.

444.10 Warehouse receipts; issuance as security for loans or debts.

Sec. 10. No warehouseman shall issue any receipt or voucher for any personal property to any person, persons or corporation as security for any money loaned or for other indebtedness or indemnity, unless such property so receipted for shall be, at the time of issuing such receipt or voucher, the property, without encumbrance, of said warehouseman, and shall be actually in store and under the control of said warehouseman at the time of giving such receipt or voucher and if such property be encumbered by prior lien, then the character, extent and amount of that lien shall be fully set forth and explained in the receipt.

HISTORY: CL 1897, 5039;—CL 1915, 6545;—CL 1929, 9832;—CL 1948, 444.10.

444.11, 444.12 Repealed. 1962, p. 317, Act 174, Eff. Jan. 1, 1964.

Sections related to duplicate warehouse receipts and disposal of goods without return.

444.13 Violation of act; misdemeanor, penalty; civil liability.

Sec. 13. Any warehouseman who shall wilfully violate any of the provisions of this act, except as hereinafter provided for in section 27, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding 2,000 dollars in amount or by imprisonment in the state prison or county jail not exceeding 2 years, or by both such fine and imprisonment in the discretion of the court, and every person or persons aggrieved by the violation of any of the provisions of this act may have and maintain an action at law against the person or persons violating any of said provisions to recover the damages which he or they may have sustained by reason of any such violation as aforesaid before any court of competent jurisdiction, whether such person shall have been convicted of misdemeanor as aforesaid under this act or not.

HISTORY: CL 1897, 5042;—Am. 1909, p. 30, Act 24, Eff. Sept. 1;—CL 1915, 6548;—CL 1929, 9835;—CL 1948, 444.13.

NOTE: Sec. 27, above referred to, is Compilers' § 444.27.

444.14-444.22 Repealed. 1962, p. 317, Act 174, Eff. Jan. 1, 1964.

Sections related to sale of goods by warehousemen.

444.23 Warehouseman; rights as to mistaken or fraudulent delivery.

Sec. 23. Any warehouseman who has parted with his possession to stored property, through fraud or mistake, to any person not entitled to the possession of the same, may after demand maintain an action of replevin for the same, or if the property cannot be found, an action of assumpsit or trover against the person converting or removing it. In case of replevin, if there was no fraud in obtaining such possession, the plaintiff shall first tender to the defendant the freight or other proper charges which may have accrued at the time of the demand of possession.

HISTORY: CL 1897, 5052;—CL 1915, 6558;—CL 1929, 9645;—CL 1948, 444.23.

444.24 Warehouseman; notice to owner of property subject to legal process, delivery, effect.

Sec. 24. Whenever any goods, wares, merchandise or other personal property shall be taken from the possession of any warehouseman, by writ of attachment or replevin, or other legal process said warehouseman shall at once give written or printed notice

thereof to the owner or person named in the warehouse receipt given for said property, or in case said warehouseman shall have received notice of any transfer of said property, and of the name and address of the transferee, he shall also give to said transferee like notice of said suit. Said notice may be delivered personally or sent by registered mail, postpaid. If such notice shall be given as aforesaid, said warehouseman shall not in any way be liable on account of said suit to said owner or transferee of said property, or to the holder of any receipt or voucher given for the same, saving and reserving to such owner or holder the legal remedies for the recovery of the said goods, wares, merchandise and other personal property from any person unlawfully detaining the same, or for damages against any person unlawfully taking the same.

HISTORY: CL 1897, 5053;—CL 1915, 6559;—CL 1929, 9646;—CL 1948, 444.24.

444.25 Warehouseman; fire loss, liability.

Sec. 25. No warehouseman shall be held responsible for any loss or damage to property by fire while in his custody, provided reasonable care and vigilance be exercised to protect and preserve the same.

HISTORY: CL 1897, 5054;—CL 1915, 6560;—CL 1929, 9647;—CL 1948, 444.25.

444.26 Examination of property; rights of interested persons, time, facilities.

Sec. 26. All persons owning property or who may be interested in the same by way of chattel mortgage, contract of sale, or where property has been sold on lease, when stored in any public warehouse, at all times during ordinary business hours, shall, on production of either the warehouse receipt, chattel mortgage, contract of sale, lease, or any other written instrument showing that said person is interested in said property so stored, be at full liberty to examine such property, and all proper facilities shall be extended to such person by the warehouseman, his agents and employes for such examination.

HISTORY: CL 1897, 5055;—Am. 1909, p. 30, Act 24, Eff. Sept. 1;—CL 1915, 6561;—CL 1929, 9648;—CL 1948, 444.26.

444.27 Examination of property; warehouseman, refusal to allow, penalty.

Sec. 27. Any warehouseman who shall refuse any person the right to examine property stored in his warehouse and who shall not extend to such person or persons proper facilities for so doing, either by himself, his agents or employes, when such person or persons have a lawful right by the terms of section 26 of this act so to do, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction shall be punished by a fine of not exceeding 25 dollars in amount or by imprisonment in the county jail not exceeding 90 days, or by both such fine and imprisonment in the discretion of the court; and every day said warehouseman shall so refuse shall be deemed a distinct and separate offense and shall subject said warehouseman to the penalty herein provided for.

HISTORY: Add. 1909, p. 30, Act 24, Eff. Sept. 1;—CL 1915, 6562;—CL 1929, 9649;—CL 1948, 444.27.

Act 147, 1905, p. 206; Eff. Sep. 16.

AN ACT to regulate the issuing of warehouse certificates in certain cases.

The People of the State of Michigan enact:

444.101 Warehouse receipts for certain merchandise; issuance, terms.

Sec. 1. All persons, firms or corporations owning or dealing in flour, grains, beans, seeds or other farm products, or engaged in the business of slaughtering cattle, sheep or hogs, and dealing in the various products therefrom, or buying or selling sugar, butter, eggs, cheese, dressed poultry or any other merchandise, who own or control the

structures wherein any such business is conducted, or such commodities stored, may issue elevator or warehouse certificates or receipts for any such commodities actually on hand and in store, the property of such person, firm or corporation, and may, by the issue of such certificates, sell, sign, encumber or pledge such commodities. Such certificate or receipt shall contain the date of its issue, the name and address of the person, firm or corporation issuing the same, and the name and address of the party to whom issued, the location of the elevator, warehouse or structure wherein the commodity therein described is stored, the quantity of each commodity mentioned therein, the brands or marks of identification thereon, if any, and shall be signed by the person, firm or corporation issuing the same.

HISTORY: CL 1915, 6622;—CL 1929, 9650;—CL 1948, 444.101.

UNIFORM WAREHOUSE RECEIPTS: See Compilers' § 440.1201 et seq.

444.102 Warehouse receipts for certain merchandise; declaration, elevator, warehouse owners; contents, filing.

Sec. 2. Before any such person, firm or corporation, except as hereinafter provided, shall be authorized to issue such elevator or warehouse certificates or receipts, he or it, as the case may be, shall file in the office of the register of deeds of the county wherein such elevator, warehouse or other structure is situated, a written declaration which shall contain the name and place of residence or location of such person, firm or corporation, and shall state that he or it designs keeping or controlling an elevator, warehouse or other structure for the storage and sale of commodities mentioned in the preceding section, and shall contain an accurate description of such elevator, warehouse or other structure, the location thereof, and the name or names of any person, other than the one making such declaration, who has any ownership interest in such elevator, warehouse or structure, or in the land upon which it is situated. Such declaration shall be signed and acknowledged by the party making the same, before some officer authorized to take acknowledgments of deeds for said county.

HISTORY: CL 1915, 6623;—CL 1929, 9651;—CL 1948, 444.102.

444.103 Warehouse receipts for certain merchandise; filing declaration, statement; issuance, transfer.

Sec. 3. Each certificate or receipt issued by any such person, firm or corporation, under the provisions of this act, shall have printed on the back thereof, a statement that the party issuing the same has complied with the requirements of section 2 of this act, giving the book, page and name of the county where the record of such declaration may be found. When such certificate or receipt is so issued and delivered, it shall have the effect of transferring to the holder thereof the title to the commodities therein described or enumerated, and shall thereafter be assignable and transferable by delivery, and such delivery shall transfer to any bona fide holder, in due course, the title to the commodities therein described and enumerated, against all persons claiming title subsequent to the issuing and delivery of such certificate or receipt.

HISTORY: CL 1915, 6624;—CL 1929, 9652;—CL 1948, 444.103.

444.104 Warehouse receipts for certain merchandise; register; inspection.

Sec. 4. All certificates or receipts given under the provisions of this chapter, shall be registered by the party issuing them in a book kept for that purpose, showing the date thereof the number of each, the name of the party to whom issued, the quantities and kinds of commodities enumerated therein, and the brands or other distinguishing marks thereon, if any, which book shall be open to the inspection of any person holding any of the certificates or receipts that may be outstanding and in force, or his agent or attorney, and when any commodity enumerated in any such certificate is delivered to the holder thereof, or if in any other manner becomes inoperative, the fact

and date of such delivery or other termination of such liability shall be entered in such register, in connection with the original entry of the issuance thereof.

HISTORY: CL 1915, 6625;—CL 1929, 9653;—CL 1948, 444.104.

444.105 Warehouse receipts for certain merchandise; unlawful issuance; endorsement, necessity.

Sec. 5. No person, firm or corporation, shall issue any elevator or warehouse certificates or receipts for any of the commodities mentioned in this chapter, unless such property is actually in the elevator or warehouse, or structure mentioned therein as the place where such commodity is stored, and it shall remain there until otherwise ordered by the lawful holder of such certificate or receipt, subject only to the lien of the warehouseman thereon and his right to enforce the same. No second certificate or receipt shall be issued for the same property, or any part thereof, while any other or prior certificate is outstanding and in force, nor shall any such commodities be sold, encumbered, transferred or removed from such elevator, warehouse or other structure wherein the same was stored at the time such certificate or receipt was issued by the warehouseman or any agent or employe thereof, without the written consent of the holder thereof endorsed thereon.

HISTORY: CL 1915, 6626;—CL 1929, 9654;—CL 1948, 444.105.

PENALTY: Issuance of receipt without being in possession of goods, see Compilers' § 750.278; by brine pipe line corporations, see Compilers' § 483.227.

444.106 Violation of act; civil recovery.

Sec. 6. Any one injured by the violation of any of the provisions of this chapter, may recover his actual damages sustained on account thereof.

HISTORY: CL 1915, 6627;—CL 1929, 9655;—CL 1948, 444.106.

444.107 Violations of act; penalty.

Sec. 7. Any person who shall wilfully alter or destroy any register or certificate or receipt provided for in this chapter or issue any receipt or certificate without entering or preserving in such book the registered memorandum; or who shall knowingly issue any certificate or receipt therein provided for when the commodity or commodities therein enumerated are not in fact in the building or buildings it is certified they are in, or shall, with intent to defraud, issue a second or other certificate for any such commodity for which, or for any part of which, a former valid certificate or receipt is outstanding and in force; or shall while any valid certificate or receipt for any part of the commodities mentioned in this chapter is outstanding and in force, sell, encumber, ship, transfer or remove from the elevator, warehouse or building where the same is stored, any such certified property, or knowingly permit the same to be done, without the written consent of the holder of such certificate or receipt, or if any person knowingly receives any such property or helps to remove the same, he shall, upon conviction, be punished by fine not exceeding 10,000 dollars, or by imprisonment in the state prison not exceeding 5 years.

HISTORY: CL 1915, 6628;—CL 1929, 9656;—CL 1948, 444.107.

444.108 Construction of act as to mingling of fungible goods.

Sec. 8. Nothing in this act shall be construed as prohibiting or preventing warehousemen from mingling in common bins, grains or beans or seeds of the same grade, issuing certificates or receipts therefor, and drawing out and shipping said grain, beans or seeds from said bins: Provided, That a sufficient quantity of such grain or seeds shall be retained and kept in said bins to represent and satisfy all outstanding receipts or certificates.

HISTORY: CL 1915, 6629;—CL 1929, 9657;—CL 1948, 444.108.

444.109 Saving clause.

Sec. 9. Nothing in this act shall be construed to affect, interfere with or impair any rights of issuing and negotiation of any warehouse receipts or certificates under any existing law, or under any regulations of any chamber of commerce or board of trade within this state.

HISTORY: CL 1915, 6630;—CL 1929, 9658;—CL 1948, 444.109.

CHAPTER 445. FAIR TRADE AND BUSINESS

ASSUMED OR FICTITIOUS NAME

Act 101 of 1907

- 445.1 Assumed name; certificate required, contents, filing fee; exemptions; definitions.
- 445.1a Assumed name certificates; expiration, renewal, fee; notice to applicant; destruction.
- 445.1b Repealed.
- 445.2 Assumed name certificates; filing period; rejection by county clerk.
- 445.2a Assumed name; change of business location certificate, filing.
- 445.2b Assumed name; discontinuance of operation certificate, filing.
- 445.2c Assumed name certificates; certified copies, fee.
- 445.3 Assumed name certificates; index, fees, certified copies admissible as evidence. Evidence of partnership. Nonresident's consent to service of process. Service on nonresident, return, affidavit of mailing; extension of time. Jurisdiction.
- 445.4 Inapplicability of act as to corporations.
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- 445.101 Unlawful trade practices; suppression.
- 445.102 Unlawful trade practices; definitions.
- 445.103 Unlawful trade practices; wholesale, use of term.
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- 445.131 Unsolicited merchandise; rights of recipients.

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Act 119 of 1964

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Act 50 of 1937

- 445.151 Contracts as to sale or resale of commodities under distinguished trade-mark, brand or name; provisions allowable, inapplicability.
- 445.152 Unfair competition; injunction.
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- 445.172 Bakery and petroleum industries; unfair discrimination prohibited.
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- 445.179 Injunctive relief; damages, amount; information, use as evidence in prosecution.
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Act 101, 1907, p. 119; Eff. Sep. 28.

AN ACT to regulate the carrying on of business under an assumed or fictitious name.

The People of the State of Michigan enact:

445.1 Assumed name; certificate required, contents, filing fee; exemptions; definitions.

Sec. 1. No person shall carry on or conduct or transact business in this state under any assumed name, or under any designation, name or style other than the real name of the person owning, conducting or transacting such business, unless such person shall file in duplicate in the office of the clerk of the county or counties in which such person owns, conducts or transacts, or intends to own, conduct or transact such business, or maintains an office or place of business, a certificate on a form furnished by the county clerk setting forth the name under which such business owned is, or is to be conducted or transacted, and the true or real full name of the person owning, conducting or transacting the same, with the address of the person, at which time the person shall pay the clerk a filing fee of \$3.00. The certificate shall be executed and duly acknowledged by the person so owning, conducting or intending to conduct the business. The selling of goods by sample or through traveling agents or traveling salesmen or by means of orders forwarded by the purchaser through the mails, shall not be construed for the purpose of this act as conducting or transacting business so as to require the filing of the certificates. The county clerk shall certify the duplicate and return it to the applicant. As used in this act, "person" means any one or more individuals, partnerships, limited partnerships, trusts, fiduciaries or any other entities capable of contracting; and "address" means the residence or principal business address of the person.

HISTORY: CL 1915, 6349;—CL 1929, 9825;—Am. 1931, p. 458, Act 274, Eff. Sep. 18;—CL 1948, 445.1;—Am. 1949, p. 157, Act 151, Eff. Sep. 23;—Am. 1967, p. 165, Act 138, Eff. Nov. 2;—Am. 1968, p. 254, Act 165, Eff. Nov. 15;—Am. 1969, p. 320, Act 158, Imd. Eff. Aug. 5.

CITED IN OTHER SECTIONS: Sections 445.1 to 445.5 are cited in § 338.512.

445.1a Assumed name certificates; expiration, renewal, fee; notice to applicant; destruction.

Sec. 1a. Such certificate when acknowledged and filed as required in section 1 shall authorize use of said assumed name for a period of 5 years. If prior to the expiration date a renewal certificate, on form to be provided by the county clerk, shall be filed with the clerk and a fee of \$2.00 paid, such renewal certificate shall extend the right to use said assumed name for an additional 5 year period from the date of expiration of the original certificate, or renewal if it has previously been renewed. Between the sixtieth and thirtieth day prior to the expiration date of an outstanding certificate, the county clerk shall mail to the person or persons whose certificate will expire renewal certificate blank forms, in duplicate, together with a notice, on form to be provided by the clerk, (1) that the certificate authorizing and to conduct business under the assumed name of expires at 5:00 p.m. on the day of, and (2) that failure to file a renewal certificate and pay a fee of \$2.00 on or before the expiration date above mentioned shall on that date constitute abandonment of said assumed name. The notice herein required shall be mailed by the county clerk to the last address of the person or persons whose certificate will expire, as stated on the original or renewal certificate, as the case may be. Six years after an original or renewal certificate has expired, the county clerk may destroy the certificate.

HISTORY: Add. 1949, p. 157, Act 151, Eff. Sep. 23.

445.1b Repealed. 1968, p. 255, Act 165, Eff. Nov. 15.

Section related to carrying on business under assumed name; additional certificate.

445.2 Assumed name certificates; filing period; rejection by county clerk.

Sec. 2. Persons now owning or conducting such business under an assumed name, or under such designation referred to in section 1, shall file such certificate or renewal certificate as hereinbefore prescribed, within 90 days after this act shall take effect

and after 30 days' notice from the county clerk, and persons hereafter owning, conducting or transacting business as aforesaid shall, before commencing said business file such certificate in the manner hereinbefore prescribed. The several county clerks of this state are hereby authorized to reject any assumed name which is likely to mislead the public, or any assumed name already filed in the county or so nearly similar thereto as to lead to confusion or deception.

HISTORY: CL 1915, 6350;—CL 1929, 9828;—Am. 1931, p. 456, Act 272, Eff. Sept. 18;—CL 1948, 445.2;—Am. 1949, p. 158, Act 151, Eff. Sep. 23.

445.2a Assumed name; change of business location certificate, filing.

Sec. 2-a. Whenever an assumed name concern has changed or changes its place of business, it shall be the duty of the person or persons conducting such business to file with the county clerk, with whom the certificate or renewal certificate required under the provisions of section 1 or 1a of this act was filed, a certificate stating the change in business location, which certificate shall be attached by the county clerk to the certificate or renewal certificate filed under the provisions of section 1 or 1a of this act, and, in case the business location is changed to some other county or counties in this state, to file the assumed name certificate or renewal certificate required under the provisions of section 1 or 1a of this act, with the clerk of such county, before doing any business in such county.

HISTORY: Add. 1931, p. 456, Act 272, Eff. Sep. 18;—CL 1948, 445.2a;—Am. 1949, p. 158, Act 151, Eff. Sep. 23.

445.2b Assumed name; discontinuance of operation certificate, filing.

Sec. 2-b. Whenever an assumed name concern shall go out of business, it shall be the duty of the person or persons, who have conducted such business, to file a certificate with the clerk of the county or counties in which such concern transacted business, of the discontinuance of the operation of the business in such county or counties, which certificate shall be attached by the county clerk to the certificate or renewal certificate filed under the provisions of section 1 or 1a of this act.

HISTORY: Add. 1931, p. 456, Act 272, Eff. Sep. 18;—CL 1948, 445.2b;—Am. 1949, p. 158, Act 151, Eff. Sep. 23.

445.2c Assumed name certificates; certified copies, fee.

Sec. 2-c. The clerk shall upon request of any person supply certified copies of the original or renewal certificates upon payment of a fee of \$1.00 per copy.

HISTORY: Add. 1949, p. 158, Act 151, Eff. Sep. 23.

445.3 Assumed name certificates; index, fees, certified copies admissible as evidence.

Sec. 3. The several county clerks of this state shall keep an alphabetical index of all persons filing certificates, provided for herein, and for the indexing and filing of such certificates, they shall receive a fee of \$3.00. A copy of such certificate duly certified to by the county clerk in whose office the same shall be filed, shall be presumptive evidence in all courts of law in this state of the facts therein contained. Upon the payment of the said sum of \$3.00 the payer thereof shall be entitled to 2 certified copies of such certificate without extra charge, with additional copies at 50 cents each at the time of filing the original thereof.

Evidence of partnership.

Where 2 or more persons file a certificate to carry on a business under an assumed name, such certificate shall be prima facie evidence of a contract of partnership.

Nonresident's consent to service of process.

Every person who is a nonresident of this state, upon filing certificates, provided for in this act, shall file an irrevocable consent that suits and actions may be commenced against said person in the courts of this state, by service of any process or pleading authorized by the laws of this state on the county clerk in whose office the certificate

and consent are filed. For the filing of such consents, the several county clerks shall receive a fee of \$2.00.

Service on nonresident, return, affidavit of mailing; extension of time.

The county clerk shall keep a record of each such process and the date and hour of service. Notice of such service and a copy of the summons shall forthwith either be served upon the defendant personally by the sheriff or constable of the county in which he resides or sent by certified mail by the plaintiff or his attorney to the defendant. If personal service of such notice and copy of summons is had upon the defendant the officer making the service shall so state in his affidavit of service which shall be filed with the court having jurisdiction of said cause, or if service be made by certified mail then the plaintiff or his attorney shall make an affidavit showing that he has made service of the notice and summons upon the defendant by certified mail and the affiant shall attach thereto a true copy of the summons and notice so served and the return receipt of the defendant and shall file the affidavit and attached papers with the court having jurisdiction of said cause. The court in which the action is pending may order such extension of time as may be necessary to afford the defendant reasonable opportunity to defend the action.

Jurisdiction.

The circuit court of the county in the office of the county clerk of which such certificate is filed shall have jurisdiction of any suit at law or in chancery brought against such nonresident person but this provision shall not be construed as depriving any other court of jurisdiction thereof.

HISTORY: CL 1915, 6351;—CL 1929, 9827;—Am. 1939, p. 188, Act 104, Eff. Sep. 29;—Am. 1947, p. 385, Act 255, Eff. Oct. 11;—CL 1948, 445.3;—Am. 1949, p. 158, Act 151, Eff. Sep. 23;—Am. 1963, p. 30, Act 29, Eff. Sep. 6.

445.4 Inapplicability of act as to corporations.

Sec. 4. The certificate referred to in section 1, in the case of any person named therein other than an individual, shall state the nature of the entity; the statutory law, if any, pursuant to which it was organized; the place and the date of filing with any governmental authority, identifying it, of any documents, describing them, required to be filed in order to accomplish or complete the organization of the entity and to entitle it to operate or transact business under the laws of this state and, if organized elsewhere, of the state or country where organized; and, if a fiduciary, the date of the last will and testament or trust agreement and the court, place and date of admission to probate of the will or the names and addresses of the parties to the trust agreement, and the name and address of each fiduciary; and, if a partnership or limited partnership, the name and address of each general partner. This act shall in no way affect or apply to any corporation organized under the laws of this state, or to any corporation organized under the laws of any other state and lawfully doing business in the state, except as otherwise provided by Act No. 192 of the Public Acts of 1962, as amended.

HISTORY: CL 1915, 6352;—CL 1929, 9828;—CL 1948, 445.4;—Am. 1967, p. 165, Act 138, Eff. Nov. 2;—Am. 1968, p. 254, Act 165, Eff. Nov. 15.

445.5 Violation of act; penalty; violation of contracts, effect.

Sec. 5. Any person or persons owning, carrying on or conducting or transacting business as aforesaid, who shall fail to comply with the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$25.00 nor more than \$100.00 or by imprisonment in the county jail for a term not exceeding 30 days or by both such fine and imprisonment in the discretion of the court, and each day any person or persons shall violate any provisions of this act shall be deemed a separate offense: Provided, however, The fact that a penalty is provided herein for non-compliance with the provisions of this act shall not be construed to avoid contracts; but any person or persons failing to file the certificate required by section 1 or 1a shall be prohibited from bringing any suit, action or proceeding in any

of the courts of this state, in relation to any contract or other matter made or done by such person or persons under an assumed or fictitious name, until after full compliance with the provisions of this act; but no person or persons doing business under a fictitious name or as the assignee or assignees thereof shall maintain or prosecute any action, nor shall any order, judgment, or decree be made in any action heretofore or hereafter commenced in any court of this state upon or on account of any contract or contracts made or transactions had under such fictitious name after August 14, 1919, if the conduct of such business under such fictitious name has ceased, or if it is still conducted under such fictitious name, then until after full compliance with the provisions of this act.

HISTORY: CL 1915, 6353;—Am. 1919, p. 464, Act 263, Eff. Aug. 14;—CL 1929, 9629;—Am. 1931, p. 459, Act 274, Eff. Sep. 18;—CL 1948, 445.5;—Am. 1949, p. 159, Act 151, Eff. Sep. 23.

Act 271, 1941, p. 474; Eff. Jan. 10, 1942.

AN ACT to define certain unlawful trade practices connected with the sale or other transfer; or with the purchase for another of goods, wares or merchandise; to provide certain penalties for the commission of such unlawful trade practices; and to provide for enjoining the commission of such trade practices and permitting the rescission of certain contracts. Am. 1956, p. 461, Act 214, Eff. Aug. 11;—Am. 1962, p. 104, Act 115, Eff. Mar. 28, 1963.

The People of the State of Michigan enact:

445.101 Unlawful trade practices; suppression.

Sec. 1. The legislature of the state of Michigan hereby finds: improper and misleading uses of the words “wholesale,” “employee” and similar terms or phrases in connection with certain sales; and likewise improper and misleading uses of the words “manufacturer,” “broker,” “wholesaler,” and similar terms or phrases denoting that the seller of a product is something other than a retailer thereof; and likewise the other practices hereinafter prohibited, are harmful to the welfare of the people of this state in the following ways, among others: consumers are misled into believing they are buying goods at a substantial discount from regular retail prices, when in fact they are not; trade is diverted from established retail outlets offering various customer services (such as free deliveries, exchange privileges, and credit facilities) to establishments not offering equal services but selling at substantially the same price, to the detriment of the consumer, who is deprived of the benefit of such services without receiving compensating advantages; purchases by business concerns, at discounts from current retail market prices, of goods, wares, and merchandise purchased not for business use but for the personal use of individuals, divert trade unfairly from established retail outlets, resulting in a loss of sales tax revenues and in a trend to higher retail prices. The legislature, acting in the exercise of the police power of the state, declares that the public policy of the state requires, and that the general welfare of the people of the state will be benefited by, the suppression of the trade practices hereinafter defined.

HISTORY: CL 1948, 445.101.

445.102 Unlawful trade practices; definitions.

Sec. 2. When used in this act:

(a) The term “person” includes any individual, firm, co-partnership, joint adventure, association, municipal or private corporation whether organized for profit or not, company, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(b) The term "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee.

(c) "Sale" or "sell" includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.

HISTORY: CL 1948, 445.102.

445.103 Unlawful trade practices; wholesale, use of term.

Sec. 3. It shall be an unlawful trade practice for any seller or transferor of any goods, wares, or merchandise to advertise, claim, or imply that any sale or other transfer of goods, wares, or merchandise is a sale or transfer at wholesale unless such sale or transfer is made to a transferee for resale and unless such sale or transfer is not subject to the provisions of the sales tax law, being Act No. 167 of the Public Acts of 1933, as amended or hereafter amended.

HISTORY: CL 1948, 445.103.

445.104 Unlawful trade practices; employee, use of term.

Sec. 4. It shall be an unlawful trade practice for any seller or transferor of any goods, wares, or merchandise to use the word "employee" or any derivative thereof or synonym therefor, in connection with signs, advertising, notices, or other written or printed matter in any way referring to sales or other transfers of goods, wares, or merchandise, if such sales or transfers are made or offered to or for others than bona fide employees of such seller or transferor.

HISTORY: CL 1948, 445.104.

445.105 Unlawful trade practices; manufacturer, miller, wholesaler and broker, use of terms.

Sec. 5. It shall be an unlawful trade practice for any person engaged in selling goods, wares, or merchandise to individual consumers, to incorporate in his business name or otherwise to use in describing his business, the words "manufacturer," "miller," "wholesaler," "broker," or any derivative or synonym for any of them, unless such person is in fact engaged in 1 or more of such businesses in addition to his business of selling goods, wares, or merchandise to individual consumers. In cases where a person is engaged in manufacturing, milling, wholesaling, or brokerage and is in addition engaged in making sales to individual consumers, it shall be an unlawful trade practice for such person to imply directly or indirectly in connection with sales to individual consumers that the selling price is other than a retail price unless the sale is for resale.

HISTORY: CL 1948, 445.105.

445.106 Unlawful trade practices; purchase of unrelated business items; automobile seat belts, exemption.

Sec. 6. It shall be an unlawful trade practice for any employer, directly or indirectly, by itself or through a subsidiary agency owned or controlled in part by such employer, to purchase any goods, wares or merchandise in the name of or on the credit of such employer, or at special discounts available to such employer, for any other purpose than for use or resale in the regular course of business of such employer; to sell, cause to be sold, or have under his or its control for sale to his or its employees or to any other person, any goods, wares or merchandise not offered for sale by such employer in the regular course of his or its business; to authorize or permit his or its name, credit or premises to be used in connection with the sale or offer for sale of any such merchandise and to authorize any of his or its officers, agents or employees, during working hours or on his or its premises, to perform any of the acts hereinabove in this section described. This section shall not apply to purchases by an employer for the purpose of use or resale to his or its employees of equipment, tools, candy, chewing gum, meals, tobacco or food services provided in the regular course of business; or to

any goods, wares or merchandise which may be related to the business of the employer and which the employer so purchases for resale to his or its employees for the purpose of promoting a principal business of the employer, or for utilizing a principal product or service of the employer. It shall not apply to purchases by an employer for the purpose of resale to his or its employees of automobile safety seat belts for personal use by the employees.

HISTORY: CL 1948, 445.106;—Am. 1956, p. 461, Act 214, Eff. Aug. 11;—Am. 1962, p. 104, Act 115, Eff. Mar. 28, 1963.

445.106a Unlawful trade practices; sale at reduced price, false representation.

Sec. 6a. It shall be an unlawful trade practice for any person, in connection with an offer or exhibit of any goods, wares, or merchandise for sale at retail, or an exhibit of samples, catalogues or other forms of advertising listing goods, wares, or merchandise for retail sale, to display price tags or price quotations in any other form, which are substantially in excess of the prices at which such goods, wares, or merchandise are regularly or customarily sold at retail by such person or by the person issuing such samples, catalogues or other advertising, so as to imply falsely that the goods, wares or merchandise are offered for sale at a reduction from an indicated regular retail price.

HISTORY: CL 1948, 445.106a.

445.106b Unlawful trade practices; United States government, use of terms, exception.

Sec. 6b. It shall be an unlawful trade practice for any person engaged in selling goods, wares or merchandise to individual consumers to sell or offer for sale any surplus materials as defined in the surplus property act of 1944 or any other goods, wares or merchandise under corporate or trade names which carry or which trade under or which in any way use in dealing with the public, directly or indirectly, any name which by reason of the inclusion of a word or words such as "army," "navy," "United States," "federal," "treasury," "procurement," "GI," "post exchange" or any others which connoting the United States government or its armed forces, or any of its departments or agencies, has a tendency to lead the purchasing public to believe that the establishment has some official relation to the United States government or that all of the articles sold or offered for sale are surplus materials: Provided, however, That this section shall not apply to any corporation all of the stock of which is owned by the United States.

HISTORY: Add. 1945, p. 110, Act 108, Eff. Sept. 6;—CL 1948, 445.106b.

445.106c Unlawful trade practices; unclaimed freight.

Sec. 6c. It shall be an unlawful trade practice for any person engaged in selling goods, wares or merchandise to individual consumers to sell or offer for sale any goods, wares or merchandise under corporate or trade names which carry or which trade under or which in any way use, in dealing with the public, directly or indirectly, any name which by reason of the inclusion of the words "unclaimed freight" has a tendency to lead the purchasing public to believe that the goods, wares or merchandise offered for sale are in fact unclaimed goods offered for sale by common carriers or authorized agents thereof: Provided, however, That this section shall not apply to any person if all goods, wares or merchandise sold or offered for sale are in fact unclaimed freight.

HISTORY: Add. 1945, p. 110, Act 108, Eff. Sept. 6;—CL 1948, 445.106c.

445.107 Unlawful trade practices; circuit court injunction; compensatory costs; sales tax, collection.

Sec. 7. The circuit court of the county where any unlawful trade practice is committed shall have jurisdiction and power, on petition of any person, and on a showing that the commission of such unlawful trade practice has caused damage or threatens to

cause damage to the petitioner or those represented by petitioner, to enjoin the commission of such unlawful trade practice or practices. Upon the granting of an injunction, the plaintiff or plaintiffs, in addition to regular taxable costs, shall be awarded compensatory costs, which shall include all sums reasonably expended to prepare and present the cause including all reasonable attorney fees incurred: Provided, however, That such compensatory costs may be denied if the trial judge rules that a meritorious, even though unsuccessful, defense was presented. The court may, in any case where such injunction is sought or issued, require and order the defendant or defendants in such proceeding to pay to the state board of tax administration any sum which the court finds should have been paid, but was not paid as a sales tax (pursuant to the provisions of Act No. 167 of the Public Acts of 1933, as amended or hereafter amended, being sections 205.51 to 205.78, inclusive, of the Compiled Laws of 1948) in connection with any sale or sales consummated in the course of the unlawful trade practice or practices complained of.

HISTORY: CL 1948, 445.107;—Am. 1956, p. 462, Act 214, Eff. Aug. 11.

445.108 Unlawful trade practices; rescission.

Sec. 8. Any person to whom is sold any goods, wares or merchandise in the course of an unlawful trade practice at his option, on discovery of such unlawful trade practice and on due notice to the seller, may rescind the sale and recover back from the seller the price or any portion thereof theretofore paid by him to the seller. The right of rescission must be exercised within 8 months subsequent to the date of the sale complained of.

HISTORY: CL 1948, 445.106;—Am. 1962, p. 104, Act 115, Eff. Mar. 28, 1963.

445.109 Unlawful trade practices; sale of product by employer to employee.

Sec. 9. Nothing in this act shall be deemed to prohibit the sale by an employer to his employees of his own products or property at any price.

HISTORY: CL 1948, 445.109.

Sec. 10. (This was a severing clause section.)

HISTORY: Rep. 1945, p. 416, Act 267, Imd. Eff. May 25.

Sec. 11. (This was a repeal section.)

HISTORY: Rep. 1945, p. 409, Act 267, Imd. Eff. May 25.

445.121-445.125 Repealed. 1964, p. 377, Act 250, Eff. Aug. 28.

Sections provided for security interests in consumer goods.

Act 28, 1969, p. 57; Imd. Eff. Jul. 10.

AN ACT to prescribe the rights and duties of persons who send and receive unsolicited merchandise.

The People of the State of Michigan enact:

445.131 Unsolicited merchandise; rights of recipients.

Sec. 1. No person, firm, partnership, association or corporation, or agent or employee thereof, in any manner, or by any means, shall offer for sale goods where the offer includes the voluntary and unsolicited sending of goods by mail or otherwise not actually ordered or requested by the recipient, either orally or in writing. The receipt of any such unsolicited goods shall be deemed for all purposes an unconditional gift to

the recipient. The recipient may refuse to accept delivery of the goods, is not bound to return them to the sender, and may use or dispose of them in any manner he sees fit without any obligation on his part to the sender.

HISTORY: New 1969, p. 57, Act 28, Imd. Eff. Jul. 10.

Act 119, 1964, p. 116; Eff. Aug. 28.

AN ACT to make it unlawful for vendors of goods to refuse to refund the down payment made upon the purchase price thereof in kind upon rescission of the sale; and to provide a penalty for the violation of this act.

The People of the State of Michigan enact:

445.141 Vendor's rescission of sale of goods; refund; goods, possession.

Sec. 1. When any person, partnership, association or corporation sells goods, wares and merchandise to any person on credit and receives partial payment of the purchase price thereof, and rescinds the sale after investigation of the credit standing of the purchaser, the vendor shall refund in full to the purchaser the entire portion of the purchase price paid. The refund shall be in money or in the goods received as partial payment of the goods purchased on credit. The vendor shall not make refund in any other manner. The provisions of this act shall apply when the vendor has possession of the goods while the credit investigation is being made.

HISTORY: New 1964, p. 116, Act 119, Eff. Aug. 28.

445.142 Violation of act; penalty.

Sec. 2. Any person who violates the provisions of this act is guilty of a misdemeanor.

HISTORY: New 1964, p. 116, Act 119, Eff. Aug. 28.

Act 50, 1937, p. 63; Eff. Oct. 29.

AN ACT to protect trade-mark owners, distributors and the public against injurious and uneconomic practices in the distribution of articles of standard quality under a distinguished trade-mark, brand or name.

The People of the State of Michigan enact:

445.151 Contracts as to sale or resale of commodities under distinguished trade-mark, brand or name; provisions allowable, inapplicability.

Sec. 1. No contract relating to the sale or resale of a commodity which bears, or the label or container of which bears, the trade-mark, brand, or name of the producer or owner of such commodity and which is in fair and open competition with commodities of the same general class produced by others shall be deemed in violation of any law of the state of Michigan by reason of any of the following provisions which may be contained in such contract:

1. That the buyer will not resell such commodity at less than the price stipulated by the vendor.

2. That the producer or vendee of a commodity require upon the sale of such commodity to another, that such purchaser agree that he will not, in turn, resell at less than the price stipulated by such producer or vendee.

Such provisions in any contract shall be deemed to contain or imply conditions that such commodity may be resold without reference to such agreement in the following cases:

1. When closing out the owner's stock for the purpose of discontinuing delivery of any such commodity: Provided, however, That such stock is first offered to the manufacturer of such stock, or his duly authorized agent, at the prevailing invoice stock price, at least 10 days before such stock shall be offered for sale to the public.

2. When the goods are damaged or deteriorated in quality, and notice is given to the public thereof.

3. By any officer acting under the orders of any court.

HISTORY: CL 1948, 445.151.

445.152 Unfair competition; injunction.

Sec. 2. Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of section 1 of this act, whether the person so advertising, offering for sale or selling is or is not a party to such contract, is unfair competition and is actionable at the suit of any person damaged thereby, and may be enjoined by a court of competent jurisdiction.

HISTORY: CL 1948, 445.152.

445.153 Inapplicability of act as to certain contracts and agreements; patronage dividends.

Sec. 3. This act shall not apply to any contract or agreement between producers or between wholesalers or between retailers as to sale or resale prices. The payment of patronage dividends by farmers' cooperative associations or companies on the basis of sales of commodities sold under the provisions of this act shall not be construed as a violation of the provisions of this act.

HISTORY: CL 1948, 445.153.

445.154 Trade-marks, brands and names; definitions.

Sec. 4. The following terms, as used in this act, are hereby defined as follows:

"Producer" means grower, baker, maker, manufacturer or publisher.

"Commodity" means any subject of commerce bearing a trade-mark, brand or name.

"Trade-mark," "brand" or "name" means any form, symbol or name appropriated by any person, as herein defined, who produces or owns or in any manner deals in a commodity, to designate the origin of ownership thereof.

"Person" includes individuals, partnerships, corporations, and any other business unit, or receiver, trustee or assignee of such business units.

"Retailer" means any person selling a commodity at retail.

HISTORY: CL 1948, 445.154.

Sec. 5. (This was a severing clause section.)

HISTORY: Rep. 1945, p. 415, Act 287, Imd. Eff. May 25.

Act 282, 1937, p. 523; Imd. Eff. Jul. 21.

AN ACT to prevent unfair discrimination, unfair methods of competition and destructive trade practices in the production, manufacture, distribution or sale of bakery products or petroleum products; to provide civil remedies and proceedings for the enforcement of this act; to define the duties of the attorney general with regard thereto; and to provide penalties for the violation of this act.

The People of the State of Michigan enact:

445.171 Bakery and petroleum industries; definitions.

Sec. 1. The word "person" as used in this act shall mean and include the plural as well as the singular, and any corporation, partnership or unincorporated or voluntary association, unless the context shall require a different construction. The word "commodity" shall mean and include any tangible personal property, article or product of general use or consumption.

HISTORY: CL 1948, 445.171.

445.172 Bakery and petroleum industries; unfair discrimination prohibited.

Sec. 2. Any person, doing business in this state and engaged in the production, manufacture, distribution or sale of bakery products or petroleum products, who shall, with the intent to injure or destroy the business of a competitor in any locality, discriminate between different sections, communities, or cities of this state by selling such products at a lower price in 1 section, community or city than is charged for such products by such person in another section, community or city, after making due allowance for the difference, if any, in the grade or quality or quantity of such products and in the actual cost of transportation from the place of production, or from the place of manufacture, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful.

HISTORY: CL 1948, 445.172.

445.173 Bakery and petroleum industries; proof of unfair discrimination, acts deemed prima facie evidence.

Sec. 3. Proof that any person has been discriminating between different sections, communities and cities of this state by selling bakery products or petroleum products at a lower rate in 1 section, community or city, than is charged for said products by said person in another section, community or city, after making an allowance for the difference, if any, in the grade or quality or quantity and in the actual cost of the transportation from the place of production, or from the place of manufacture, shall be prima facie evidence that the party so discriminating is guilty of unfair discrimination.

HISTORY: CL 1948, 445.173.

445.174 Bakery and petroleum industries; unfair methods of competition prohibited.

Sec. 4. Any person doing business in this state and engaged in the production, manufacture, distribution or sale of bakery products or petroleum products, who shall sell, offer for sale or advertise for sale such products at less than the cost thereof to any person, with the intent to injure or destroy the business of a competitor, shall be deemed guilty of an unfair method of competition, which is hereby prohibited and declared to be unlawful.

HISTORY: CL 1948, 445.174.

445.175 Cost; definition; exemptions from act.

Sec. 5. The term "cost" as applied to production or manufacture is hereby defined as including the cost of raw materials, labor, and all necessary overhead expense of the producer or manufacturer; and as applied to distribution "cost" shall mean the cost of such product to the distributor or vendor, plus the overhead expense of the distributor or vendor: Provided, however, This act shall not apply to any sale made: (1) In closing out in good faith the owner's stock or any part thereof, for the purpose of discontinuing his trade in any such stock or commodity, (2) when the goods are damaged or deteriorated in quality and notice is given to the public thereof, or (3) by an officer acting

under the orders of any court, (4) sales made in good faith for the purpose of meeting prices of a competitor selling the same article in the same locality or trade area.

HISTORY: CL 1948, 445.175.

445.176 Bakery and petroleum industries; destructive trade practices prohibited.

Sec. 6. Any person, doing business in this state and engaged in the production, manufacture, distribution or sale of bakery products or petroleum products, who shall, with the intent to injure or destroy a competitor, give, offer to give or advertise the intent to give away any commodity for the purpose of promoting the sale of any other commodity, shall be deemed guilty of a destructive trade practice, which is hereby prohibited and declared to be unlawful.

HISTORY: CL 1948, 445.176.

NOTE: This section was held unconstitutional in *People v. Victor*, 287 Mich. 506, 283 N.W. 686.

445.177 Bakery and petroleum industries; special services or privileges prohibited.

Sec. 7. Any person, doing business in this state and engaged in the production, manufacture, distribution or sale of bakery products or petroleum products, who shall, with the intent to injure or destroy the business of a competitor, extend to certain purchasers special service or privileges not extended to all purchasers of the same class, by means of secret payments, rebates, refunds, commissions or unearned discounts, either in the form of money or otherwise, shall be deemed guilty of unfair discrimination.

HISTORY: CL 1948, 445.177.

445.178 Established cost survey; admissible as evidence.

Sec. 8. Where a particular trade or industry, in which the person complained against is engaged, has an established cost survey for the locality and vicinity in which the offense is committed, such cost survey shall be deemed competent evidence to be used in proving the cost to such person.

HISTORY: CL 1948, 445.178.

445.179 Injunctive relief; damages, amount; information, use as evidence in prosecution.

Sec. 9. Any person, public corporation, or trade association, may maintain an action to enjoin a continuance of any act or acts in violation of this act and, if injured thereby, for the recovery of damages. If, in such action, the court shall find that the defendant is violating or has violated any of the provisions of this act, it shall enjoin the defendant from a continuance thereof. It shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant 3 times the amount of the actual damages, if any, sustained. The books and records of any such defendant may be brought into court and introduced, by reference, into evidence: Provided, That no information so obtained may be used against said defendant as a basis for a prosecution for the violation of this act.

HISTORY: CL 1948, 445.179.

445.180 Violation of act; duty of attorney general.

Sec. 10. It shall be the duty of the attorney general, upon the third conviction for violation of any of the provisions of this act, by any corporation, to institute a proceeding in the nature of a quo warranto, in the name of the state, for a forfeiture of the articles of incorporation, rights, franchises, privileges and powers exercised by such corporation and to permanently enjoin it from transacting business in this state. If in such proceeding, the court shall find such corporation is violating or has violated any of the provisions of this act, it shall enjoin such corporation from doing business in this

state permanently, or for such time as the court shall order, or shall annul the charter or revoke the franchise of such corporation.

HISTORY: CL 1948, 445.180.

445.181 Persons deemed liable under act.

Sec. 11. Any person, who, either as director, officer or agent of any firm or corporation, or as agent of any person, violating the provisions of this act, knowingly assists or aids, directly or indirectly in such violation, shall be responsible therefor equally with the person, firm or corporation for whom he acts.

HISTORY: CL 1948, 445.181.

445.182 Violation of act; misdemeanor, penalty.

Sec. 12. Any person who shall violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for not to exceed 1 year, or by a fine of not more than 5,000 dollars, or by both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1948, 445.182.

Sec. 13. (This was a severing clause section.)

HISTORY: Rep. 1945, p. 415, Act 267, Imd. Eff. May 25.

445.184 Construction of act.

Sec. 14. Nothing in this act shall be construed as repealing any other law or part thereof, but the remedies herein provided shall be cumulative to all other remedies provided by law.

HISTORY: CL 1948, 445.184.

Act 180, 1941, p. 273; Eff. Jan. 10, 1942.

AN ACT to require the bonding of persons, firms and corporations engaged in the business of soliciting accounts for collection or in the collection of accounts; to provide a penalty for the violation of this act, and to repeal Act No. 210 of the Public Acts of 1925, being sections 9728 to 9731, inclusive, of the Compiled Laws of 1929.

The People of the State of Michigan enact:

445.201 Collection agencies; surety bond, approval; county bond; conveyance of real estate, personal surety's justification; notice, intent to sell.

Sec. 1. It shall be unlawful for any person, firm or corporation engaged in the business of soliciting accounts for collection or in the collection of accounts for others, to engage in such business without first giving a bond to the people of the state of Michigan, executed by 2 or more persons as sureties, or by a surety company duly authorized to do business in this state, in the sum of \$5,000.00 conditioned upon the faithful accounting of all moneys collected upon accounts entrusted to such person, firm or corporation for collection. Said bond shall be approved by the prosecuting attorney or a circuit judge and filed in the office of the county clerk in the county where such person, firm or corporation maintains an established location for both the soliciting of accounts for collection as well as the collection of accounts for others: Provided, however, That any person, firm or corporation maintaining such business at one or more locations within this state shall provide one such bond in the amount of \$5,000.00 for each county wherein an established location is maintained for both the soliciting of accounts for collection as well as the collection of accounts for others: Provided further, That if such person, firm or corporation does not maintain an established location for both the soliciting of accounts for collection as well as the collection of accounts for others within this state, one such bond in the amount of \$5,000.00 shall be given to the

people of the state of Michigan for each county within this state where such person, firm or corporation engages in the collection of accounts for others, or solicits accounts for collection by agents and representatives, each of such bonds to be approved by the prosecuting attorney or a circuit judge of said county and filed with the county clerk in the county in which such person, firm or corporation engages in or intends to engage in such business. The sureties on such bond, if other than a surety company, shall justify their pecuniary responsibility in unencumbered real estate subject to execution under the laws of the state in double the amount of such bond, such real estate to be fully and accurately described in an affidavit and a notice of the pledging of such property as surety shall be recorded in the office of the register of deeds in the county in which said real estate is located. Before any sale of such real estate, or any part thereof, or the placing of any encumbrance thereon, 15 days' written notice of intention to sell or encumber the same shall be served upon the prosecuting attorney of said county, and in all cases upon the principal upon such bond. Within said 15 days the prosecuting attorney shall make an investigation to determine whether or not the remaining real estate, unencumbered and subject to execution, held by such surety or sureties has a value in double the amount of the penalty of such bond, and within said period the prosecuting attorney shall notify the principal as to whether or not said bond remains qualified or insufficient. If insufficient, the principal shall have 15 days after such notice within which to file a good and sufficient bond in compliance with the provisions of this act. For all defalcations existing up to the date of such 15-day written notice of intentions to sell or encumber, the lien heretofore created by the aforementioned recording with the register of deeds shall remain in full force and effect for 13 months from the date of such notice. It shall thereafter be unlawful for any person, firm or corporation to engage in the business of soliciting accounts for collection or in the collection of accounts for others until a good and sufficient bond shall be filed in accordance with the provisions of this act.

HISTORY: CL 1948, 445.201;—Am. 1953, p. 100, Act 104, Eff. Oct. 2;—Am. 1956, p. 223, Act 114, Eff. Aug. 11.

445.202 Collection agencies; report and remittance upon demand; failure, penalty; statement, contents; separate bank account.

Sec. 2. Any such person, firm or corporation engaged in such business who shall, after the expiration of 45 days from and after written demand shall be made therefor, fail to report and remit all sums so collected, less their commission or fee, to the person, firm or corporation for which the same is being collected, shall forfeit all commissions, charges and fees to which such person, firm or corporation would otherwise be entitled for the handling or collecting of such account or accounts: Provided, however, That the person, firm or corporation for which the same is being collected shall incorporate in such written demand an itemized statement of all moneys that have been collected by them direct from the debtor after the account or accounts were placed for collection, or a statement that no such moneys were so collected after the account or accounts were placed for collection. This remedy shall not be considered as exclusive but in addition to all other remedies provided by law in such cases.

Any person, firm or corporation engaged in such business shall, within 45 days after payment made to them on accounts, furnish to the person, firm or corporation for whom the accounts are being collected, a true statement showing date received by them, from whom collected, and amount collected, and accompany same with remittance to cover, less collection charges: Provided, however, There is not an amount due said collector from the creditor, properly billed in said statement, and the amount due is more than \$2.00. Any person, firm or corporation engaged in such business shall be deemed as having made such statement to the best of their knowledge, records and belief, that such statement is true, correct and complete and any material misstate-

ment shall be presumed to have been made with intent to defraud: Provided further, That any person, firm or corporation in such business shall maintain a separate and distinct bank account in which the share of all payments received belonging to the persons, firms or corporations for whom the accounts are being collected shall be deposited and left on deposit until a remittance is made to such persons, firms or corporations.

HISTORY: CL 1948, 445.202;—Am. 1953, p. 100, Act 104, Eff. Oct. 2.

445.203 Collection agencies; no established location, resident agent for service of process.

Sec. 3. Every such person, firm or corporation that does not maintain an established location for both the soliciting of accounts for collection as well as the collection of accounts for others within the state of Michigan, shall also, as a condition precedent to doing business in this state, appoint an agent or attorney resident herein, upon whom all lawful process against the person, firm or corporation may be served, with the like effect as if served upon the person, firm or corporation in the manner provided by law, and said appointment shall stipulate and agree, on the part of the person, firm or corporation making the same, that service of lawful process upon such agent or attorney shall be valid service upon such person, firm or corporation, and shall likewise file with the secretary of state an irrevocable written stipulation duly authenticated by such person, firm or corporation stipulating and agreeing that any legal process served on the secretary of state or his deputy personally or by registered mail, shall have the same effect as if personally served on such person, firm or corporation or its duly authorized attorney in this state.

HISTORY: CL 1948, 445.203;—Am. 1956, p. 224, Act 114, Eff. Aug. 11.

445.204 Bond; condition; cancellation; defalcations; actions, limitations.

Sec. 4. Said bond shall be for the use and benefit of all persons damaged by the wrongful conversion of any moneys by such person, firm or corporation and failure to report and remit the proceeds of the collection thereof, and any person so injured or aggrieved may bring suit upon such bond. Said bond as above provided shall be cancelled and terminated 30 days after the receipt by the principal, the county clerk or prosecuting attorney in the county in which such bond is filed, of written notices from the surety or sureties of its or their intention to cancel such bond. For all defalcations existing up and until the effective date of such cancellation the lien heretofore created by the aforementioned recording with the register of deeds shall remain in full force and effect for 1 year from the effective date of cancellation. No action on any bond shall be begun after 1 year from the termination of said bond.

HISTORY: CL 1948, 445.204;—Am. 1953, p. 101, Act 104, Eff. Oct. 2.

445.205 Bond; maximum amount.

Sec. 5. In no event shall there be any recovery or recoveries by any person or any number of persons for losses or series of losses on any 1 such bond or any number of bonds, in force or previously in force, in excess of \$5,000.00.

HISTORY: CL 1948, 445.205;—Am. 1953, p. 101, Act 104, Eff. Oct. 2.

445.206 Accounts; definition.

Sec. 6. The term "accounts" shall be construed to mean any claim or demand, written or unwritten, expressed or implied, growing out of the sale of goods, wares and merchandise, or the performance of any work, labor or services for another, or upon any written obligation.

HISTORY: CL 1948, 445.206.

445.207 Applicability of act; exemptions; exceptions.

Sec. 7. This act shall not apply to any person admitted to the practice of law in this state, or to any corporation, person or persons established as and doing a banking or trust business, or to persons acting in a fiduciary capacity: Provided, however, That no justice of the peace, constable, deputy sheriff or process server in this state shall engage in the business of soliciting and collecting of accounts for others on a fee basis within their legal jurisdiction not provided for under the provisions of their special authority, and that any such persons shall not be exempted from the requirements of this act, outside the legal jurisdiction of their office: Provided further, That any person, firm or corporation who sells, furnishes or maintains a letter or written demand service, designed for the purpose of making demand on any debtor on behalf of any creditor for the payment of any 'account' wherein the person, firm or corporation selling, furnishing or maintaining such letter or written demand service shall collect a fee or collection charge on moneys paid by a debtor, such person, firm or corporation shall be deemed to be engaged in the business of collection of accounts for others and shall not be exempted from the provisions of this act.

HISTORY: CL 1948, 445.207;—Am. 1953, p. 101, Act 104, Eff. Oct. 2.

445.208 Collection agencies; certificate of ownership, filing.

Sec. 8. At the time of filing of said bond, said person, firm or corporation shall also file with the county clerk, in case said person, firm or corporation maintains an established location for both the soliciting of accounts for collection as well as the collection of accounts for others within this state, and with the secretary of state, in case said person, firm or corporation does not maintain an established location for both the soliciting of accounts for collection as well as the collection of accounts for others within this state, a certificate containing the names and addresses of all persons, firms and corporations interested in or conducting or intending to conduct such business. Said bond shall not be approved until such certificate shall be filed.

HISTORY: CL 1948, 445.208;—Am. 1956, p. 224, Act 114, Eff. Aug. 11.

445.209 Collection agencies; noncompliance with act, penalty.

Sec. 9. Any person, firm or corporation engaged in the business of soliciting accounts or collection of accounts as herein defined, without first having filed a bond as provided in section 1 hereof and a certificate as provided in section 8 hereof or who shall violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$100.00 and not more than \$500.00, or imprisonment in the county jail or Detroit house of correction not exceeding 90 days, or both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1948, 445.209.

Sec. 10. (This was a severing clause section.)

HISTORY: Rep. 1945, p. 415, Act 267, Imd. Eff. May 25.

Sec. 11. (This was a repeal section.)

HISTORY: Rep. 1945, p. 409, Act 267, Imd. Eff. May 25.

ACT REPEALED: Act 210, 1925, CL 1929, 9728-9731.

Act 100, 1927, p. 139; Eff. Sep. 5.

AN ACT to regulate the buying and selling of poultry; to aid in the detection of and prevention of crime in the purchase and sale of poultry, and to provide a penalty therefor.

The People of the State of Michigan enact:

445.301 Purchasing poultry for resale; record.

Sec. 1. Any person, firm or corporation engaged in the business of purchasing poultry for the purpose of resale shall keep a record of the date of each such purchase, the name and residence of the seller, kind of poultry purchased and the description and number thereof, whether such poultry was raised by the seller or purchased from others, and if purchased from others, then the name of the person from whom the same was purchased by the seller and the date of such purchase, and if the seller delivers such poultry by means of automobile or other vehicle having a license thereon, then the number of such license.

HISTORY: CL 1929, 9732;—CL 1948, 445.301.

445.302 Duty of seller; statement, signature.

Sec. 2. The seller shall at the time of making sale of any poultry as provided in the preceding section, truthfully state all of the facts as aforesaid; shall sign his name to such statement and shall certify to the correctness thereof.

HISTORY: CL 1929, 9733;—CL 1948, 445.302.

445.303 Blanks for record; furnished by secretary of state.

Sec. 3. Each and every person, firm or corporation, so purchasing poultry as aforesaid, shall procure from the secretary of state, suitable blanks for such record. It shall be the duty of said secretary of state to furnish said blanks free of cost to the applicant upon demand; and all purchasers of poultry as hereinbefore designated, shall order and keep on hand a supply of such blanks.

HISTORY: CL 1929, 9734;—CL 1948, 445.303.

445.304 Blanks for record; custody, inspection.

Sec. 4. All such blanks when filled shall constitute a record of the purchase or purchases made; shall be safely kept by such purchasers for a period of 1 year and shall at all times be open to the inspection of all sheriffs, their deputies, police officers, or other law enforcement officers of this state upon demand by such officer.

HISTORY: CL 1929, 9735;—CL 1948, 445.304.

445.305 Violation of act; penalty.

Sec. 5. Any person violating any of the provisions of the foregoing sections, shall be deemed guilty of a misdemeanor and punishable by any court of competent jurisdiction, by a fine of not exceeding 100 dollars or imprisonment in the county jail of the county where the offense is committed, for a period of not exceeding 90 days, or both such fine and imprisonment in the discretion of the court, together with the costs of prosecution.

HISTORY: CL 1929, 9736;—CL 1948, 445.305.

Act 184, 1913, p. 364; Eff. Aug. 14.

AN ACT to regulate the business of selling farm products on commission, providing all commission merchants dealing in farm products shall be licensed, to provide against and punish fraud and deception in the sale of farm products on commission, and defining the duties of the state dairy and food commissioner relative thereto.

The People of the State of Michigan enact:

445.331 Sale of farm products on commission; definitions.

Sec. 1. As used in this act:

(a) "Commission merchant" means every person, firm, association and corporation, licensed under this act to receive, sell or offer for sale on commission within this state any kind of farm produce.

(b) "Farm produce" means all agricultural, horticultural, vegetable and fruit products of the soil, and meats, poultry, eggs, dairy products, nuts and honey, but shall not include timber or floricultural products.

HISTORY: CL 1915, 7010;—CL 1929, 9737;—CL 1948, 445.331;—Am. 1954, p. 380, Act 163, Eff. Aug. 13;—Am. 1965, p. 126, Act 93, Eff. Mar. 31, 1966.

445.332 Commission merchant; license; application, qualifications, issuance, term, fee.

Sec. 2. On and after October first, 1913, no person, firm, association or corporation, whose principal place of business shall be located in any city in this state, shall receive, sell or offer for sale on commission within this state any kind of farm produce, without a license as provided in this article. Every person, firm, association and corporation in this state receiving farm produce for sale on commission shall annually on or before October first, file an application with the state dairy and food commissioner for a license to do a commission business in farm produce. Such application shall state the kind or kinds of produce which the applicant proposes to handle, the full name of the person or corporation applying for such license, and if the applicant be a firm or association, the full name of each member of the firm or association, the city and street number at which the business is to be conducted, and such other facts as the state dairy and food commissioner shall prescribe. Such applicant shall further satisfy the state dairy and food commissioner of his or its character, responsibility and good faith in seeking to carry on a commission business. The state dairy and food commissioner shall thereupon issue to such applicant, on payment of 15 dollars, in cities of less than 20,000 population, and 25 dollars, in cities of more than 20,000 population, a license entitling the applicant to conduct the business of receiving and selling farm produce on commission at the place named in the application until the tenth day of October next following. Such license shall not be issued, however, to any applicant if during the preceding year a complaint from any consignor of farm produce for sale on commission shall have been filed with the state dairy and food commissioner against such applicant for any of the grounds specified in section 4 hereof, and such complaint shall have been established as true and just to the satisfaction of the commissioner after such complaint shall have been investigated by the commissioner in the manner provided by section 3 of this act.

HISTORY: CL 1915, 7011;—CL 1929, 9738;—CL 1948, 445.332.

DAIRY AND FOOD COMMISSIONER: Abolished; powers and duties transferred to the food and drug commissioner, which in turn has been abolished and superseded by the department of agriculture, see Compilers' §§ 289.2 and 285.2, respectively.

445.333 License; applicants, investigation; procedure.

Sec. 3. The commissioner and his assistants shall have power to investigate, upon the complaint of an interested person, or of his own motion, the record of any person, firm or corporation applying for a license, or any transaction involving the solicitation, receipt, transportation, sale or attempted sale of farm produce on a commission basis, including the making of charges in selling, carting, or other services, the failure to make proper and true accounts and settlements at prompt and regular intervals, the making of false statements as to condition, quality or quantity of goods received or while in storage, the making of false statements as to market conditions, or the failure to make payment for goods received or other alleged injurious transactions; and for such purpose may examine the ledgers, books of account, memoranda or other documents of any commission merchant and may take testimony therein under oath; but information relating to the general business of any such person, contained in such investigation and not relating to the immediate purpose thereof shall be deemed of a

confidential nature by the commissioner, his assistants and employees. When a complaint is filed with the commissioner, he shall attempt to secure an explanation or adjustment; failing this, within 10 days he shall cause a copy thereof, together with a notice of a time and place for a hearing on such complaint, to be served personally, or by mail, upon such commission merchants. If served by mail such complaint and notice shall be directed to such commission merchant at his place of business and the postage prepaid thereon. Such service shall be made at least 7 days before the hearing. At the time and place appointed for such hearing, which shall be within the county where the commission merchant is licensed to do business, the commissioner or his assistants shall hear the parties to such complaint, shall have power to administer an oath, and shall enter in the office of the state dairy and food commissioner a decision either dismissing such complaint or specifying the fact which he deemed established on such hearing.

HISTORY: CL 1915, 7012;—CL 1929, 9739;—CL 1948, 445.333.

COMMISSIONER: See note to Compilers' § 445.332.

445.334 License; refusal, revocation, grounds.

Sec. 4. The state dairy and food commissioner may decline to grant a license or may revoke a license already granted, where he is satisfied of the existence of the following cases or either of them:

1. Where false charges have been imposed for handling or services, or charges other than as by a schedule agreed on by the parties, or other than those customary in the trade;
2. Where there has been a failure to account promptly and properly or to make settlements with intent to defraud;
3. Where there have been false statements as to condition, quality or quantity of goods received or held for sale on commission;
4. Where there have been false or misleading statements as to market condition with intent to deceive;
5. Where there have been combinations to fix prices below the market level;
6. Where there has been a continual course of dealings of such nature as to satisfy the commissioner of inability of the commission merchant to properly conduct the business, or of an intent to deceive or defraud customers;
7. Where the commission merchant directly or indirectly purchases the goods for his own account without prior authority therefor, or without notifying the consignor thereof.

HISTORY: CL 1915, 7013;—CL 1929, 9740;—CL 1948, 445.334.

COMMISSIONER: See note to Sec. 2 of this act.

445.335 License; refusal, revocation, judicial review; effect.

Sec. 5. The action of the commissioner in refusing to grant a license, or in revoking a license granted under this act, shall be subject to review by a writ of certiorari, and if such proceedings are begun; until the final determination of certiorari proceedings and all appeals therefrom, the license of such commission merchant shall be deemed to be in full force and effect, or if such license shall have been refused, such commission merchant shall not be deemed to have violated the provisions of this act, prohibiting the transaction of such business without a license, provided the fee for such license shall have been paid.

HISTORY: CL 1915, 7014;—CL 1929, 9741;—CL 1948, 445.335.

445.336 License; list of commission merchants, publication.

Sec. 6. The dairy and food commissioner shall publish in pamphlet form as often as he thinks is necessary, a list of all the licensed commission merchants.

HISTORY: CL 1915, 7015;—CL 1929, 9742;—CL 1948, 445.336.

COMMISSIONER: See note to Sec. 2 of this act.

445.337 Licenses; fees, credited to general fund.

Sec. 7. The funds received for the license issued under section 2 of this act shall be paid into the state treasury and any accumulated balance as of June 30, 1949, shall be credited to the general fund.

HISTORY: CL 1915, 7016;—CL 1929, 9743;—CL 1948, 445.337;—Am. 1949, p. 141, Act 134, Imd. Eff. May 20.

445.338 Shipper's complaint; investigation.

Sec. 8. If any shipper of farm produce to a commission merchant be dissatisfied with any statement relative to the sale of such shipment, he may apply to the state dairy and food commissioner, in writing, within 60 days of making such shipment, for an investigation. The state dairy and food commissioner shall treat such application as a complaint, and shall cause a full investigation of the transaction complained of to be made either by himself, or 1 of his assistants in the manner provided by section 5 of this act.

HISTORY: CL 1915, 7017;—CL 1929, 9744;—CL 1948, 445.338.

COMMISSIONER: See note to Sec. 2 of this act.

445.339 Unlawful acts; misdemeanor.

Sec. 9. Any person, who being a commission merchant in farm produce, shall (a) impose false charges for handling or services in connection with food products, or (b) fail to account for such food products, promptly and properly and to make settlements therefor with intent to defraud, or (c) shall make false or misleading statement or statements as to the market conditions with intent to deceive, or (d) enter into any combination to fix prices below market level, (e) directly or indirectly purchase for his or its own account, goods received by him upon consignment without prior authority therefor from the consignor, or shall fail to promptly notify the consignor of such purchase for his own account, shall be guilty of a misdemeanor.

HISTORY: CL 1915, 7018;—CL 1929, 9745;—CL 1948, 445.339;—Am. 1954, p. 380, Act 163, Eff. Aug. 13;—Am. 1965, p. 126, Act 93, Eff. Mar. 31, 1966.

445.340 Inapplicability of act.

Sec. 10. Nothing in this act shall apply to retail dealers, real estate dealers or auctioneers selling farm products on commission.

HISTORY: CL 1915, 7019;—CL 1929, 9746;—CL 1948, 445.340.

AUCTIONEERS: See Compilers' § 446.26 et seq.

REAL ESTATE DEALERS: See Compilers' § 451.201 et seq.

445.341 Failure to secure license; penalty; evidence.

Sec. 11. Any commission merchant of farm produce, as defined in sections 1 and 2 of this act, who shall fail to take out a license as required by this act, shall be deemed guilty of a misdemeanor, and for each and every offense of selling farm produce on commission without such license, shall be punished by a fine of not more than 100 dollars, and the costs of prosecution, or by imprisonment in the county jail for not more than 30 days, or both in the discretion of the court, and the fact that any person advertises and holds himself out as a commission merchant of farm produce, shall be prima facie evidence of the fact that he is a commission merchant of farm products as defined by this act.

HISTORY: Add. 1915, p. 25, Act 18, Eff. Aug. 24;—CL 1915, 7020;—CL 1929, 9747;—CL 1948, 445.341.

Act 51, 1925, p. 61; Eff. Aug. 27.

AN ACT to license and regulate the business of transient merchants, to provide penalties for the violation of this act, and to repeal certain inconsistent acts.

The People of the State of Michigan enact:

445.371 Transient merchants; definitions.

Sec. 1. The term "transient merchant" as used in this act shall mean any person, firm, association or corporation engaging temporarily in a retail sale of goods, wares or merchandise, in any place in this state and who, for the purpose of conducting such business, occupies any lot, building, room or structure of any kind. Such term shall not be construed to apply to any person selling goods, wares or merchandise of any description raised, produced, or manufactured by the individual offering the same for sale nor to persons handling vegetables, fruits or perishable farm products at any established city or village market, or parties operating stores or refreshment stands at resorts or having booths on or adjacent to the property owned or occupied by them, nor to any stands on any fairgrounds.

The word "person" as used in this act shall include any corporation, or partnership, or 2 or more persons having a joint or common interest.

HISTORY: CL 1929, 9748;—CL 1948, 445.371.

FORMER ACTS: Act 259 of 1899; Act 191 of 1901, being CL 1915, 6964-7000; Act 294 of 1913, being CL 1915, 7001-7009, as amended by Act 191 of 1915 and Act 383 of 1921.

VETERANS: For the effect of an act, allowing free hawkers' and peddlers' licenses to ex-service men, on the 2 acts which were repealed by the present act, see Compilers' § 35.443, and § 445.371.

445.372 Transient merchants; license required.

Sec. 2. It shall be unlawful for any person, either as principal or agent, to engage in business as a transient merchant in the state of Michigan without having first obtained a license in the manner herein provided.

HISTORY: CL 1929, 9749;—CL 1948, 445.372.

445.373 License; application, contents; bond, deposit, fee; expiration.

Sec. 3. Any person desiring to engage in such business shall make and file with the county treasurer of the county in which he intends to do business, a written application stating the applicant's name, residence, place where he intends to do business and kind of business. If said applicant is acting as agent for another person, he shall cause to be filed with such county treasurer a power of attorney appointing said county treasurer the agent of said principal on whom service of process may be made in any suit commenced against him. Said applicant shall at the same time deposit with said county treasurer, or file a surety company bond in a like amount, the sum of 500 dollars and pay to him the further sum of 25 dollars as a license fee, whereupon said county treasurer shall issue to said applicant a license as herein provided if satisfied that the business to be conducted by such merchant is not intended to cheat or defraud the public, which license shall expire on December thirty-first following the date of issue.

HISTORY: CL 1929, 9750;—CL 1948, 445.373.

445.374 License; deposit; subjection to claims; balance, deposit.

Sec. 4. Deposits made with such county treasurer as required by the preceding section shall be subject to claims of creditors and claims for local license fees on behalf of any city, village or township in all cases where a judgment has been obtained against such transient merchant in any court in this state and the time for appealing such judgment has expired. In such cases garnishment proceedings may be commenced in such court against said county treasurer. It shall thereupon be the duty of the county treasurer to remit to any such court any balance of said cash deposit remaining in his hands not exceeding the amount of said judgment, for the purpose of satisfying the same. Any balance of said cash deposit remaining in the hands of the county treasurer 4 months after the expiration of said license shall be remitted to said transient merchant, provided, if, at such date, the county treasurer shall have received notice of any

suit then pending against said transient merchant, said deposit shall not be returned until 60 days after the termination of such suit.

HISTORY: CL 1929, 9751;—CL 1948, 445.374.

445.375 License; invalidation, exhaustion of deposit; revocation.

Sec. 5. Any such license shall be void as soon as the deposit made with the county treasurer as provided in section 3 hereof shall have been exhausted because of garnishment suits as mentioned in the preceding section. Such county treasurer may revoke any license issued by him hereunder, for good cause shown, after giving the licensee reasonable notice and opportunity to be heard.

HISTORY: CL 1929, 9752;—CL 1948, 445.375.

445.376 Transient merchants; evidence.

Sec. 6. Transaction of business as defined in section 1 of this act by any person for a period of less than 6 months consecutively shall be prima facie evidence that such person was a transient merchant within the intent and meaning hereof.

HISTORY: CL 1929, 9753;—CL 1948, 445.376.

445.377 Violation of act; penalty.

Sec. 7. Any violation of this act shall be a misdemeanor and any person upon conviction thereof shall be punished by a fine of not more than 100 dollars, or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1929, 9754;—CL 1948, 445.377.

445.378 Effect of act as to local license or regulation.

Sec. 8. Nothing in this act contained shall interfere with the licensing or regulation of said business by any municipality, township, or county in this state not inconsistent with the provisions hereof.

HISTORY: CL 1929, 9755;—CL 1948, 445.378.

Sec. 9. (This was a repeal section.)

HISTORY: CL 1929, 9756;—Rep. 1945, p. 406, Act 267, Imd. Eff. May 25.

ACT REPEALED: Act 191, 1901, CL 1915, 6984-7000; Act 294, 1913, CL 1915, 7001-7009.

Sec. 10. (This was a severing clause section.)

HISTORY: CL 1929, 9757;—Rep. 1945, p. 413, Act 267, Imd. Eff. May 25.

Act 350, 1917, p. 863; Imd. Eff. May 10.

AN ACT to regulate and license second hand dealers and junk dealers; and to prescribe penalties for the violation of the provisions of this act. Am. 1939, p. 29, Act 15, Eff. Sep. 29.

The People of the State of Michigan enact:

445.401 Second hand or junk dealer; license required in certain cities and villages.

Sec. 1. No person, corporation, copartnership or firm shall hereafter carry on the business of dealer in second hand goods or junk dealer in any of the cities or villages of this state having a population of 1,000 located in counties of 25,000 or over without having first obtained, from the mayor of the city or the president of the village where such business is to be carried on, a license subject to the provisions of this act authorizing such person, corporation, copartnership or firm to carry on such business.

HISTORY: CL 1929, 9758;—Am. 1931, p. 196, Act 127, Imd. Eff. May 19;—CL 1948, 445.401.

PAWNBROKERS: Right to deal in second hand goods, see Compilers' § 446.207.

MOTOR VEHICLES: Licensing of dealers in second hand vehicles or parts, see Compilers' § 257.248.

JUNK DEALERS: Dwellings or premises thereof not to be used for the storage or handling of junk, see Compilers' § 125.479. Testing of

weights and measures of junk dealers, see Compilers' § 290.604. Possession of towels or similar articles for hire as presumptive evidence of unlawful traffic therein, see Compilers' § 429.203.

445.402 Second hand or junk dealer; license, issuance; objection by adjacent property owners; terms; transferability; fee.

Sec. 2. The mayor of any such city, or president of any such village, may from time to time grant under his hand and the official seal of his office to any suitable person, corporation, copartnership or firm, a license authorizing such person, corporation, copartnership or firm to carry on the business of a second hand dealer or junk dealer subject to the provisions of this act. Said license shall designate the particular place in said city or village where such person, corporation, copartnership or firm shall carry on said business, and no person, corporation, copartnership or firm receiving said license shall carry on said business in any place other than as designated in said license. It shall be unlawful for the issuing officer to grant a license to any person, firm or corporation doing, or desiring to do a junk business in any residential community, where 65 per cent or more of the property owners within a radius of 1 city block of such junk business, or contemplated junk business, petition the issuing officer not to do so: Provided, however, That in case any person shall have no regular place of business, a license shall be issued to such person to carry on the business of second hand dealer or junk dealer either by horse and wagon, cart, automobile or by pack. The said license shall be for the period of 1 year from date of issuance unless sooner revoked for cause, and shall not be transferable. It shall be within the power of the legislative body of any city, or the trustees and president of any village, to fix the amount to be paid as an annual license fee at any amount not more than 50 dollars.

HISTORY: CL 1929, 9759;—CL 1948, 445.402.

445.403 Second hand or junk dealer; definition.

Sec. 3. Any person, corporation or member or members of a co-partnership or firm whose principal business is that of purchasing, selling, exchanging, storing or receiving second hand articles of any kind, cast iron, old iron, old steel, tool steel, aluminum, copper, brass, lead pipe or tools, lighting and plumbing fixtures, is hereby defined to be a second hand dealer or junk dealer.

HISTORY: CL 1929, 9760;—Am. 1939, p. 29, Act 15, Eff. Sept. 29;—CL 1948, 445.403.

445.404 Second hand or junk dealer; sign, display; transactions, record.

Sec. 4. Such second hand dealer or junk dealer as defined in the preceding section shall post in a conspicuous place in or upon his shop, store, wagon, boat or other place of business, a sign having his name and occupation legibly inscribed thereon, and shall keep a separate book open to inspection by member of a police force, city marshal, constable or other person, in which shall be written in the English language at the time of the purchase or exchange of such articles, a description thereof, the name, description and residence of the person from whom the same was purchased and received, and the day and hour when such purchase or exchange was made. Each entry shall be numbered consecutively, commencing with number 1.

HISTORY: CL 1929, 9761;—CL 1948, 445.404.

445.405 Second hand or junk dealer; goods purchased; retention, tagging, record; exceptions.

Sec. 5. Such articles, purchased or exchanged shall be retained by the purchaser thereof, for at least 15 days before disposing of them, in an accessible place in the building where such articles are purchased and received. A tag shall be attached to such articles in some visible and convenient place, with the number written thereupon, to correspond with the entry number in such book. Such purchaser shall prepare and deliver on Monday of each week to the chief of police or chief police officer of the city in which such business is carried on, before 12 o'clock noon, a legible and correct

copy written in the English language from such book, containing a description of each article purchased or received during the preceding week, the hour and day when the purchase was made, and the description of the person from whom it was purchased. Such statement shall be verified by the affidavit of the person subscribing his name thereto. This section shall not apply to old rags, waste paper and household goods except radios, televisions, record players and electrical appliances. Nothing herein contained shall make it necessary for the purchaser to retain articles purchased from individuals, firms or corporations having a fixed place of business after said articles shall have been reported.

HISTORY: CL 1929, 9762;—CL 1948, 445.405;—Am. 1961, p. 36, Act 35, Eff. Sep. 8.

445.406 Second hand or junk dealer; person without business place; retention of goods, record for police.

Sec. 6. If the purchaser or receiver, by exchange or otherwise, as described in section 3, is a peddler or goes about with a wagon to purchase or obtain by exchange or otherwise, any of such articles, and does not have a place of business in a building, he need not retain such articles for 15 days before selling them, provided on Monday of each week he files with the chief of police or chief police officer of the city or village in which he is located a report showing the place of business of the person to whom such sale was made; a copy of the record required by such section to be kept in a separate book of the articles purchased or received during the preceding week, including a description of such articles sold, to whom sold and his place of business.

HISTORY: CL 1929, 9763;—CL 1948, 445.406.

445.407 Second hand or junk dealer; unlawful purchases.

Sec. 7. No person shall purchase or receive by sale, barter or exchange or otherwise, any article mentioned in this act from any person between the hours of 9 p.m. and 7 a.m., nor from any person who is at the time intoxicated or from an habitual drunkard or from any person known by said second hand dealer or junk dealer to be a thief or any associate of thieves or receiver of stolen property or from any person he has reason to suspect of being such.

HISTORY: CL 1929, 9764;—CL 1948, 445.407.

RECEIVING STOLEN GOODS: Penalty, see Compilers' § 750.535 et seq.

PURCHASE FROM MINORS: See Compilers' § 750.137.

445.408 Violation of act; penalty.

Sec. 8. Every person violating any of the provisions of this act shall be punished by a fine not exceeding 100 dollars, nor less than 10 dollars, or by imprisonment in the county jail not exceeding 6 months, or by both such imprisonment and fine. In case any person, corporation, copartnership or firm shall be found guilty of violating any of the provisions of this act, the license issued to such person, corporation, copartnership or firm shall be deemed to have been revoked ipso facto, and such person, corporation, copartnership or firm shall not be permitted to carry on such business within this state for a period of 1 year after such conviction.

HISTORY: CL 1929, 9765;—CL 1948, 445.408.

Act 12, 1929, p. 28; Eff. Aug. 28.

AN ACT to give power to the township board of any township to license and regulate junk yards and places for the dismantling, wrecking and disposing of the junk and/or refuse material of automobiles; to prescribe rules, regulations and conditions for the operation of the same; to provide penalties for the operation of the same without a license and for the violation of any rule, regulation or condition. Am. 1935, p. 47-48, Act 34, Imd. Eff. Apr. 27.

The People of the State of Michigan enact:

445.451 Junk yards; township licenses, fees, regulations, state of purchases.

Sec. 1. The township board of any township may, at any regular meeting, adopt a resolution providing for the licensing of junk yards and places for the dismantling, wrecking and disposing of the junk and/or refuse material of automobiles; may prescribe the amount of an annual license fee which shall not exceed 25 dollars, and prescribe the form of an application for such license, and adopt rules, regulations and conditions for the operation thereof, which in the discretion of said board will best protect the public health, interests and general welfare of their township, and shall specify the date when such resolution and the rules, regulations and conditions shall take effect: Provided, however, That the licensee shall, at least once each month, prepare and mail to the commissioner of the department of public safety at East Lansing, Michigan, a sworn statement of all purchases made by said licensee. The township board may in its discretion, for just cause, refuse to grant the license provided for in this act.

HISTORY: CL 1929, 9766;—Am. 1935, p. 47-48, Act 34, Imd. Eff. April 27;—CL 1948, 445.451.

AUTOMOBILES: Licensing of dealers in second hand motor vehicles or parts, see Compilers' § 257.248.

445.452 Junk yards; regulations, publication.

Sec. 2. Said resolution and the rules, regulations and conditions enacted thereunder shall within 5 days after their adoption and before the same shall take effect, be published by posting the same in 3 conspicuous places in the township, and an affidavit of said posting shall be filed in the office of the township clerk.

HISTORY: CL 1929, 9767;—CL 1948, 445.452.

445.453 Violation of act; penalty.

Sec. 3. Any person, firm, association or corporation which shall operate such an establishment without a license, or shall violate any rule, regulation or condition, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding 100 dollars, or by imprisonment in the county jail not to exceed 90 days, or by both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1929, 9768;—CL 1948, 445.453.

Act 231, 1945, p. 325; Eff. Sep. 6.

AN ACT to prescribe additional regulations and requirements for pawnbrokers, second-hand dealers and junk dealers; to provide for the taking of fingerprints and the making of reports to enforcement officers; to prescribe penalties for the violation of the provisions of this act; and to declare the effect of this act.

The People of the State of Michigan enact:

445.471 Pawnbrokers, secondhand and junk dealers; construction of act; definitions.

Sec. 1. This act shall be construed as supplementing the laws of this state and city and village ordinances and charters regulating pawnbrokers, secondhand dealers and junk dealers.

The term "secondhand dealer" or "junk dealer" as used in this act shall mean any person, corporation, or member or members of a co-partnership or firm whose principal business is that of purchasing, storing, selling, exchanging and receiving second hand personal property of any kind or description. The term "pawnbroker" as used in this act shall mean any person, corporation, or member or members of a co-

partnership or firm, who loans money on deposit or pledge of personal property, or other valuable thing, other than securities or printed evidence of indebtedness, or who deals in the purchasing of personal property or other valuable thing on condition of selling the same back again at a stipulated price.

HISTORY: CL 1948, 445.471.

445.472 Pawnbrokers, secondhand and junk dealers; fingerprints of seller, copies to municipal and state police.

Sec. 2. At the same time any pawnbroker, secondhand dealer or junk dealer in this state shall receive any article of personal property, or other valuable thing, by way of pledge or pawn, or shall acquire or purchase any article of personal property, or other valuable thing, except new articles, wares, or merchandise purchased at wholesale from manufacturers, wholesale distributors or jobbers for retail sale to customers, except also motor vehicles, old rags, waste paper, books, magazines, tapestries, antiques and household furniture, he shall take in duplicate the legible imprint of the right thumb of the person from whom such property was received, or if that be not possible, of the left thumb or some other finger of such person. Such fingerprint shall be taken under such rules and regulations as prescribed by the commissioner of the Michigan state police. One copy shall be forwarded within 48 hours, together with a statement of the nature of the property received, to the chief of police or chief police officer of the city in which the place of business of such pawnbroker, secondhand dealer or junk dealer is located, or to the sheriff of the county in case such place of business shall be located outside the corporate limits of any city, together with a statement of the nature of the property received. The second copy shall be forwarded within 48 hours, together with a statement of the nature of the property received, to the commissioner of the Michigan state police in East Lansing.

HISTORY: CL 1948, 445.472;—Am. 1953, p. 120, Act 121, Eff. Oct. 2.

445.473 Pawnbrokers, secondhand and junk dealers; statement to commissioner of state police.

Sec. 3. Within 30 days after the effective date of this act, each pawnbroker, secondhand dealer and junk dealer herein shall send to the commissioner of the Michigan state police a statement in writing containing the name or title under which such business is operated, owners thereof, street address, city or village and county in which such business is located.

HISTORY: CL 1948, 445.473.

445.474 Commissioner of state police; forms.

Sec. 4. The commissioner of the Michigan state police shall furnish forms for the taking of the fingerprints and the statement required under section 2 of this act. The statement shall show the name and address of the person from whom such property was received, and his place of employment, if any.

HISTORY: CL 1948, 445.474.

445.475 Violation of act; misdemeanor.

Sec. 5. Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor.

HISTORY: CL 1948, 445.475.

445.476 Inapplicability of act.

Sec. 6. Nothing in this act shall be deemed to apply to any secondhand or junk dealer purchasing scrap iron and metal, except scrapped motor vehicles not purchased from a licensed second hand or junk dealer.

HISTORY: Add. 1953, p. 120, Act 121, Eff. Oct. 2.

Act 232, 1937, p. 362; Eff. Oct. 29.

AN ACT to authorize and require the township board of any township to license and regulate used car lots, as herein defined; to prescribe rules, regulations and conditions for the operation of the same; to prescribe penalties for the violation of the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act.

The People of the State of Michigan enact:

445.501 Used car lot; definition.

Sec. 1. The term "used car lot" as used in this act shall be construed to mean any place where used motor vehicles are displayed and offered for sale in the open.

HISTORY: CL 1948, 445.501.

445.502 Township used car lot; resolution; license, fee, application; rules; licensee, sworn statement, mailing.

Sec. 2. The township board of any township is hereby authorized and may adopt a resolution providing for the licensing of used car lots. In such regulations the township board may prescribe the amount of an annual license fee which shall not exceed 100 dollars. The township board shall prescribe the form of an application for such license. The township board is hereby authorized to adopt rules, regulations and conditions for the operation of used car lots, which in the discretion of said board will best protect the public health, interests and general welfare of the township, and the board shall specify the date when such resolution and the rules, regulations and conditions shall take effect. The licensee shall, at least once each month, prepare and mail to the commissioner of the Michigan state police at East Lansing, Michigan, and the secretary of state at Lansing, Michigan, a sworn statement of all purchases and sales made by the said licensee. The township board may in its discretion, for just cause, refuse to grant the license provided for in this act.

HISTORY: CL 1948, 445.502.

445.503 Resolution, rules and regulations; posting, affidavit; township clerk, filing.

Sec. 3. Said resolution, and the rules, regulations and conditions enacted hereunder shall, within 5 days after their adoption and before the same shall take effect, be published by posting the same in 3 conspicuous places in the township and an affidavit of said posting shall be filed in the office of the township clerk.

HISTORY: CL 1948, 445.503.

445.504 Violation of act; penalty.

Sec. 4. Any person, firm, association or corporation which shall operate a used car lot without a license, or shall violate any rule, regulation or condition, shall be deemed guilty of a misdemeanor, and shall be punished as provided by the laws of this state.

HISTORY: CL 1948, 445.504.

Sec. 5. (This was a repeal section.)

HISTORY: Rep. 1945, p. 408, Act 267, Imd. Eff. May 25.

Act 200, 1937, p. 320; Eff. Oct. 29.

AN ACT to regulate the sale of second-hand watches; and to prescribe penalties for the violation of the provisions of this act.

The People of the State of Michigan enact:

445.551 Second-hand watches; definitions.

Sec. 1. For the purposes of this act:

“Consumer” shall mean an individual, firm, partnership, association or corporation who buys for own use or for the use of another but not for re-sale.

“Second-hand watch” means:

(1) A watch which, as a whole, the case thereof, or the movement thereof, has previously been sold to a consumer: Provided, however, That a watch which has been so sold, and is thereafter returned within 60 days from the date of such sale, either through an exchange or for credit, to the same person who sold such watch to the consumer, shall not be deemed to be a second-hand watch for the purpose of this act, if such person keeps a written or printed record setting forth the name and address of the consumer, the date of the sale to the consumer, the name of the watch or its maker, and the serial numbers (if any) on the case and the movement of the watch or other distinguishing numbers or identification marks, the aforesaid record to be kept for at least 3 years from the date of the sale of the watch and to be open for inspection during all business hours by the prosecuting attorney of the county in which such person is engaged in business; or

(2) Any watch whose case or movement, serial numbers or other distinguishing numbers or identification marks have been erased, defaced, removed, altered or covered.

HISTORY: CL 1948, 445.551.

445.552 Second-hand watches; sale; tag, size, wording.

Sec. 2. Any person, or agent or employee thereof, who sells a second-hand watch, shall affix and keep affixed to the same a tag at least 1 inch by 1 ½ inches with the words “second-hand” legibly written or printed thereon in the English language. For the purposes of this act, “sell” shall be deemed to include offer to sell or exchange, expose for sale or exchange, possess with intent to sell or exchange, and sell or exchange.

HISTORY: CL 1948, 445.552.

445.553 Second-hand watches; invoice, contents.

Sec. 3. Any person, or agent or employee thereof, who sells a second-hand watch, shall deliver to the vendee a written notice setting forth the name and address of the vendor, the name and address of the vendee, the date of the sale, the fact that the watch is second-hand, the name of the watch or its maker, and the serial number (if any), or other distinguishing numbers or identification marks on its case and movement. In the event the serial numbers or other distinguishing numbers or identification marks have been erased, defaced, removed, altered or covered, this shall be set forth in the invoice. A duplicate of the aforesaid invoice shall be kept on file by the vendor of such second-hand watch for at least 1 year from the date of the sale thereof and shall be open to inspection during all business hours by the prosecuting attorney of the county in which the vendor is engaged in business.

HISTORY: CL 1948, 445.553.

445.554 Second-hand watches; advertisement.

Sec. 4. Any person advertising second-hand watches for sale in any manner shall state clearly in such advertisement that the watches so advertised are second-hand watches. If such advertisement is printed or written, the fact that such watches are second-hand shall be printed or written in bold faced letters.

HISTORY: CL 1948, 445.554.

445.555 Violation of act; penalty.

Sec. 5. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided by the laws of this state.

HISTORY: CL 1948, 445.555.

Act 144, 1895, p. 282; Eff. Aug. 30.

AN ACT to make it unlawful for any company or corporation to remove, abandon or discontinue any factory, work shop, machine shop, repair shop, office, agency or establishment, or the work, business or industry carried on therein from any village, city, town or place within this state, without repaying and restoring to such town, city, village or place any and all money, bonds, land and other property, with interest, which have been or may hereafter be given or granted as a consideration or inducement for the location, construction, operation, enlargement or maintenance at any such city, village, town or place; and to provide a remedy by injunction to restrain any such company or corporation from moving, abandoning or discontinuing any such factory, shop, and so forth, and to provide a penalty for so doing.

The People of the State of Michigan enact:

445.601 Abandonment of business by municipally aided company without restoration of benefits and interest unlawful.

Sec. 1. That it shall be unlawful for any corporation or company doing business in this state, at any time, or for the officers, agents or others having control of the corporation or company, or of the business of property of such corporation or company, to move, abandon or discontinue in any way, to any material extent, any factory, work shop, machine shop, repair shop, office, agency or other establishment, or the work or business carried on therein, from any city, town or other place within this state, without repaying and restoring any and all money, bonds, lands and other property which have been or shall hereafter be given or granted as a consideration or inducement for the location or construction, operation, enlargement or maintenance at any such city, town or place, of such factory, work shop, machine shop, repair shop, office, agency or establishment, or of the work or business carried on thereat; and such payment or restoration must include and be accompanied by the payment of lawful interest on such money, bonds, lands and other property, or upon the proceeds or reasonable profits thereof, for the full period that shall have elapsed, between the date of the original gift and such final payment and restoration.

HISTORY: CL 1897, 5447;—CL 1915, 7140;—CL 1929, 9831;—CL 1948, 445.601.

445.602 Abandonment of business; application of act; benefit to company officer or agent or to predecessor company.

Sec. 2. The provisions and penalties shall apply in all cases where the gift or grant was or shall be made by any city, town, company, person or persons, and they shall apply in all cases where the gift, grant, consideration or inducement was made or paid to the corporation or company owning or operating such factory, work shop, machine shop, repair shop, office, agency or establishment, and shall apply as well in all cases where such gift, grant, consideration or inducement was made or paid to any officer, agent, receiver or trustee of such corporation or company, or at any time in control of the property or business of the corporation or company; and the provisions and penalties of this act shall apply also if the corporation or company has succeeded to the rights, franchises, property or business of any corporation or company to which or the officers, agents, receivers or trustees of which company or corporation, or of its prop-

erty, any such gift, grant, consideration or inducement was or shall have been made or paid.

HISTORY: CL 1897, 5448;—CL 1915, 7141;—CL 1929, 9832;—CL 1948, 445.602.

445.603 Violation of act; misdemeanor.

Sec. 3. The violation of any of the provisions of this act by any corporation or company, or any shareholder, officer or agent of any corporation or company, or by any person or persons succeeding to or controlling or managing the property or business of such corporation or company is hereby made a misdemeanor, to be punished by fines, penalties, forfeitures, injunctions and imprisonments, as provided in other sections of this act.

HISTORY: CL 1897, 5449;—CL 1915, 7142;—CL 1929, 9833;—CL 1948, 445.603.

445.604 Violation of act; penalty.

Sec. 4. Any shareholder, officer, agent or other person violating any of the provisions of this act shall be punished by imprisonment for not more than 1 year, or by fine not exceeding 1,000 dollars or by both such fine and imprisonment; any corporation or company violating any of the provisions of this act shall be punished by a fine of 1,000 dollars for each day that shall elapse between such act of removal, abandonment or discontinuation, and the repayment and restoration required by this act; and any such corporation or company found guilty of violating any of the provisions of this act shall also forfeit all rights or franchises derived from or enjoyed within this state, and shall be enjoined from transacting any business within the state.

HISTORY: CL 1897, 5450;—CL 1915, 7143;—CL 1929, 9834;—CL 1948, 445.604.

445.605 Restoration of benefits; payment.

Sec. 5. The repayments and restorations required by this act shall be made to the city, town, company, person or persons by which or from whom the gift, grant, consideration or inducement was made or paid, or to their successors, assigns or legal representatives.

HISTORY: CL 1897, 5451;—CL 1915, 7144;—CL 1929, 9835;—CL 1948, 445.605.

445.606 Forfeitures and injunctions; rights of municipality upon failure of company.

Sec. 6. The forfeitures and injunctions provided for in this act may be decreed and enforced by any circuit court of any county in which any such corporation or company may do business, in a suit to be instituted for the purpose, in the name of the state of Michigan, by the prosecuting attorney of the county in which such suit is prosecuted: Provided, That in case of the suspension of any such business on account of the financial failure of any such company or corporation (other than railroad corporations), the person, city, village or town having so contributed any money, bonds, lands or other property shall become and be creditors of such company or corporation to the amount and value of such bonds, money or other property so contributed, and shall be treated and have all the rights of other creditors of such company or corporation; and such company or corporation, its shareholders, officers or agents, shall not be liable to the penalties herein provided: Provided further, That the provisions of this act shall not apply to any corporation or company having received any bonds, money, lands or other property as a consideration or inducement for the erection or construction, operation, enlargement or maintenance of any factory, work shop, machine shop, office, agency or establishment at any city, town or place for a specified length of time and having fully complied with all the conditions of the contract and agreement under which such bonds, money, lands or other property was given such company or corporation.

HISTORY: CL 1897, 5452;—CL 1915, 7145;—CL 1929, 9836;—CL 1948, 445.606.

Act 255, 1899, p. 409; Eff. Sep. 23.

AN ACT to prevent trusts, monopolies and combinations of capital, skill or arts, to create or carry out restriction in trade or commerce; to limit or reduce the production, or increase or reduce the price, of merchandise or any commodity; to prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity; to fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption.

The People of the State of Michigan enact:

445.701 Trusts; definition; unlawfulness; construction of act as to dairy products.

Sec. 1. That a trust is a combination of capital, skill or arts by 2 or more persons, firms, partnerships, corporations or associations of persons, or of any 2 or more of them, for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce;
2. To limit or reduce the production, or increase or reduce the price of, merchandise or any commodity;
3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity;
4. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this state;
5. It shall hereafter be unlawful for 2 or more persons, firms, partnerships, corporations or associations of persons, or of any 2 or more of them, to make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure or fixed value, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity, or transportation between them or themselves and others, so as to directly or indirectly preclude a free and unrestricted competition among themselves, or any purchasers or consumers, in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine, or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected. Every such trust as is defined herein is declared to be unlawful, against public policy and void: Provided, however, That nothing contained in the provisions of this act shall be construed to forbid producers of farm or dairy products from co-operating or organizing corporations or associations not primarily for profit, for the purpose of insuring and providing a reasonably certain and stable market for, and distribution of, such products upon terms fair and reasonable to the public and to themselves, and bargaining with distributors of such products singly or collectively in relation thereto, nor shall such co-operative undertaking, corporations, associations or members thereof be held or construed to be illegal combinations or conspiracies in restraint of trade.

HISTORY: CL 1915, 15013;—Am. 1925, p. 80, Act 60, Eff. Aug. 27;—CL 1929, 16847;—CL 1948, 445.701.

SUPPLEMENTAL ACT: Act 329 of 1906, being Compilers' § 445.761 et seq. and in particular Compilers' § 445.767.

PUBLIC POLICY: The offenses covered in this chapter are part of those against public policy. For other offenses against public policy, see Compilers' § 750.553 et seq.

MARKET DIRECTOR: For duty to report to attorney general "violation of laws in restraint of trade or unlawful combinations to fix prices of food stuffs", see Compilers' § 285.37.

445.702 Quo warranto proceedings and suits; prosecution, venue.

Sec. 2. For a violation of any of the provisions of this act by any corporation or association mentioned herein, it shall be the duty of the attorney general, or the prosecuting attorney of the proper county, to institute proper suits or quo warranto proceedings in the court of competent jurisdiction in any of the county seats in the state where such corporation or association exists or does business, or may have a domicile. And when such suit is instituted by the attorney general in quo warranto, he may also begin any such suit in the supreme court of the state, or the circuit court of Ingham, Kent or Wayne counties, for the forfeiture of its charter rights, franchises or privileges and powers exercised by such corporation or association, and for the dissolution of the same under the general statutes of the state.

HISTORY: CL 1915, 15014;—CL 1929, 16648;—CL 1948, 445.702.

445.703 Violation of act by foreign corporation; effect; duty of attorney general; certificate, revocation.

Sec. 3. Every foreign corporation, as well as any foreign association, exercising any of the powers, franchises or functions of a corporation in this state, violating any of the provisions of this act, is hereby denied the right and prohibited from doing any business in this state, and it shall be the duty of the attorney general to enforce this provision by bringing proper proceedings in quo warranto in the supreme court, or the circuit court of the county in which defendant resides or does business, or other proper proceedings by injunction or otherwise. The secretary of state shall be authorized to revoke the certificate of any such corporation or association, heretofore authorized by him to do business in this state.

HISTORY: CL 1915, 15015;—CL 1929, 16649;—CL 1948, 445.703.

Secs. 4-5.

HISTORY: CL 1915, 15016-15017;—CL 1929, 16650-16651;—Rep. 1931, p. 745, Act 328, Eff. Sept. 18.

These were penalty sections. For present law, see Compilers' § 750.553 et seq.

445.706 Violation of act; proof.

Sec. 6. In prosecutions under this act, it shall be sufficient to prove that a trust or combination, as defined herein, exists, and that the defendant belonged to it, or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement, or any written instrument on which it may have been based; or that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such.

HISTORY: CL 1915, 15018;—CL 1929, 16652;—CL 1948, 445.706.

445.707 Violation of act; penalty; recovery, venue.

Sec. 7. Each and every firm, person, partnership, corporation or association of persons, who shall in any manner violate any of the provisions of this act, shall for each and every day that such violations shall be committed or continued, after due notice given by the attorney general or any prosecuting attorney, forfeit and pay the sum of 50 dollars, which may be recovered in the name of the state, in any county where the offense is committed, or where either of the offenders reside. And it shall be the duty of the attorney general, or the prosecuting attorney of any county on the order of the attorney general, to prosecute for the recovery of the same. When the action is prose-

cuted by the attorney general against a corporation or association of persons, he may begin the action in the circuit court of the county in which defendant resides or does business.

HISTORY: CL 1915, 15019;—CL 1929, 16653;—CL 1948, 445.707.

445.708 Contract in violation of act; invalidity.

Sec. 8. That any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

HISTORY: CL 1915, 15020;—CL 1929, 16654;—CL 1948, 445.708.

445.709 Cumulative effect of provisions.

Sec. 9. That the provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state.

HISTORY: CL 1915, 15021;—CL 1929, 16655;—CL 1948, 445.709.

Sec. 10.

HISTORY: CL 1915, 15022;—CL 1929, 16656;—Rep. 1931, p. 745, Act 328, Eff. Sept. 18.

This was a penalty section. For present law, see Compilers' § 750.553 et seq.

445.711 Violation of act; civil liability, double damages, parties defendant.

Sec. 11. In addition to the criminal and civil penalties herein provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership, by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover two-fold the damages by him sustained, and the costs of suit. Whenever it shall appear to the court before which any proceedings under this act may be pending, that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending, or not.

HISTORY: CL 1915, 15023;—CL 1929, 16657;—CL 1948, 445.711.

Sec. 11a.

HISTORY: Add. 1911, p. 5, Act 2, Eff. Aug. 1;—CL 1915, 15024;—CL 1929, 16658;—Rep. 1931, p. 745, Act 328, Eff. Sept. 18.

This section provided for immunity of witnesses. For present law, see Compilers' § 750.560.

445.712 Person; definition.

Sec. 12. The word "person" or "persons" whenever used in this act, shall be deemed to include corporations, partnerships and associations existing under or authorized by the laws of the state of Michigan, or any other state, or any foreign country.

HISTORY: CL 1915, 15025;—CL 1929, 16659;—CL 1948, 445.712.

Sec. 13. (This was a repeal section.)

HISTORY: CL 1915, 15026;—CL 1929, 16660;—Rep. 1945, p. 403, Act 267, Imd. Eff. May 25.

Act 229, 1905, p. 331; Imd. Eff. Jun. 16.

AN ACT declaring it unlawful to make or enter into certain contracts, understandings or agreements, and to provide a punishment therefor.

The People of the State of Michigan enact:

445.731 Contracts in restraint of trade; illegality; inapplicability of act to contracts relating to good will.

Sec. 1. That all contracts, understandings and agreements, made or entered into by and between parties capable of making a valid contract, the purpose or intent of which is to prohibit, restrict, limit, control or regulate the sale of any article of machinery, tools, implements, vehicles, or appliances designed to be used in any branch of

productive industry; or to enhance or control or regulate the price thereof; or in any manner to restrict, limit, regulate or destroy free and unlimited competition in the sale thereof, shall be deemed illegal and void as in restraint of trade: Provided, That nothing in this act shall be construed to impair or invalidate agreements or contracts known to the common law and in equity as those relating to good will of trade.

HISTORY: CL 1915, 15027;—CL 1929, 10661;—CL 1948, 445.731.

445.732 Contracts in restraint of trade; illegality of certain kinds.

Sec. 2. Contracts, understandings and agreements of the following nature, whether written or oral, are hereby declared to be illegal and void under the provisions of section 1 of this act:

First. Contracts compelling and requiring that any particular make or brand of any article of machinery, tools, implements, vehicles or appliances designed to be used in any branch of productive industry, shall be dealt in or sold, by either party to such contract, to the exclusion of all other makes or brands of such article or articles.

Second. Contracts providing for the exclusive sale of certain makes or brands of manufactured articles of machinery, tools, implements, vehicles or appliances designed to be used in any branch of productive industry, and stipulating certain sums to be paid as liquidated damages to either party for every article so sold of other than the specified make or brand.

HISTORY: CL 1915, 15028;—CL 1929, 10662;—CL 1948, 445.732.

Sec. 3.

HISTORY: CL 1915, 15029;—CL 1929, 10663;—Rep. 1931, p. 746, Act 328, Eff. Sept. 18.

This was a penalty section. For present law, see Compilers' § 750.553 et seq.

445.734 Contracts in restraint of trade; forfeiture of charter.

Sec. 4. Any partnership limited, or corporation, organized under the laws of this state, or authorized to carry on business in this state, which shall make, execute or enter into any contract, understanding or agreement made illegal under the terms of this act, or shall do any act in pursuance of carrying the same into effect in whole or in part, shall be deemed to be guilty of a misuser and shall forfeit its charter and all rights thereunder.

HISTORY: CL 1915, 15030;—CL 1929, 10664;—CL 1948, 445.734.

445.735 Contracts in restraint of trade; filing quo warranto by attorney general.

Sec. 5. It shall be the duty of the attorney general to file an information in the nature of quo warranto, upon his own relation, or the relation of any person, on leave granted, against any corporate body whenever it shall violate any of the provisions of this act.

HISTORY: CL 1915, 15031;—CL 1929, 10665;—CL 1948, 445.735.

445.736 Contracts in restraint of trade; civil liability.

Sec. 6. Any person who shall be injured in his business or property, through the making or operating of any contract, understanding or agreement, made in violation of this act, shall have a right of action against the parties to such contract, understanding or agreement for all damages sustained by him in consequence thereof, and may recover the same in any court of competent jurisdiction.

HISTORY: CL 1915, 15032;—CL 1929, 10666;—CL 1948, 445.736.

Act 329, 1905, p. 507; Imd. Eff. Jun. 20.

AN ACT relative to agreements, contracts and combinations in restraint of trade or commerce.

The People of the State of Michigan enact:

445.761 Contracts not to engage in business; illegality.

Sec. 1. All agreements and contracts by which any person, co-partnership or corporation promises or agrees not to engage in any avocation, employment, pursuit, trade, profession or business, whether reasonable or unreasonable, partial or general, limited or unlimited, are hereby declared to be against public policy and illegal and void.

HISTORY: CL 1915, 15033;—CL 1929, 16667;—CL 1948, 445.761.

445.762 Combination for monopoly; illegality.

Sec. 2. All combinations of persons, copartnerships, or corporations made and entered into for the purpose and with the intent of establishing and maintaining or of attempting to establish and maintain a monopoly of any trade, pursuit, avocation, profession or business, are hereby declared to be against public policy and illegal and void.

HISTORY: CL 1915, 15034;—CL 1929, 16668;—CL 1948, 445.762.

445.763 Corporation organized to maintain monopoly; illegality.

Sec. 3. Any corporation organized under the laws of this state for the purpose of establishing and maintaining, or attempting to establish or maintain, any combination of persons, copartnerships or corporations with intent to establish and maintain or of attempting to establish and maintain a monopoly of any trade, pursuit, avocation, profession or business, is hereby declared to be against public policy and illegal and void.

HISTORY: CL 1915, 15035;—CL 1929, 16669;—CL 1948, 445.763.

445.764 Foreign corporation organized to maintain monopoly; illegality.

Sec. 4. Any foreign corporation organized for the purpose and with the intent of establishing and maintaining or of attempting to establish and maintain a monopoly of any trade, pursuit, avocation, profession or business, is hereby prohibited from doing business in this state, and any permission or authority heretofore obtained by any such corporation to do business in this state is hereby declared to be illegal and void.

HISTORY: CL 1915, 15036;—CL 1929, 16670;—CL 1948, 445.764.

445.765 Applicability of act; existing contracts, combinations.

Sec. 5. This act shall apply to agreements, contracts and combinations in restraint of trade or commerce heretofore entered into or made, and which are sought to be enforced or maintained after this act takes effect; and all contracts and agreements in violation of this act heretofore made, expressly or impliedly, continuing in force after this act takes effect, are hereby declared to be against public policy and illegal and void.

HISTORY: CL 1915, 15037;—CL 1929, 16671;—CL 1948, 445.765.

445.766 Contracts in restraint of trade; exceptions.

Sec. 6. This act shall not apply to any contract mentioned in this act, nor in restraint of trade where the only object of restraint imposed by the contract is to protect the vendee, or transferee, of a trade pursuit, avocation, profession or business, or the good will thereof, sold and transferred for a valuable consideration in good faith, and without any intent to create, build up, establish or maintain a monopoly; nor to any contract of employment under which the employer furnishes or discloses to the employee a list of customers or patrons, commonly called a route list, within certain territory in which such employee is to work, in which contract the employee agrees not to perform similar services in such territory for himself or another engaged in a like or competing line of business for a period of 90 days after the termination of such contract or services.

HISTORY: CL 1915, 15038;—Am. 1917, p. 346, Act 171, Eff. Aug. 10;—CL 1929, 16672;—Am. 1935, p. 329, Act 202, Imd. Eff. June 6;—CL 1948, 445.766.

445.767 Effect of act.

Sec. 7. This act is declared to be supplementary to, and declaratory of, and in addition to Act No. 255 of the Public Acts of 1899, page 409.

HISTORY: CL 1915, 15039;—CL 1929, 16673;—CL 1948, 445.767.

NOTE: Act 255 of 1899, above referred to, is Compilers' § 445.701 et seq.

Act 135, 1913, p. 235; Eff. Aug. 14.

AN ACT to prevent unfair commercial discrimination between different localities for the purpose of ruining the business of a competitor.

The People of the State of Michigan enact:

445.791 Petroleum products; unfair discrimination prohibited.

Sec. 1. Any person, firm, company, association or corporation, foreign or domestic, doing business in the state, and engaged in the production, manufacture or distribution of any petroleum products, that shall intentionally, for the purpose of destroying the business of a competitor in any locality, discriminate between different sections, communities or cities of this state, by selling such commodity at a lower rate in 1 section, community or city, than is charged for said commodity by said party in another section, community or city, after making due allowance for the difference, if any, in the grade or quality and in the actual cost of transportation from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful.

HISTORY: CL 1915, 15041;—CL 1929, 16683;—CL 1948, 445.791.

Sec. 2.

HISTORY: CL 1915, 15042;—CL 1929, 16684;—Rep. 1931, p. 749, Act 328, Eff. Sept. 18.

This was a penalty section. For present law, see Compilers' § 750.553 et seq.

445.793 Contracts in violation of act; invalidity.

Sec. 3. All contracts or agreements made in violation of any of the provisions of the 2 preceding sections shall be void.

HISTORY: CL 1915, 15043;—CL 1929, 16685;—CL 1948, 445.793.

445.794 Enforcement of act; duty of prosecutors and attorney general.

Sec. 4. It shall be the duty of the county prosecuting attorneys in their counties, and the attorney general of the state, to enforce the provisions of the preceding sections of this act by appropriate actions in courts of competent jurisdiction.

HISTORY: CL 1915, 15044;—CL 1929, 16686;—CL 1948, 445.794.

445.795 Violation of act; duty of secretary of state and attorney general.

Sec. 5. If complaint shall be made to the secretary of state that any corporation authorized to do business in this state is guilty of unfair discrimination within the terms of this act, it shall be the duty of the secretary of state to refer the matter to the attorney general who shall, if the facts justify it in his judgment, institute proceedings in the courts against such corporation.

HISTORY: CL 1915, 15045;—CL 1929, 16687;—CL 1948, 445.795.

445.796 Violation of act; revocation of permit.

Sec. 6. If any corporation, foreign or domestic, authorized to do business in this state, is found guilty of unfair discrimination within the terms of this act, it shall be the duty of the secretary of state to immediately revoke the permit of such corporation to do business in this state.

HISTORY: CL 1915, 15046;—CL 1929, 16688;—CL 1948, 445.796.

445.797 Violation of act; ouster from business.

Sec. 7. If after revocation of its permit such corporation, or any other corporation not having a permit and found guilty of having violated any of the provisions of this act, shall continue or attempt to do business in this state, it shall be the duty of the attorney general, by a proper suit in the name of the state, to oust such corporation from all business of every kind and character in said state.

HISTORY: CL 1915, 15047;—CL 1929, 10680;—CL 1948, 445.797.

445.798 Construction of act.

Sec. 8. Nothing in this act shall be construed as repealing any other act, or part of act, but the remedies herein provided shall be cumulative to all other remedies provided by law.

HISTORY: CL 1915, 15048;—CL 1929, 10680;—CL 1948, 445.798.

Act 241, 1966, p. 324; Eff. Mar. 10, 1967.

AN ACT to regulate advertising; to provide penalties for violation of this act; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

445.801 False advertising unlawful.

Sec. 1. It shall be unlawful for any person knowingly to make, publish, disseminate, circulate or place before the public any advertisement which contains any statement or representation which is untrue, deceptive or misleading; or to advertise the availability of goods, wares or merchandise so as to misrepresent or unreasonably overstate the available supply in relation to reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.

HISTORY: New 1966, p. 324, Act 241, Eff. Mar. 10, 1967.

445.802 Inapplicability of act.

Sec. 2. The provisions of this act shall not apply to any owner, publisher, printer, agent or employee of a newspaper or other publication, periodical, circular or outdoor advertising or of a radio or television station, who in good faith and without knowledge of the falsity or deceptive character thereof, publishes, causes to be published or takes part in the publication of such advertisement. With respect to the use of a telephone by subscribers or users, the provisions of this act shall not apply to any person, firm or corporation providing telephone service as a public utility.

HISTORY: New 1966, p. 324, Act 241, Eff. Mar. 10, 1967.

445.803 Determination of deception; factors.

Sec. 3. In determining whether or not advertising is deceptive or misleading, there shall be taken into account, in addition to the above, the extent to which the advertising fails to reveal facts material in the light of representations made or suggested in a positive manner.

HISTORY: New 1966, p. 324, Act 241, Eff. Mar. 10, 1967.

445.804 Failure to sell as advertised; presumption of intent.

Sec. 4. The failure to sell any goods, wares, merchandise, or service in the manner advertised, or the refusal to sell at the price at which it was advertised, or in accordance with other terms and conditions of the advertisement creates a rebuttable presumption of an intent to violate the provisions of this act.

HISTORY: New 1966, p. 324, Act 241, Eff. Mar. 10, 1967.

445.805 Publication with intent not to sell as advertised.

Sec. 5. It is unlawful for any person to make, publish, disseminate, circulate or place before the public, an advertisement with the intent, design or purpose not to sell at the price stated therein, or otherwise communicated, or with intent not to sell the goods, wares, merchandise, or service so advertised.

HISTORY: New 1966, p. 324, Act 241, Eff. Mar. 10, 1967.

445.806 Advertisement of seconds or defective goods; statement of condition.

Sec. 6. It is unlawful for any person to advertise, call attention to, or give publicity to the sale of any goods, wares or merchandise which are known to be substantially defective and therefore not first class, or which consist of articles or units or parts known as "seconds", or blemished goods, wares or merchandise, or which goods, wares or merchandise have been rejected by the manufacturer thereof as not first class, unless there is displayed directly in connection with the name and description of the goods, wares or merchandise, a direct and unequivocal statement, phrase or word which will clearly indicate that the goods, wares or merchandise, so advertised are "seconds" or are blemished goods, wares or merchandise, or have been rejected by the manufacturer thereof. Any merchandise advertised, offered for sale and sold as a unit or set consisting of more than one part or piece shall be sufficiently identified as not first class, within the meaning of this section, if advertised, offered for sale and sold as a unit or set at the single price advertised, and displayed in connection with a direct and unequivocal statement, phrase or word identifying the goods as not first class as required by this section.

HISTORY: New 1966, p. 324, Act 241, Eff. Mar. 10, 1967.

445.806a Real property sales or exchanges; discriminatory advertising prohibited; burden of proof; legal or equitable remedies.

Sec. 6a. It is unlawful for any person to make, publish, disseminate, circulate or place before the public, an advertisement concerning the buying, selling, exchanging or trading of real property if such advertising in any way contains language expressing discrimination on the part of the seller concerning prospective buyers because of race, creed, color or national origin. Nothing in this act shall authorize the attorney general to assume any facts not in evidence and he shall at all times bear the burden of proof to all charges made against a party. Nothing contained in this act shall be construed to diminish the right of any party to direct and immediate legal or equitable remedies in the courts of this state.

HISTORY: Add. 1969, p. 481, Act 249, Imd. Eff. Aug. 11.

445.807 Violation of act; action to enjoin; notice.

Sec. 7. (1) The attorney general may maintain an action to enjoin a continuance of any act in violation of this act. If the court finds that the defendant is violating or has violated any of the provisions of this act, it shall enjoin him from a continuance thereof. It shall not be necessary that actual damages to any person be alleged or proved.

(2) No proceeding shall be instituted for an injunction unless the attorney general has notified the defendant of his intention to file such a proceeding unless the defendant ceases and desists or has taken positive action to cease and desist from continuing to act in violation of this act, which notice shall be given at least 48 hours previous to the filing of the action. No injunction shall issue if defendant has ceased or has taken positive action to cease and desist violating the provisions of this act, upon receipt of the notice.

HISTORY: New 1966, p. 325, Act 241, Eff. Mar. 10, 1967.

445.808 Violation of injunction; penalty.

Sec. 8. Any person, including any responsible officer or employee of a firm or corporation, who violates or knowingly aids in the violation of any order or injunction issued pursuant to this act shall forfeit and pay to the state of Michigan a civil penalty of not more than \$1,000.00.

HISTORY: New 1966, p. 325, Act 241, Eff. Mar. 10, 1967.

445.809 Assurance of discontinuance; acceptance, filing, signing, contents; admission, effect.

Sec. 9. In the enforcement of this act, the attorney general may accept an assurance of discontinuance of any act or practice alleged to be in violation of 1 or more of the sections, from any person engaging in, or who was engaged in, such acts or practices. Any assurance shall be in writing and be filed with the clerk of the circuit court of the county in which the alleged violator resides or has his principal place of business. The assurance of discontinuance shall be signed by the person and shall contain a statement describing the acts or practices for which the assurance of discontinuance is being given and the specific sections of the law prohibiting such acts or practices. Such assurance shall not constitute an admission of any fact or issue at law.

HISTORY: New 1966, p. 325, Act 241, Eff. Mar. 10, 1967.

Act 277, 1966, p. 399; Eff. Mar. 10, 1967.

AN ACT to create a consumers council; to define its powers and duties; and to make an appropriation therefor.

The People of the State of Michigan enact:

445.821 Legislative citizens committee on consumer affairs; members, appointment, terms.

Sec. 1. There is hereby established a committee to be officially known as the legislative citizens committee on consumer affairs and to consist of 3 members who are not members of the legislature. The members of this committee shall be appointed by the legislative council for 2-year terms to coincide with the terms of office of state representatives.

HISTORY: New 1966, p. 399, Act 277, Eff. Mar. 10, 1967.

445.822 Executive committee on consumer affairs; members.

Sec. 2. There is hereby established a committee of public officials to be officially known as the executive committee on consumer affairs and to consist of 3 members who shall be the secretary of state, the attorney general and the head of the department of commerce.

HISTORY: New 1966, p. 399, Act 277, Eff. Mar. 10, 1967.

445.823 Governor's citizens committee on consumer affairs; members, appointment, terms.

Sec. 3. There is hereby established a committee of 3 persons who are not public officers to be officially known as the governor's citizens committee on consumer affairs. The members of this committee shall be appointed by the governor for 2-year terms to coincide with the terms of office of state representatives.

HISTORY: New 1966, p. 399, Act 277, Eff. Mar. 10, 1967.

445.824 Special Michigan consumer's council; joint meetings, composition.

Sec. 4. The legislative citizens' committee on consumer affairs, the executive committee on consumer affairs and the governor's citizens committee on consumer affairs

shall meet together regularly. The 3 separate committees meeting jointly shall be the special Michigan consumer's council.

HISTORY: New 1966, p. 399, Act 277, Eff. Mar. 10, 1967.

445.825 Legislative and governor's citizens committees; expenses, payment.

Sec. 5. Members of the legislative citizens committee on consumer affairs and members of the governor's citizens committee on consumers affairs shall be entitled to the necessary expenses incurred in connection with the business of the council not to exceed those allowed by the standard travel regulations as published by the department of administration.

HISTORY: New 1966, p. 399, Act 277, Eff. Mar. 10, 1967.

445.826 Consumer's council; duties.

Sec. 6. The council shall:

(a) Formulate and direct a program for the protection of individual consumers from harmful products and merchandise, false advertising and deceptive sales practices.

(b) Formulate and conduct a program of research and education to eliminate fraudulent commercial practices.

(c) Serve as a central coordinating agency and clearing house for activities and information concerning fraudulent commercial practices.

(d) Advise the governor as to all matters affecting the interests of the people of the state as consumers and recommend to both the governor and the legislature the enactment of legislation necessary to protect and promote the interests of the people as consumers.

(e) Advise the attorney general of any practice which requires investigation to determine if any law of the state is being violated.

HISTORY: New 1966, p. 399, Act 277, Eff. Mar. 10, 1967.

445.827 Consumer's council; powers.

Sec. 7. The council may:

(a) Appear before governmental commissions, departments and agencies to represent and be heard on behalf of consumers' interests, except when the legislature has specifically established a regulatory body or commission for the express purpose of regulating rates, charges and conditions of service, or otherwise protecting consumers' interests through the exercise of regulatory power vested in such body or commission.

(b) Cooperate and contract with agencies, public and private, to obtain statistical surveys, printing, economic information and other necessary information within the range of its budget, or do whatever else is incidental to the proper exercise of its powers.

(c) Hire a director and whatever additional staff is necessary to carry out its powers and duties, to be paid out of the appropriation to the council.

HISTORY: New 1966, p. 400, Act 277, Eff. Mar. 10, 1967.

445.828 Consumer's council; general control of legislative council.

Sec. 8. The council shall come under the general control of the legislative council for purposes of budgeting, procurement and related management functions.

HISTORY: New 1966, p. 400, Act 277, Eff. Mar. 10, 1967.

445.829 Consumer's council; appropriation.

Sec. 9. There is appropriated to the consumer council from the general fund of the state the sum of \$10,000.00 for the fiscal year ending June 30, 1967.

HISTORY: New 1966, p. 400, Act 277, Eff. Mar. 10, 1967.

Act 224, 1966, p. 271; Eff. Mar. 10, 1967.

AN ACT to regulate retail installment sales transactions, agreements, charges and disclosures; and to provide for the enforcement thereof and penalties for violations.

The People of the State of Michigan enact:

445.851 Retail installment sales act; short title.

Sec. 1. This act shall be known and may be cited as the "retail installment sales act".

HISTORY: New 1966, p. 271, Act 224, Eff. Mar. 10, 1967.

445.851a Federal truth in lending act; effect of compliance.

Sec. 1a. Compliance with the requirement of the consumer credit protection act, Public Law 90-321; 82 statute 146, et seq., commonly referred to as the federal truth in lending act is compliance with the disclosure provisions of subsection (d) of section 3 and subsection (b) of section 12.

HISTORY: Add. 1969, p. 59, Act 31, Imd. Eff. Jul. 10.

445.852 Retail installment sales act; definitions.

Sec. 2. As used in this act:

(a) "Goods" means all tangible chattels personal when purchased primarily for personal, family or household use and not for commercial or business use, but not including motor vehicles, money, things in action or intangible personal property or the equivalent thereof. The term includes chattels which are furnished or used, at the time of sale or subsequently, in the modernization, rehabilitation, repair, alteration, improvement or construction of real property so as to become a part thereof whether or not severable therefrom and which is not covered by the provisions of Act No. 332 of the Public Acts of 1965, being sections 445.1101 to 445.1431 of the Compiled Laws of 1948. The term also includes merchandise certificates or coupons, issued by a retail seller, not redeemable in cash and to be used in their face amount in lieu of cash, in exchange for goods or services sold by such seller.

(b) "Services" means work, labor or advice, counseling or instruction of any kind when purchased primarily for personal, family or household use and not for commercial or business use, but does not include work, labor, advice, counseling or instruction for which the cost is by law fixed or approved by, or filed subject to approval or disapproval with, the United States or the state of Michigan, or educational counseling or instruction provided by an accredited college or university or primary or secondary school providing education required by the state of Michigan or counseling or instruction of a kindergarten or nursery school.

(c) "Motor vehicle" means any self-propelled device in which, upon which or by which any person or property is or may be transported or drawn upon a public highway, including all tractors, motorcycles, all trailers and semi-trailers, buses, trucks, power shovels, road machinery, agricultural machinery and other machinery not designed primarily for highway transportation, but which may incidentally transport persons or property on a public highway, and including such devices which move upon or are guided by a track or travel through the air.

(d) "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished, from a retail seller.

(e) "Retail seller" or "seller" means a person regularly and principally engaged in the business of selling goods or services to retail buyers, but does not include the services of a professional person licensed by the state, to perform legal or dental services, or medical services as a medical doctor or a doctor of osteopathy.

(f) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract or a retail charge agreement, which provides for a time price differential and under which the buyer agrees to pay the unpaid balance in 1 or more installments.

(g) "Retail installment contract" means an instrument, other than a retail charge agreement or an instrument reflecting a sale made pursuant thereto, entered into in this state evidencing a retail installment transaction, whether secured or unsecured. It may include a chattel mortgage, a security agreement, a conditional sale contract and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of the value of the goods sold and if it is agreed that the bailee or lessee is bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease.

(h) "Retail charge agreement" means an instrument prescribing the terms of retail installment transactions whether secured or unsecured which may be made thereunder from time to time and under the terms of which a time price differential is to be computed in relation to the buyer's unpaid balance from time to time.

(i) "Time price differential" means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. It does not include the amount, if any, charged for insurance premiums, delinquency charges, attorney fees, court costs or official fees, but does include all other charges.

(j) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge agreement, for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services which are the subject matter of a retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes and charges for delivery, installation, servicing, repairs, alterations or improvements.

(k) "Official fees" means the amount of the fees prescribed by law and charged and paid by the seller or holder for filing, recording, or otherwise perfecting, and releasing or satisfying, a retained title, lien, or other security interest created by a retail installment transaction.

(l) "Time sale price" means the cash sale price of the goods or services and the amount, if any, included for insurance, if a separate, identified charge is made therefor, the official fees and the time price differential.

(m) "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment contract plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance, and official fees, less the amount of the buyer's down payment in money or goods or both.

(n) "Holder" means the retail seller of the goods or services under the retail installment contract or retail charge agreement or the assignee if the retail installment contract or the retail charge agreement or outstanding balance under either has been sold or otherwise transferred.

(o) "Person" means an individual, partnership, joint venture, corporation, association or any other group, however organized.

HISTORY: New 1966, p. 272, Act 224, Eff. Mar. 10, 1967.

445.853 Retail installment contracts; requirements; retail buyer, representative.

Sec. 3. Each retail installment contract shall be in writing, dated, signed by the retail buyer or the authorized representative of the retail buyer and completed as to all essential provisions, except as otherwise provided in sections 5 and 6. No seller, agent of the seller, or employee of the seller, acting in the course of his employment shall act as the authorized representative of a retail buyer under this act.

Printed or typed portion, type size; designation; notice to buyer.

(a) The printed or typed portion of the contract, other than instructions for completion, shall be in a size equal to at least 8-point type. The contract shall be designated "retail installment contract" and shall contain substantially the following notice printed or typed in a size equal to at least 10-point bold type:

"Notice to the buyer: Do not sign this contract before you read it or if it contains blank spaces. You are entitled to a copy of the contract you sign. You are entitled to a partial return of the finance charge if you prepay the balance."

Delivery of copy to buyer; effect of nondelivery; third party reliance on buyer's acknowledgment.

(b) The retail seller shall deliver to the retail buyer, or mail to him at his address shown on the retail installment contract, a copy of the contract as accepted by the seller. Until the seller does so, a buyer, to any extent that he has not received delivery of the goods or been furnished or rendered the services, shall have the right to rescind his contract and to receive a refund of all payments made and return of all goods traded in to the seller on account of or in contemplation of the contract, or if such goods cannot be returned, the value thereof. Any reliance by a holder other than the seller upon written acknowledgment by the buyer of delivery of a copy of the contract shall be based upon a statement in a size equal to at least 10-point bold type and, if contained in the contract, shall appear directly above the buyer's signature or the signature of the authorized representative of the buyer and shall require a separate signature of the buyer or the authorized representative of the buyer.

Required provisions.

(c) The retail installment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer and a description or identification of the goods sold or to be sold, or services furnished or rendered or to be furnished or rendered.

Mandatory terms.

(d) The retail installment contract shall contain the following items:

- (1) The cash sale price of the goods or services.
- (2) The amount of the buyer's down payment, identifying the amounts paid in money and allowed for goods traded in.
- (3) The difference between items (1) and (2).
- (4) The itemized amounts of official fees.
- (5) The aggregate amount, if any, included for insurance, if a separate identified charge is made therefor, specifying the type or types of insurance and the term or terms of coverage.
- (6) The principal balance.
- (7) The amount of the time price differential for the full term of the contract.
- (8) The amount of the time balance owed by the buyer to the seller, which is the sum of items (6) and the amount set out under item (7).
- (9) Except as otherwise provided in the next 2 sentences, the maximum number of installment payments required and the amount of each installment and the due date of

each payment necessary to pay the time balance set forth in item (8). If installment payments other than the final payment are stated as a series of equal schedule amounts and if the amount of the final installment payment does not substantially exceed the scheduled amount of each preceding installment payment, the maximum number of payments and the amount and due date of each payment need not be separately stated and the amount of the scheduled final installment payment may be stated as the remaining unpaid balance. The due date of the first installment payment may be fixed by a day or date or may be fixed by reference to the date of the contract or to the time of delivery or installation.

(10) The time sale price.

(11) If any installment, except the down payment, is more than double the average of all other installments, except the down payment, the following legend printed in at least 10-point bold type or typewritten: "This contract is not payable in installments of equal amounts", followed, if there is but 1 larger installment, by: "An installment of \$..... will be due on" or, if there is more than 1 larger installment, by: "larger installments will be due as follows:", in the latter case inserting the amount of every larger installment and of its due date. The above items need not be stated in the sequence or order set forth; additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

(12) A notice to the buyer that upon his request the seller must provide or make available for examination by the buyer a statement or table showing how the partial refund of the time price charge is to be computed if any balance of the contract should be prepaid.

(13) A statement that the seller retains a security interest in the subject matter of the retail installment contract or retail charge agreement if he does so and a statement setting forth the nature and terms of the security interest retained, and the following legend printed in at least 10-point bold type or typewritten: "The seller retains a security interest in the subject matter of this agreement".

HISTORY: New 1966, p. 273, Act 224, Eff. Mar. 10, 1967.

445.854 Retail installment contracts; single document not required; sales slip, account book, other written statements.

Sec. 4. A retail installment contract need not be contained in a single document. If the contract is contained in more than 1 document, 1 such document may be an original document signed by the retail buyer, stated to be applicable to purchases of goods or services to be made by the retail buyer from time to time. In such case, the document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by this subsection and shall constitute the retail installment contract for each purchase. On each succeeding purchase pursuant to such original document, the sales slip, account book or other written statement at the option of the seller may constitute the memorandum required by section 11. No seller shall induce a buyer to become obligated at substantially the same time under more than 1 retail installment contract for the purpose of obtaining a higher time price differential than would apply to 1 contract.

HISTORY: New 1966, p. 275, Act 224, Eff. Mar. 10, 1967.

445.855 Retail installment contracts; sales; mail, telephone; provisions applicable; exceptions.

Sec. 5. (a) Retail installment contracts negotiated and entered into by mail or telephone without personal solicitations by salesmen or other representatives of the seller and based upon a catalog of the seller, or other printed solicitation which clearly sets forth the cash sale prices and other terms of sales to be made through such medium

may be made as provided in this section. The provisions of this act with respect to retail installment contracts shall be applicable to such sales, except that:

(1) The designation and notice provisions of subsection (a) of section 3 shall not be applicable to such contract; and

(2) The retail installment contract, when completed by the buyer, need not contain the items required by subsection (d) of section 3.

(b) When the contract is received from the retail buyer, the seller shall prepare a written memorandum containing all of the information required by subsection (d) of section 3 to be included in a retail installment contract. In lieu of delivering a copy of the contract to the retail buyer as provided in subsection (b) of section 3, the seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment payable under the contract.

HISTORY: New 1966, p. 275, Act 224, Eff. Mar. 10, 1967.

445.856 Retail installment contracts; blank space; filling.

Sec. 6. A retail installment contract shall not be signed by any party thereto when it contains blank spaces of items which are essential provisions of the transaction, but if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted by the seller in the seller's counterpart of the contract after it has been signed by the buyer. The buyer's acknowledgment, conforming to the requirement of subsection (b) of section 3, of delivery of a copy of the contract shall be presumptive proof, or, in the case of a holder of the contract without knowledge to the contrary when he purchases it, conclusive proof of such delivery and of compliance with this subsection and any other requirement relating to completion of the contract prior to execution thereof by the buyer, in any action or proceeding.

HISTORY: New 1966, p. 275, Act 224, Eff. Mar. 10, 1967.

445.857 Retail installment contracts; time price differential; schedule, minimum; payments, treated as interest.

Sec. 7. (a) Notwithstanding the provisions of any other law, a retail installment contract may provide for, and the seller or holder may then charge, collect and receive a time price differential which shall not exceed an amount determined in accord with the following schedule:

(1) On so much of the principal balance as does not exceed \$500.00, at the rate of \$12.00 per \$100.00 per year;

(2) On so much of the principal balance as exceeds \$500.00, at the rate of \$10.00 per \$100.00 per year.

(b) The time price differential under this section shall be computed on the principal balance of each transaction, as determined under section 3 on contracts payable in successive monthly payments substantially equal in amount from the date of the contract to the maturity of the final payment, notwithstanding that the total time balance thereof is required to be paid in 1 or more deferred payments. When a retail installment contract provides for payment other than in substantially equal, successive monthly payments, the time price differential shall not exceed the amount which will provide the same return as is permitted on substantially equal, successive monthly payment contracts, having due regard for the schedule of payments. The time price differential may be computed on the basis of a full month for any fractional portion of a month in excess of 10 days.

(c) A minimum time price differential of not more than \$10.00 may be charged, received and collected on each such contract, whether or not the contract is prepaid.

(d) In any retail installment contract for the purchase of goods or services in which there is a separately stated time price differential, a portion of the payments made

during the taxable year under the contract shall be treated as interest. The portion of any such payments to be treated as interest shall be equal to 6% of the average unpaid balance under the contract during the taxable year. For purposes of this computation, the average unpaid balance under the contract is the sum of the unpaid balance outstanding on the first day of each month beginning during the taxable year, divided by 12.

HISTORY: New 1966, p. 275, Act 224, Eff. Mar. 10, 1967.

445.858 Unpaid time balances; prepayment; refund credit.

Sec. 8. Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay in full the unpaid time balance thereof at any time before its final due date and, if he does so, shall receive a refund credit thereon for such prepayment. The amount of such refund credit shall represent at least as great a proportion of the original time price differential after first deducting therefrom an acquisition cost of not more than \$10.00 as:

(a) The sum of the monthly balances under the schedule of payments in the contract beginning as of the date after such prepayment which is the next succeeding monthly anniversary date of the due date of the first installment under the contract, or, if the prepayment is prior to the due date of the first installment under the contract, then as of the date after such prepayment which is the next succeeding monthly anniversary date of the date of the contract, bears to;

(b) The sum of all the monthly balances under the schedule of installment payments in the contract. Where the amount of refund credit is less than \$1.00, no refund credit need be made.

HISTORY: New 1966, p. 276, Act 224, Eff. Mar. 10, 1967.

445.859 Retail installment contracts; charges, delinquency, collection.

Sec. 9. The holder of any retail installment contract, if it so provides, may collect a delinquency and collection charge on each installment in default for a period of more than 10 days in the amount not to exceed 5% of each installment or \$5.00, whichever is less, or in lieu thereof, interest after maturity of each installment not to exceed the highest lawful contract rate.

HISTORY: New 1966, p. 276, Act 224, Eff. Mar. 10, 1967.

445.860 Retail installment contracts; statement of dates, payments and unpaid balances; receipt.

Sec. 10. Upon written request of the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under the contract. A buyer shall be given a written receipt for any payment when made in cash. The statement or receipt shall be given the buyer once without charge; if any additional statement is requested by the buyer, it shall be supplied by the holder at a charge not in excess of \$1.00 for each additional statement or receipt so supplied.

HISTORY: New 1966, p. 276, Act 224, Eff. Mar. 10, 1967.

445.861 Retail installment transactions; subsequent purchases; previous contracts, inclusion and consolidation.

Sec. 11. (a) If, in a retail installment transaction, a retail buyer makes any subsequent purchases of goods or services from a retail seller from whom he has previously purchased goods or services under 1 or more retail installment contracts, and the amounts under such previous contracts have not been fully paid, at the seller's option, the subsequent purchases may be included in and consolidated with 1 or more of the previous contracts. Each subsequent purchase shall be a separate retail installment contract under this act, notwithstanding that the same may be included in and consoli-

dated with 1 or more previous contracts. All the provisions of this act with respect to retail installment contracts shall be applicable to subsequent purchases except as hereinafter stated in this section.

Consolidated contracts; written memorandum for subsequent purchase, sufficiency; contents.

(b) In the event of consolidation, in lieu of the buyer's executing a retail installment contract respecting each subsequent purchase, as provided in this act, it shall be sufficient if the seller prepares a written memorandum of each subsequent purchase, in which case the provisions of section 3 shall not be applicable. Unless previously furnished in writing to the buyer by the seller, by sales slip, memorandum or otherwise, such memorandum shall contain with respect to each subsequent purchase items (1) to (8) of subsection (d) of section 3 and, in addition, the outstanding balance of the previous contract or contracts, the consolidated time balance, and the revised installments applicable to the consolidated time balance, if any. The seller shall deliver to the buyer a copy of the memorandum prior to the due date of the first installment of the consolidated contract.

Secured transactions; allocation of payments; exceptions.

(c) When subsequent purchases are made, if the seller has retained title or taken a lien or other security interest in any of the goods purchased under any 1 of the contracts included in the consolidation, the entire amount of all payments made prior to such subsequent purchases shall be deemed to have been applied to the unpaid time balances of the previous purchases; and each payment after the subsequent purchase made on the consolidated contract shall be deemed to have been allocated to all of the various purchases in the same ratio as the original cash sale prices of the various purchases bear to the total of all. Where the amount of each installment payment is increased in connection with subsequent purchases, at the seller's option, the subsequent payments may be deemed to be allocated as follows: an amount equal to the original periodic payment to the previous purchase, the balance to the subsequent purchase. However, the amount of any down payment on the subsequent purchase shall be allocated in its entirety to the subsequent purchase. The provisions of this subsection shall not apply to cases where such previous and subsequent purchases involve equipment, parts or other goods attached or affixed to goods previously purchased and not fully paid, or to services in connection therewith rendered by the seller at the buyer's request.

Agreements to extend due date or defer installments; charge; insurance premiums; confirmation by holder.

(d) (1) The holder of a retail installment contract, upon agreement in writing with the buyer, may extend the scheduled due date or defer the scheduled payment of all or of any part of any installment or installments payable thereunder. The holder may charge and collect at the time of the extension or deferral for the payment of an extension or deferral by the buyer a fee and collect and receive the same, but such charge may not exceed an amount equal to 1 ¼% per month on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of \$1.00 for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than \$1.00. The agreement may also provide for payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until

the end of such period of extension or deferral, any insurance coverages provided for in the contract. The extension or deferral must be confirmed in writing by the holder.

Refinancing unpaid balances; new schedule; refinance charges; contents.

(2) The holder of a retail installment contract, upon agreement in writing with the buyer, may refinance the payment of the unpaid time balance of the contract by providing for a new schedule of installment payments. The holder may charge and contract for the payment of a refinance charge by the buyer and collect and receive the same, but such refinance charge shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to such refinancing, after the deduction of a refund of credit in an amount equal to that to which the buyer would have been entitled under section 8, if he had prepaid in full his obligations under the contract or contracts, computed without allowance for any minimum earned finance charge. Such refinance charge shall not exceed the rate of finance charge provided under section 7. The refinancing agreement shall set forth the amount of the unpaid time balance to be refinanced, the amount of any refund credit, the amount to be refinanced after the deduction of the refund credit, any additional premiums paid for insurance and of official fees to the buyer, the amount of the finance charge under the refinancing agreement, the new unpaid time balance and the new schedule of installment payments.

HISTORY: New 1966, p. 277, Act 224, Eff. Mar. 10, 1967.

445.862 Retail charge agreements; copies, form, acknowledgment of delivery, notice to buyer; monthly statements, contents.

Sec. 12. (a) Each retail charge agreement shall be in writing and signed by the buyer or the authorized representative of the buyer. A copy of any such agreement executed on or after the effective date of this act shall be delivered or mailed to the buyer prior to the date on which the first payment is due thereunder. Any acknowledgment by the buyer of delivery of a copy of the agreement contained in the body thereof shall be in a size equal to at least 10-point bold type and shall appear directly above the buyer's signature or the signature of the authorized representative of the buyer. No agreement executed on or after the effective date of this act shall be signed by the buyer when it contains blank spaces of items which are essential provisions of the transaction to be filled in after it has been signed. The buyer's acknowledgment, conforming to the requirements of this section, of delivery of a copy of an agreement, shall be presumptive proof, in any action or proceeding, of such delivery and that the agreement, when signed, did not contain any blank spaces as herein provided. All retail charge agreements executed on or after the effective date of this act shall state the maximum amount and rate of the time price differential to be charged and paid pursuant thereto. Any such agreement shall contain substantially the following notice printed or typed in a size equal to at least 10-point bold type. "Notice to the buyer—Do not sign this agreement before you read it or if it contains blank spaces. You are entitled to a copy of the agreement you sign."

Monthly statement to buyer; provisions.

(b) The buyer under the retail charge agreement shall promptly be supplied with a statement as of the end of each monthly period, which need not be a calendar month, or other regular period agreed upon in writing, at the end of which there is any unpaid balance thereunder, which statement shall recite the following:

(1) The unpaid balance under the retail charge agreement at the beginning and at the end of the period.

(2) The cash sale price of each purchase by the buyer during the period and, unless a sales slip or a memorandum of each purchase is attached to the statement, the purchase or posting date, a brief description or identification of each purchase.

(3) The payments made by the buyer and any other credits to the buyer during the period.

(4) The amount, if any, of any time price differential for such period.

(5) A statement to the effect that the buyer at any time may pay his total unpaid balance or any part thereof.

Time price differential; rate; computation; minimum charges.

(c) A retail charge agreement may provide for, and the seller or holder may then, notwithstanding the provisions of any other law, charge, collect and receive, a time price differential for the privilege of paying in installments thereunder, in an amount not exceeding 1.7% of the unpaid balance per month. The time price differential under this subsection shall be computed on all amounts unpaid thereunder from month to month, which need not be calendar months, or other regular periods; but if the regular period is other than a monthly period or if the unpaid amount is less than or greater than \$10.00, the time price differential may be computed proportionately. The time price differential may be computed for all unpaid balances within a range of not in excess of \$10.00 on the basis of the median amount within such range if as so computed such time price differential is applied to all unpaid balances within such range. A minimum time price differential not in excess of 70 cents per month may be charged, received and collected.

Attorney's collection fees and court costs.

(d) A retail charge agreement may also provide for the payment of an attorney's reasonable fee where it is referred for collection to an attorney not a salaried employee of the holder of the retail charge agreement or any unpaid balance thereunder, and for court costs.

HISTORY: New 1966, p. 278, Act 224, Eff. Mar. 10, 1967.

445.863 Retail installment contracts or charge agreements; insurance included in cost; requirements; minimum charges; refunds.

Sec. 13. (a) If the cost of insurance is included in the retail installment contract or the retail charge agreement and a separate charge is made to the buyer for the insurance:

(1) The contract or agreement shall state the nature, purpose and the amount of the insurance.

(2) The contract or agreement shall state whether the insurance is to be procured by the buyer or the seller.

(3) The amount included for the insurance may not exceed the premiums chargeable in accordance with the rate fixed for the insurance by the insurer except where the amount is less than \$1.00; and if the insurance is cancelled or terminated for any reason, any refund for unearned insurance premiums received by the seller or the holder, shall be credited to the final maturing installments of the retail installment contract or retail charge agreement, and any remaining balance of the unearned insurance premiums shall be refunded to the buyer. No credit or cash refund shall be required if the amount thereof is less than \$1.00.

(b) If the insurance is to be procured by the seller or holder, within 45 days after delivery of the goods or furnishing of the services under the contract or agreement he shall deliver, mail, or cause to be delivered or mailed to the buyer at his address as specified in the contract or agreement, a notice that the insurance is procured, a copy of the policy or policies of insurance, or a certificate of the insurance so procured.

HISTORY: New 1966, p. 279, Act 224, Eff. Mar. 10, 1967.

445.864 Retail installment contracts or charge agreements; provisions prohibited.

Sec. 14. No retail installment contract or retail charge agreement shall contain any provision by which:

(a) In the absence of the buyer's default in the performance of any of his obligations, the holder may accelerate the maturity of any part or all of the amount owing thereunder.

(b) A power of attorney is given to confess judgment in this state, or an assignment of wages is given.

(c) The seller or holder or other person acting on his behalf is given authority to enter upon the buyer's premises unlawfully or to commit any breach of the peace in the repossession of goods.

(d) The buyer waives any right of action against the seller or holder or other person acting on his behalf, for any illegal act committed in the collection of payments under the contract or agreement or in the repossession of goods.

(e) The buyer executes a power of attorney appointing the seller or holder, or other person acting on his behalf, as the buyer's agent in collection of payments under the contract or agreement or in the repossession of goods.

(f) The buyer agrees not to assert against the seller or against an assignee a claim or defense arising out of the sale.

HISTORY: New 1966, p. 279, Act 224, Eff. Mar. 10, 1967.

445.865 Retail installment contracts or charge agreements; assignment.

Sec. 15. Notwithstanding the provisions of any other law:

(a) An assignee may purchase or acquire or agree to purchase or acquire any retail installment contract or retail charge agreement or any outstanding balance under either from a seller on such terms and conditions and for such price as may be mutually agreed upon.

(b) Filing of the assignment, notice to the buyer of the assignment and any requirement that the seller be deprived of dominion over payments upon a retail installment contract or retail charge agreement, or over the goods if returned to or repossessed by the seller, shall not be necessary to the validity of a written assignment of the retail installment contract or retail charge agreement or any outstanding balance under either as against creditors, subsequent purchasers, pledgees, mortgagees and lien claimants of the seller.

(c) Unless the buyer has notice as provided in subsection (d) of this section of the assignment of his retail installment contract, retail charge agreement or any outstanding balance under either, payment therefor made by the buyer to the holder last known to him shall be binding upon all subsequent holders.

(d) Assignment of the retail installment contract or retail charge agreement shall not bar the buyer from asserting any defense against the assignee which he may have against the seller, unless the assignee mails a written notice of the assignment to the buyer, certified mail, return receipt requested or personally serves the buyer with such notice and receives no notice of the claimed defense or facts upon which the defense is based, from the buyer within 15 days of the mailing of the notice of assignment.

HISTORY: New 1966, p. 280, Act 224, Eff. Mar. 10, 1967.

445.866 Waiver of act as to buyers' protection prohibited.

Sec. 16. No act or agreement of the retail buyer before or at the time of the making of a retail installment contract, retail charge agreement or purchase thereunder shall constitute a valid waiver of any of the provisions of this act or of any remedies granted to the buyer by law.

HISTORY: New 1966, p. 280, Act 224, Eff. Mar. 10, 1967.

445.867 Violation of act; misdemeanor.

Sec. 17. Any person who wilfully and intentionally violates any provisions of this act shall be guilty of a misdemeanor.

HISTORY: New 1966, p. 280, Act 224, Eff. Mar. 10, 1967.

445.868 Violation of act; effect as to recovery rights of seller.

Sec. 18. Any seller who enters into any contract or agreement which does not comply with the provisions of this act or who violates any provision of this act except as a result of accidental or bona fide error is barred from the recovery of any time price differential, any official fees, delinquency or collection charge, attorney fees or court costs and the buyer shall be entitled to recover his reasonable attorney fees and court costs from the seller or his assigns.

Notwithstanding the provisions of this section, nothing in this act shall bar recovery upon a contract which is lawful where executed and is executed outside this state by a buyer who was not at the time of such execution a bona fide resident of this state, except that no seller or seller's assign may in any such action recover a greater total time price differential upon any retail installment contract or charge agreement than the maximum lawful rate which would have been permitted by this act if such contract or agreement had been executed in this state.

HISTORY: New 1966, p. 280, Act 224, Eff. Mar. 10, 1967.

445.869 Violation of act; injunction.

Sec. 19. The attorney general or the prosecuting attorney of the county in which the violation occurs may bring an action in the name of the state against any person to enjoin any violation of this act.

HISTORY: New 1966, p. 281, Act 224, Eff. Mar. 10, 1967.

445.870 Violation of act; assurance of discontinuance; acceptance by attorney general, approval of circuit court.

Sec. 20. The attorney general, or with his consent a prosecuting attorney, may accept an assurance of discontinuance of any act or practice deemed in violation of this act from any person engaging in, or who has engaged in, such act or practice. Any assurance shall be in writing and filed with and subject to the approval of the circuit court of the county in which the alleged violator resides or has his principal place of business. Failure to perform the terms of any assurance constitutes prima facie proof of a violation of this act for the purpose of securing any injunction as provided in section 19 and for the purpose of section 18. After commencement of any action by a prosecuting attorney, the attorney general may not accept an assurance of discontinuance without the consent of the prosecuting attorney.

HISTORY: New 1966, p. 281, Act 224, Eff. Mar. 10, 1967.

445.871 Violation of order of circuit court; civil penalty.

Sec. 21. Any person who violates any order of a circuit court issued pursuant to this act shall forfeit and pay a civil penalty of not more than \$1,000.00. For the purpose of

this section, the court issuing any order shall retain jurisdiction for a period of 10 years and the cause shall be continued for that period, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties during the period of any order.

HISTORY: New 1966, p. 281, Act 224, Eff. Mar. 10, 1967.

445.872 Effect of act as to prior contracts.

Sec. 22. The provisions of this act shall not invalidate or make unlawful or unenforceable, retail installment contracts or retail charge agreements executed prior to the effective date of this act, or liabilities at any time incurred thereunder.

HISTORY: New 1966, p. 281, Act 224, Eff. Mar. 10, 1967.

Act 332, 1965, p. 637; Eff. Jan. 1, 1966.

AN ACT to define and regulate home improvement installment contracts for the modernization, rehabilitation, repair, alteration or improvement upon or in connection with real property; to prescribe the functions of circuit courts, the attorney general and prosecuting attorneys; and to provide remedies and penalties.

The People of the State of Michigan enact:

PART 1.

445.1101 Home improvement finance act; short title.

Sec. 101. This act shall be known and may be cited as the "home improvement finance act".

HISTORY: New 1965, p. 637, Act 332, Eff. Jan. 1, 1966.

CITED IN OTHER SECTIONS: Sections 445.1101 to 445.1431 are cited in § 445.852.

445.1102 Home improvement finance act; definitions.

Sec. 102. As used in this act, except where the context clearly indicates otherwise:

(a) "Banking institution" means a bank, bank and trust company, trust company, savings bank, private bank or a national banking association, organized and doing business under the provisions of any law of this state, or of any other state of the United States, or under the provisions of any law of the United States of America.

(b) "Cash price" means the cash sales price stated in a home improvement installment contract for which the contractor would sell or furnish to the buyer and the buyer would buy or obtain from the contractor the goods and services which are the subject matter of the contract, if the sale were a sale for cash, instead of a home improvement installment sale, and may include any taxes.

(c) "Collateral" means real or personal property subject to a pledge, security interest, mortgage, encumbrance, judgment or other lien which secures the performance of an obligation of the buyer, or a surety or guarantor for the buyer, under a home improvement installment contract or any extension, deferment, renewal or other revision thereof.

(d) "Down payment" means the amounts paid in money and in goods to the home improvement contractor and allowances given by the home improvement contractor to the buyer prior to or contemporaneous with the execution of a home improvement installment contract.

(e) "Finance charge", "credit service charge", "service charge", "time price differential" or a similar term, means that amount by which the time sale price exceeds the aggregate of the cash price and the amounts, if any, included for insurance premiums and official fees.

(f) "Financing agency" means a person other than a home improvement contractor engaged, directly or indirectly, as principal, agent or broker in the business of purchasing, acquiring, financing, soliciting or arranging for the financing or acquisition of home improvement installment contracts or any obligation in connection therewith. It does not include a person to the extent that he makes bona fide commercial loans to contractors or financing agencies and takes assignments of, or an interest in, an aggregation of such contracts only as security for such commercial loans under which, in the absence of default or other bona fide breach of the loan contract, ownership of such contracts remains vested in the assignor and collection of payments on such contracts is made by the assignor.

(g) "Goods" means chattels which are furnished or used in the modernization, rehabilitation, repair, alteration or improvement of real property, but not in the construction of new homes.

(h) "Holder" means a person, including a contractor, currently entitled to the rights of a contractor under a home improvement installment contract.

(i) "Home improvement contractor" or "contractor" means a person who sells goods and services, or agrees to furnish or render services, to a retail buyer pursuant to a home improvement installment contract, but not in connection with construction of new homes.

(j) "Home improvement installment contract" or "contract" means an agreement covering a home improvement installment sale, whether contained in 1 or more documents, together with any accompanying promissory note or other evidence of indebtedness, pursuant to which the buyer promises to pay in installments all or any part of the time sale price or prices of goods and services, or services. It does not include such an agreement:

(1) Pertaining to real property used for a commercial or business purpose.

(2) Covering the sale of goods by a person who neither directly nor indirectly performs or arranges to perform any services in connection with the installation of or application of the goods.

(3) Covering only an appliance designed to be free-standing and not built into and permanently affixed as an integral part of the structure such as a stove, freezer, refrigerator, air conditioner, other than one connected with a central heating system, hot water heater and the like.

(4) Covering the sale of goods and the furnishing of services or the furnishing of services thereunder for a cash price stated therein of \$300.00 or less.

(5) If the loan is contracted for or obtained directly by the retail buyer from the lending institution, person or corporation.

(k) "Home improvement installment sale" or "sale" means the sale of goods and furnishing of services or the furnishing of services by a contractor to a retail buyer pursuant to a home improvement installment contract in which the cash price is stated to be in excess of \$300.00.

(l) "Official fees" means the fees required by law to be paid to the appropriate public officer for obtaining any permit or filing or recording or releasing any judgment, mortgage or other lien or perfecting any security interest taken or reserved as security in connection with a home improvement installment contract.

(m) "Person" means an individual, partnership, association, business corporation, banking institution, nonprofit corporation, common law trust, joint stock company, or any other group of individuals, however organized.

(n) "Principal amount financed" means the cash price of the goods and services which are the subject matter of the home improvement installment sale minus the

amount of the buyer's down payment, plus the amounts, if any, included for insurance and official fees.

(o) "Retail buyer" or "buyer" means a person who buys goods and services, or services from a contractor pursuant to a home improvement installment contract.

(p) "Services" means work, labor and services furnished in connection with the installation or application of goods.

(q) "Time balance" means the sum of the principal amount financed and the finance charge.

(r) "Time sale price" means the total of the cash price of the goods and services or services, the finance charge and the amounts, if any, included for insurance premiums and official fees.

HISTORY: New 1965, p. 638, Act 332, Eff. Jan. 1, 1966.

445.1111 Federal truth in lending act; effect of compliance.

Sec. 111. Compliance with the requirements of the consumer credit protection act, Public Law 90-321; 82 statute 146, et seq., commonly referred to as the federal truth in lending act is compliance with the disclosure provisions of subsections (b), (c), (d), (e), (f), (g), (h), (i), (j) and (k) of section 203 of this act.

HISTORY: Add. 1969, p. 58, Act 30, Imd. Eff. Jul. 10.

PART 2.

445.1201 Home improvement installment contract; date, form.

Sec. 201. A home improvement installment contract shall be dated and in writing and the printed portion thereof shall be in at least 8-point type.

HISTORY: New 1965, p. 639, Act 332, Eff. Jan. 1, 1966.

445.1202 Home improvement installment contract; contents required.

Sec. 202. A home improvement installment contract shall contain:

(a) The entire agreement of the parties with respect to the goods and services.

(b) Either at the top of the contract or directly above the space reserved for the signature of the buyer, the words "home improvement installment contract" and shall appear in at least 10-point bold type.

(c) A notice in at least 8-point bold type reading as follows: "Notice to buyer: (1) Do not sign this contract before you read it. (2) You are entitled to a completely filled-in copy of this contract. (3) Under the law, you have the right to pay off in advance the full amount due and, under certain conditions, to obtain a partial refund of the finance charge. (4) You may rescind or cancel this contract, not later than 5 p.m. on the business day following the date thereof by giving written notice of rescission to the contractor or his agent at his place of business given in the contract or by mailing the notice or cancellation to the contractor to his place of business given in the contract by depositing a properly addressed certified letter in a United States post office or mail box, but if you rescind after 5 p.m. on the business day following, you are still entitled to offer defenses in mitigation of damages and to pursue any rights of action or defenses that arise out of the transaction".

HISTORY: New 1965, p. 639, Act 332, Eff. Jan. 1, 1966.

445.1203 Home improvement installment contract; additional required contents.

Sec. 203. Except as provided in sections 306, 307 and 308, a home improvement installment contract shall contain the following:

(a) The name and place of business of the contractor, the name and address of the buyer as specified by the buyer, the location of the premises to be improved, and a description of the goods and services sufficient to identify them.

- (b) The cash price of the goods and services which are the subject matter of the sale.
- (c) The amount of the buyer's down payment, itemizing any allowance given by the contractor, amounts paid in money and in goods and containing a brief description of the goods, if any, traded in.
- (d) The unpaid cash balance which is the difference between item (b) and item (c).
- (e) The premium paid for each type of insurance included in the contract for which a separate charge is made, a statement as to whether the insurance is to be procured by the contractor or buyer, and a brief description of each type of coverage and the term thereof.
- (f) The amount of official fees, if any.
- (g) The principal amount financed, which is the sum of items (d), (e) and (f).
- (h) The amount of the finance charge expressed in dollars.
- (i) The time balance, which is the sum of items (g) and (h), payable by the buyer to the contractor, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.
- (j) The time sale price.
- (k) If any installment substantially exceeds in amount any prior installment other than the down payment, the following legend printed in 10-point bold type or type-written and underlined: This contract is not payable in installments of equal amounts. Followed, if there be but 1 larger installment, by: An installment of \$..... will be due on, or if there be more than 1 larger installment, by: Larger installments will be due as follows: (Insert the amount or amounts of every larger installment and its due date).
- (l) This contract may be rescinded or cancelled by the buyer not later than 5 p.m. on the business day following the date thereof by giving written notice of rescission to the contractor or his agent at his place of business given in this contract or by mailing the notice of cancellation to the contractor to his place of business given in the contract by depositing a properly addressed certified letter in a United States post office or mail box, but if he rescinds after 5 p.m. on the business day following, he is still entitled to offer defenses in mitigation of damages and to pursue any rights of action or defenses that arise out of the transaction.

The items need not be stated in the sequence or order set forth above. Additional items may be included to explain the computation made in determining the amount to be paid by the buyer. The contract need not make any reference to item (e) or item (f) if a charge for the item is not included in the contract.

HISTORY: New 1965, p. 640, Act 332, Eff. Jan. 1, 1966.

445.1204 Home improvement installment contract; delivery of copy to buyer; acknowledgment, form.

Sec. 204. The contractor shall deliver to the buyer at the time the contract is executed a copy thereof completed in accordance with the provisions of this act. Until the contractor does so, the buyer shall not be obligated to pay. Any acknowledgment by the buyer of the delivery of a copy of the contract shall be printed or written in a size equal to at least 10-point bold type and, if contained in the contract, shall also appear directly above the space reserved for the buyer's signature. The buyer's written acknowledgment, conforming to the requirements of this section of delivery of a copy of a contract, shall be evidence of such delivery and of compliance with this section in any action or proceeding by or against an assignee of the contract without knowledge to the contrary when he purchases the contract.

HISTORY: New 1965, p. 640, Act 332, Eff. Jan. 1, 1966.

445.1205 Home improvement installment contract; statement as to insurance.

Sec. 205. If the premium paid for group credit life or other insurance is included in the home improvement installment contract and a separate charge is made to the buyer for such insurance, the contract shall state whether the insurance is to be procured by the buyer or the contractor.

HISTORY: New 1965, p. 641, Act 332, Eff. Jan. 1, 1966.

445.1206 Home improvement installment contract; provisions prohibited.

Sec. 206. A home improvement installment contract shall not contain any provision by which:

(a) The buyer agrees not to assert against a contractor a claim or defense arising out of the sale or agrees not to assert against an assignee such a claim or defense other than as provided in section 208.

(b) In the absence of the buyer's default in the performance of any of his obligations, the holder may, arbitrarily and without reasonable cause, accelerate the maturity of any or all of the amount owing thereunder.

(c) The buyer waives any right of action against the contractor or holder, or a person acting on his behalf, for any illegal act committed in the collection of payments under the contract.

(d) The buyer relieves the contractor from liability for any legal remedies which the buyer may have against the contractor under the contract or any separate instrument executed in connection therewith.

(e) The contractor or holder, or a person acting on his behalf, is authorized to enter upon the premises of the buyer unlawfully, or is authorized to commit any breach of the peace in connection with any repossession or other entry upon the premises of the buyer.

(f) The seller is entitled to liquidated damages for any cancellation, rescission or failure or refusal to accept delivery of the goods or performance of the services covered in the contract.

Any prohibited provision is void but shall not otherwise affect the validity of the contract.

HISTORY: New 1965, p. 641, Act 332, Eff. Jan. 1, 1966.

445.1207 Home improvement installment contract; provisions as to execution of notes.

Sec. 207. (1) A home improvement installment contract shall not require execution of a note or series of notes by the buyer which, when separately negotiated, will cut off as to third parties any right of action or defense which the buyer may have against the contractor.

(2) The contract may require execution of a promissory note but only if it bears on the same side of the note as contains the maker's signature the following legend in at least 10-point bold type: "Payment of this note is subject to the terms of a home improvement installment contract of even date between maker and payee." No such note may be negotiated or otherwise transferred without simultaneous delivery of the related contract.

HISTORY: New 1965, p. 641, Act 332, Eff. Jan. 1, 1966.

445.1208 Home improvement installment contracts; assignment; effect as to right of action or defense; notice to buyer, contents.

Sec. 208. A right of action or defense arising out of the transaction which gave rise to the home improvement installment contract which the buyer has against the contractor, and which would be cut off by assignment, shall not be cut off by assignment

of the contract to a third person whether or not he acquired the contract in good faith and for value, unless the assignee gives notice of the assignment to the buyer as provided in this section and within 15 days of the mailing of such notice receives no written notice of the facts giving rise to the claim or defense of the buyer. A notice of assignment shall be in writing addressed to the buyer by certified mail at his address shown on the contract and shall indicate or contain: The name and address of the assignee, the names of the contractor and the buyer and a description of the goods and services which are the subject matter of the contract, the time balance of the contract, the number and amount of installments in which the time balance is payable and the due date or period thereof, together with the following legend printed or written in a size equal to at least 8-point bold type:

Notice:

- (1) If the within statement of your transaction with the contractor is not correct in every respect; or
- (2) If the goods and services described in or in an enclosure with this notice have not been delivered and satisfactorily performed by the contractor; or
- (3) If the contractor has not fully performed all his agreements with you, you must notify the assignee in writing at the address indicated in or in an enclosure with this notice within 15 days from the date of the mailing of this notice; otherwise, you will have no right to assert against the assignee any right of action or defense arising out of the sale which you might otherwise have against the contractor.

HISTORY: New 1965, p. 641, Act 332, Eff. Jan. 1, 1966.

445.1209 Home improvement installment contract; provisions as to delinquency and collection charges, court costs and attorney fees.

Sec. 209. A home improvement installment contract may provide for the payment by the buyer of a delinquency and collection charge on each installment in default for a period of not less than 10 days in an amount not in excess of 5% of such installment or \$5.00, whichever is less. Only 1 such delinquency and collection charge may be collected on any such installment regardless of the period during which it remains in default. A contract may also provide for the payment of court costs actually incurred and of attorney's fees not exceeding 20% of the amount due and payable under such contract if the attorney is not a salaried employee of the contractor or holder for collection.

HISTORY: New 1965, p. 642, Act 332, Eff. Jan. 1, 1966.

PART 3.

445.1301 Maximum finance charge; computation, payment.

Sec. 301. (1) The maximum finance charge included in a home improvement installment contract payable in substantially equal successive monthly installments beginning 1 month from the date the finance charge accrues, shall not exceed \$8.00 per \$100.00 per annum. The finance charge shall be computed on the principal amount financed on the contract notwithstanding that the time balance is required to be paid in installments. The finance charge shall not accrue over a longer period than one which commences on the date of completion of the contract and ends on the date when the final installment is payable. For a period less or greater than 12 months or for amounts less or greater than \$100.00, the amount of the maximum finance charge shall be increased or decreased proportionately. A fractional monthly period of 15 days or more may be considered a full month. If the finance charge computed as above provided is less than \$12.00, a minimum finance charge of \$12.00 may be made.

(2) Subject to the limitations in subsection (3), when a contract is payable other than in substantially equal successive monthly installments, as where payable in irregular or

unequal installments either in amount or periods thereof, or in regular installments followed by or interspersed with an irregular, unequal or larger installment or installments, or if the finance charge accrues from a date more than 1 month before the first installment is payable, the finance charge may not exceed an amount which, having due regard for the schedule of installment payments, will provide the same yield as if the contract were payable in accordance with the standard payment terms stated in subsection (1).

(3) If the amount of any installment is 2 times or more the amount of any other installment except the down payment, the amount of the finance charge in respect to the portion of the principal amount financed included in such larger installment shall not exceed the equivalent of 6% per annum simple interest for the period from the date on which finance charge begins to accrue to the due date of such larger installment and such portion of the finance charge shall be payable in substantially equal periodic installments throughout such period.

HISTORY: New 1985, p. 642, Act 332, Eff. Jan. 1, 1986.

445.1302 Division of sale transaction prohibited.

Sec. 302. A contractor shall not induce or permit a buyer to split up or divide any sale transaction for the purpose of qualifying for any exclusion under subsection (j) of section 102.

HISTORY: New 1985, p. 643, Act 332, Eff. Jan. 1, 1986.

445.1303 Payment before maturity; refund credit.

Sec. 303. (1) Notwithstanding the provisions of a home improvement installment contract to the contrary, a buyer may pay the contract in full at any time before maturity and in so paying shall receive a refund credit thereon. Except as provided in subsection (2), the amount of the refund credit shall represent at least as great a proportion of the finance charge, or if the contract has been extended, deferred or refinanced, of the additional charge therefor, as the sum of the periodical time balance scheduled by the contract to follow the installment date after the day of prepayment bears to the sum of all the periodical time balances under the schedule of installments in the contract or, if the contract has been extended, deferred or refinanced, as so extended, deferred or refinanced.

(2) If any part of the finance charge is computed on an installment as provided in subsection (3) of section 301, the amount of the refund credit applicable to that part of the finance charge shall represent at least as great a proportion of that part of the finance charge as the number of months to elapse after the month in which prepayment is made to the due date of that installment bears to the number of months from the date the finance charge accrues to the due date of that installment.

(3) Where the amount of the credit for anticipation of payment is less than \$1.00, no refund need be made. Where the earned finance charge amounts to less than the minimum finance charge, there may be retained an amount equal to the minimum finance charge under section 301.

HISTORY: New 1985, p. 643, Act 332, Eff. Jan. 1, 1986.

445.1304 Scheduled payments; extension of due date; deferral charge.

Sec. 304. The holder of a home improvement installment contract, upon agreement in writing with the buyer, may extend the scheduled due date or defer the scheduled payment of all or of any part of any installment or installments payable thereunder. The holder may charge and contract for the payment of an extension or deferral charge by the buyer and collect and receive the same, but such charge may not exceed an amount equal to 1% per month simple interest on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or de-

ferred installment, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of \$1.00 for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than \$1.00. The agreement may also provide for payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided for in the contract.

HISTORY: New 1965, p. 643, Act 332, Eff. Jan. 1, 1966.

445.1305 Refinancing payment of unpaid balance; refinance charge, computation; refinancing agreement, consolidation of contracts.

Sec. 305. The holder of a home improvement installment contract, upon agreement in writing with the buyer, may refinance the payment of the unpaid time balance of the contract by providing for a new schedule of installment payments. The holder may charge and contract for the payment of a refinanced charge by the buyer and collect and receive the same, but such refinance charge shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to such refinancing, after the deduction of a refund credit in an amount equal to that to which the buyer would have been entitled under section 303 if he had prepaid in full his obligations under the contract or contracts, computed without allowance for any minimum earned finance charge. Such refinance charge shall not exceed the rate of finance charge provided under section 301. The agreement for refinancing may also provide for the payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until the maturity of the contract as refinanced, any insurance coverages provided therein. The refinancing agreement shall set forth the amount of the unpaid time balance to be refinanced, the amount of any refund credit, the amount to be refinanced after the deduction of the refund credit, any additional premiums paid for insurance and of official fees to the buyer, the amount of the finance charge under the refinancing agreement, the new unpaid time balance and the new schedule of installment payments. A refinancing agreement between a financing agency and a buyer may consolidate the new unpaid time balances of 2 or more home improvement installment contracts by providing for a new schedule of consolidated installment payments, and may provide for the acceleration of the consolidated time balance upon a failure of the buyer to pay in full any consolidated installment payment. A contractor may not consolidate 2 or more home improvement installment contracts except to the extent provided in sections 306, 307 and 308.

HISTORY: New 1965, p. 643, Act 332, Eff. Jan. 1, 1966.

445.1306 Add-on sales; optional contract provisions; finance charges, insurance.

Sec. 306. A home improvement installment contract may provide that the contractor may at his option add to the contract subsequent home improvement installment sales made by such contractor to the buyer, and that the total time balance of the goods and services covered by the contract shall be increased by the principal amount financed under the subsequent sale or sales, and that all finance charges and installment payments may, at the contractor's option, be increased proportionately and that all terms and conditions of the contract shall apply equally to such sale or sales. In addition, the contract may provide for the payment by the buyer of the additional cost of premiums for continuing in force, until the due date of the final installment of the consolidated time balance, any insurance coverages provided for therein. The minimum

finance charge as provided in section 301 may be used but once in any series of add-on home improvement installment sales.

HISTORY: New 1965, p. 644, Act 332, Eff. Jan. 1, 1966.

445.1307 Finance charge; computation, maximum sale.

Sec. 307. Subject to the provisions of section 301, the finance charge to be included in a consolidated time balance shall be determined by applying a finance charge at a rate not exceeding the maximum rate specified in that section to either:

(a) The total of the principal amount financed under the subsequent sale and the unpaid balance of any previous contract determined by deducting from the unpaid time balance thereof as of the date the finance charge is to accrue on the subsequent sale, any then unearned finance charge in an amount not less than the refund credit provided for in section 303 computed without the allowance of any minimum earned finance charge, for the period from the date the finance charge is to accrue on the subsequent sale to and including the date when the final installment of such consolidated time balance is payable; or

(b) The principal amount financed under the subsequent sale for the period from the date the finance charge is to accrue thereon to and including the date when the final installment of such consolidated time balance is payable and, if the due date of the final installment of such consolidated time balance is later than the due date of the final installment of any previous contract included in the consolidated time balance, on the unpaid time balance of such previous contract as of the date the finance charge is to accrue on the subsequent sale for the period from the date when the final installment on the previous contract would have been payable to the date when the final installment of such consolidated time balance is payable.

HISTORY: New 1965, p. 644, Act 332, Eff. Jan. 1, 1966.

445.1308 Subsequent sale; memorandum, contents.

Sec. 308. When a subsequent home improvement installment sale is made, the contractor shall deliver to the buyer, at the time the contract is executed, a memorandum which shall set forth the following with respect to the subsequent sale:

(a) The name and place of business of the contractor, the name and address of the buyer, as specified by the buyer, the location of the premises to be improved, and a description of the goods and services sufficient to identify them.

(b) The cash price of the goods and services which are the subject matter of the subsequent sale.

(c) The amount of the buyer's down payment, in respect of the subsequent sale, itemizing any allowance given by the contractor, amounts paid in money and in goods and containing a brief description of the goods, if any, traded in.

(d) The unpaid cash balance which is the difference between item (b) and item (c).

(e) The premium paid for each type of insurance, if any, included in the subsequent sale for which a separate charge is made, a statement as to whether the insurance is to be procured by the contractor or buyer and a brief description of each type of coverage and the term thereof.

(f) The amount of official fees, if any, in respect of the subsequent sale.

(g) The principal amount financed in respect of the subsequent sale which is the sum of items (d), (e) and (f).

(h) The unpaid time balance of the prior contract or contracts.

(i) The amount of any refund credit in respect of the prior contract or contracts.

(j) Item (h) less item (i).

(k) The premiums paid for any additional insurance and the cost of official fees in respect of the prior contract or contracts, a statement as to whether the insurance is to

be procured by the contractor or buyer, and a brief description of each type of coverage and the term thereof.

(l) The total principal amount financed, which is the sum of items (g), (j) and (k).

(m) The amount of the finance charge expressed in dollars.

(n) The consolidated time balance, which is the sum of items (l) and (m), payable by the buyer to the contractor, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.

(o) If any installment substantially exceeds in amount any prior installment other than the down payment, the following legend printed in 10-point bold type or type-written and underlined: This contract ("memorandum") is not payable in installments of equal amounts.

Followed, if there be but one larger installment by:

An installment of \$..... will be due on, or if there be more than 1 larger installment, by: Larger installments will be due as follows: (insert the amount or amounts of every larger installment and its due date).

The items need not be stated in the sequence or order set forth above. Additional items may be included to explain the computations made in determining the amount to be paid by the buyer. The memorandum need not make any reference to items (e), (f) or (k) if a charge for the item is not included. The memorandum shall contain the statement that the contractor is adding the subsequent home improvement installment sale to the buyer's existing contract in accordance with the provisions thereof. Until the contractor delivers to the buyer the memorandum as provided in this section, the buyer shall not be obligated to pay any installment due.

HISTORY: New 1965, p. 645, Act 332, Eff. Jan. 1, 1966.

PART 4.

445.1401 Notice of assignment by contract holder.

Sec. 401. Unless the buyer has notice of the actual or intended assignment of a home improvement installment contract, payment thereunder by the buyer to the last known holder of the contract is binding upon all subsequent holders or assignees.

HISTORY: New 1965, p. 646, Act 332, Eff. Jan. 1, 1966.

445.1402 Statement of payments; furnished by holder, fee.

Sec. 402. At any time after its execution, but not later than 1 year after the last payment thereunder, the holder of a home improvement installment contract, upon written request of the buyer, shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount, if any, unpaid thereunder. The statement shall be supplied by the holder once each year without charge; if any additional statement is requested by the buyer, the holder shall supply each statement to the buyer at a charge not exceeding \$1.00 for each additional statement supplied to the buyer. A buyer shall be given a receipt for any payment when made in cash.

HISTORY: New 1965, p. 646, Act 332, Eff. Jan. 1, 1966.

445.1403 Payment in full; acknowledgment, release of collateral.

Sec. 403. After the payment of all sums for which the buyer is obligated under a home improvement installment contract and upon demand made by the buyer, the holder shall deliver, or mail to the buyer at his last known address, such 1 or more good and sufficient instruments as may be necessary to acknowledge payment in full and to release all collateral.

HISTORY: New 1965, p. 646, Act 332, Eff. Jan. 1, 1966.

445.1404 Compensation or reward for procurement of contract prohibited.

Sec. 404. (1) As part of or in connection with the inducement to make a home improvement installment contract, no person shall promise or offer to pay, credit or al-

low to a buyer any compensation or reward for the procurement of a home improvement installment contract with others.

(2) No person shall offer, deliver, pay, credit or allow to the buyer any gift, bonus, award, merchandise or cash loan as an inducement to enter into a home improvement installment contract.

(3) A contractor or financing agency may give tangible items to prospective buyers for advertising or sales promotion purposes where the gift is not conditioned upon obtaining a home improvement installment contract, but such item shall not have a cost value in excess of \$2.50 and no buyer or other person shall receive more than 1 such item in connection with any one sale.

HISTORY: New 1965, p. 646, Act 332, Eff. Jan. 1, 1966.

445.1405 Criminal violation of act by personnel deemed violation by contractor; exception.

Sec. 405. A criminal violation of any of the provisions of this act by a director, manager, partner, officer, salesman, agent or employee of a contractor or financing agency is deemed a criminal violation by such contractor or financing agency, unless it shall appear that the individuals engaged in the management of the contractor or financing agency had no actual or constructive knowledge of the wrongful conduct or was reasonably unable to prevent the violation.

HISTORY: New 1965, p. 646, Act 332, Eff. Jan. 1, 1966.

445.1406 Unauthorized charges and expenses.

Sec. 406. No person shall charge, collect or receive from a buyer, directly or indirectly, any further or other amount for costs, credit investigation charges, insurance premiums, examination, appraisal, service, brokerage, commission, interest, discount, expense, fee, fine, penalty or other thing of value in connection with a home improvement installment contract other than the charges authorized by this act. Any such unauthorized charge shall be unenforceable. Any payment thereof shall be applied to the next maturing installment, or, if the contract has been fully paid, remitted to the buyer and the buyer shall be entitled to recover all such unauthorized charges.

HISTORY: New 1965, p. 646, Act 332, Eff. Jan. 1, 1966.

445.1407 Cash loans not included.

Sec. 407. No cash loan shall directly or indirectly be included in or combined or consolidated with any home improvement installment contract or with any extension, deferment, refinancing, add-on or consolidation agreement pertaining thereto.

HISTORY: New 1965, p. 647, Act 332, Eff. Jan. 1, 1966.

445.1409 Waiver of act as to buyers' protection prohibited.

Sec. 409. No act, agreement or statement of a buyer under a home improvement installment contract constitutes a valid waiver of any provision of this act intended for the benefit or protection of the buyer.

HISTORY: New 1965, p. 647, Act 332, Eff. Jan. 1, 1966.

445.1410 Effect of act as to prior contracts.

Sec. 410. This act does not apply to or affect the validity of a home improvement installment contract otherwise within the purview of this act, which is made prior to the effective date of the respective provisions of this act governing such contracts.

HISTORY: New 1965, p. 647, Act 332, Eff. Jan. 1, 1966.

445.1421 Violation of act; misdemeanor, penalty.

Sec. 421. Any person who wilfully violates any provision of this act or directs or consents to such violation, is guilty of a misdemeanor and, upon conviction thereof, may be punished by imprisonment in the county jail for a period not to exceed 90 days and may be fined not more than \$500 or both for the first offense; and for each subsequent

offense a like fine or imprisoned not to exceed 1 year, or both. Violation of any order, decree or injunction issued pursuant to the provisions of this act shall constitute prima facie proof of a violation of this section.

HISTORY: New 1965, p. 647, Act 332, Eff. Jan. 1, 1966.

445.1422 Violation of act; injunction; violation of injunction, civil penalty.

Sec. 422. (1) The attorney general or the prosecuting attorney of any county may bring an action in the name of the state to restrain or prevent any violation of this act or any continuance of any such violation. Such action, in the case of the attorney general, shall be brought in the circuit court of Ingham county, upon which jurisdiction thereof is conferred, and, in the case of the prosecuting attorney, in the county where the defendant resides, has his principal place of business, or where the act sought to be restrained has been, or is about to be, performed.

(2) A person who violates any order or decree entered, or injunction issued, pursuant to subsection (1) is liable to a civil penalty of not more than \$1,000.00, in the discretion of the court, to be recovered as judgments are now by law recovered. For the purpose of this section, the circuit court entering any order or judgment, or issuing any injunction, under the provisions of this section may retain jurisdiction, and the cause may be continued.

(3) Any penalty directed to be paid under the provisions of this section shall be in addition to any penalty which may be imposed under the provisions of section 421.

HISTORY: New 1965, p. 647, Act 332, Eff. Jan. 1, 1966.

445.1431 Effective date of act.

Sec. 431. This act shall take effect January 1, 1966.

HISTORY: New 1965, p. 647, Act 332, Eff. Jan. 1, 1966.

CHAPTER 446. AUCTIONEERS, PAWNBROKERS AND VENDORS

HAWKERS AND PEDDLERS

Ch. 21, R.S. 1846

446.16-446.25 Repealed.

AUCTIONEERS, AND DUTIES UPON SALES AT AUCTIONS

446.26 Auctioneers; bond, delivery to county treasurer.

446.27 Auctioneers; term.

446.28 Auctioneers; statement on oath, time, contents.

446.29 Statement on oath; delivery to county treasurer; payment of duties, record.

446.30 Statement on oath; forwarding to auditor general, payment over of duties.

446.31 Auction duties; articles subject, amount.

446.32 Auction duties; articles exempt.

446.33 Auctions; conduct; duties on articles bought by auctioneers.

446.34 Auction duties; calculation.

446.35 Auctioneers; practice without delivery of bond, penalty.

PUBLIC AUCTIONS

Act 224 of 1955

446.51 Sale of new merchandise at public auction; license required.

446.52 Licenses; application, filing, contents.

446.53 Licenses; bond, amount, beneficiaries, conditions, liability.

Service of process on principal and surety under bond.

Jurisdiction, consent.

Joinder of parties.

446.54 Licenses; fees.

446.55 Licenses; issuance, transferability, validity.

446.56 Report of sale and inventory of unsold merchandise; filing.

446.57 Licensing of sales by auction; definitions.

446.58 Cappers, boosters, shillers or false bids prohibited.

446.59 Nonapplication of act as to certain sales.

446.60 Violation of act; penalty.

PEDDLERS AND PAWNBROKERS IN UPPER PENINSULA

Act 204 of 1889

446.101 Hawkers, peddlers and pawnbrokers in upper peninsula; regulation and licensing by township board.

446.102 Regulation and licensing; procedure; resolution of township board, record, posting, effect, affidavit as evidence.

446.103 Licenses; term, transferability.

446.104 Licenses; fees, disposition.

446.105 Licenses; unlawful use or failure to obtain, penalty; exemptions from act.

PAWNBROKERS IN CITIES AND VILLAGES

Act 273 of 1917

446.201 Pawnbrokers in municipalities over 3,000; license required.

446.202 Licenses; issuance, contents, term, transferability, fee, bond.

446.203 Pawnbroker; definition.

446.204 Licensed pawnbroker; action upon bond.

446.205 Record of property received; contents, inspection.

446.206 Statement to police of property received; contents.

446.207 Right to deal in second-hand property; pawned article, definition.

446.208 Purchaser's memorandum of pawn; contents.

446.209 Interest on loans; rate; storage charge; time of payment, computation.

446.210 Sale of pawned property at public auction; time, place; notice, affidavit of printer as to publication.

446.211 Tender of debt and costs before sale; effect as to right to property.

446.212 Surplus resulting from sale; disposition.

446.213 Pawned property; destruction or defacing unlawful.

446.214 Pawned property; acceptance from posted person or minor unlawful.

446.216 Bond of complainant; amount, surety.

446.217 Transaction of business on Sunday unlawful.

446.218 Violation of act; penalty.

446.219 Violation of act; revocation of license.

DRUG AND TOILET PREPARATIONS

Act 85 of 1923

446.301 Peddlers of drugs and toilet preparations; license required, fee, term.

446.302 Peddlers of drugs and toilet preparations; definition.

446.303 Violation of act; penalty.

446.304 Effect of act as to local tax or license.

446.305 Inapplicability of act to certain sales.

446.306 Additional state license not required.

R.S. 1846, Ch. 21 (continued).

HAWKERS AND PEDDLERS

446.16-446.25 Repealed. 1952, p. 141, Act 124, Eff. Sep. 18.

Sections regulated licensing of hawkers and peddlers.

AUCTIONEERS AND DUTIES UPON SALES AT AUCTIONS.

446.26 Auctioneers; bond, delivery to county treasurer.

Sec. 26. Any citizen of this state may become an auctioneer within the county in which he resides, on executing and delivering to the treasurer of such county, a bond

in the penal sum of 2,500 dollars, with 2 or more sufficient sureties to be approved by such treasurer, conditioned for the payment to such treasurer, of all auction duties upon goods or property which may be sold by him, according to law.

HISTORY: CL 1857, 973;—CL 1871, 1158;—How. 1267;—CL 1897, 5332;—CL 1915, 7021;—CL 1929, 9669;—CL 1948, 446.26.

FORMER LAWS: For law prior to 1846 covering the subject matter of this and most of the following sections, see Act 78 of 1839.

SALE BY AUCTION: See Compilers' § 440.2328.

FARM PRODUCTS: Licensing of auctioneers, see Compilers' § 285.34.

COMMISSION MERCHANTS: Act not to apply to auctioneers selling farm products on commission, see Compilers' § 445.340.

446.27 Auctioneers; term.

Sec. 27. Every person who shall have executed and delivered such bond to the county treasurer shall, for the term of 4 years next after the date of such bond, be an auctioneer within such county, and be authorized to carry on and perform the business of an auctioneer, and shall conform to the provisions hereinafter contained.

HISTORY: CL 1857, 974;—CL 1871, 1159;—How. 1268;—CL 1897, 5333;—CL 1915, 7022;—CL 1929, 9670;—CL 1948, 446.27.

446.28 Auctioneers; statement on oath, time, contents.

Sec. 28. If such auctioneer reside in either of the cities of this state, he shall on the first Monday of each month, and if he reside in any other place, then on the first Monday of April and October in each and every year, make out a statement in writing, verified by his oath, and deliver the same to the county treasurer, in which statement he shall designate particularly:

1. The sums for which all the goods, at every auction held by him after delivering such bond, or the date of his last preceding statement, were sold:

2. The days on which sales were so made by him, and the amount of sales on each day:

3. The amount of duties chargeable under the provisions of this chapter.

HISTORY: CL 1857, 975;—CL 1871, 1160;—How. 1269;—CL 1897, 5334;—CL 1915, 7023;—CL 1929, 9671;—CL 1948, 446.28.

446.29 Statement on oath; delivery to county treasurer; payment of duties, record.

Sec. 29. Every such statement, verified, as aforesaid, shall, within 10 days after the date thereof, be delivered by such auctioneer to the treasurer of the county in which he resides, and such auctioneer shall, at the time of delivering such statement, pay over to such county treasurer the duties chargeable by law upon the sales specified in such statement, and take the treasurer's receipt therefor, which receipt shall be countersigned by the clerk of the same county, who shall make an entry of the amount thereof, in a proper book to be kept by him for that purpose.

HISTORY: CL 1857, 976;—CL 1871, 1161;—How. 1270;—CL 1897, 5335;—CL 1915, 7024;—CL 1929, 9672;—CL 1948, 446.29.

446.30 Statement on oath; forwarding to auditor general, payment over of duties.

Sec. 30. Each county treasurer shall, immediately after receiving such statement, forward the same to the auditor general, and shall pay over all auction duties received by him to the state treasurer, in such manner as such treasurer shall direct.

HISTORY: CL 1857, 977;—CL 1871, 1162;—How. 1271;—CL 1897, 5336;—CL 1915, 7025;—CL 1929, 9673;—CL 1948, 446.30.

446.31 Auction duties; articles subject, amount.

Sec. 31. The following articles and no others shall be subject to the payment of the following duties if sold at auction:

1. All ardent spirits, wines, and intoxicating liquors, whether foreign or domestic, shall be liable to the payment of a duty of 2 ½ per cent.

2. All goods, wares, and merchandise of every description imported from any place without the United States, shall be liable to the payment of a duty of 1 ½ per cent at each and every time they are so exposed for sale.

HISTORY: CL 1857, 978;—CL 1871, 1163;—How. 1272;—CL 1897, 5337;—CL 1915, 7026;—CL 1929, 9674;—CL 1948, 446.31.

446.32 Auction duties; articles exempt.

Sec. 32. Goods and chattels, otherwise liable to auction duties, shall be exempt therefrom, if sold under the following circumstances:

First, If they shall belong to the United States, or this state.

Second, If they shall be sold in pursuance of any judgement, order or decree of any court of law or equity, or under any seizure or distress by any public officer.

Third, If they shall belong to an estate of a deceased person, and be sold by his executors or administrators, or by any other person duly authorized by any judge of probate.

Fourth, If they shall be the effects of a bankrupt or insolvent, and be sold by his assignee, appointed pursuant to law, or by a general assignment for the benefit of the creditors of such bankrupt or insolvent.

Fifth, If they shall be sold at any fair or other exhibition, the entire proceeds of which are devoted to any association, organized for charitable or benevolent purposes, or for the relief of sick and wounded soldiers, or the families of such soldiers.

HISTORY: CL 1857, 979;—Am. 1865, p. 40, Act. 33, Eff. June 22;—CL 1871, 1164;—How. 1273;—CL 1897, 5338;—CL 1915, 7027;—CL 1929, 9675;—CL 1948, 446.32.

446.33 Auctions; conduct; duties on articles bought by auctioneers.

Sec. 33. All goods, property and effects, liable to the payment of duties, shall, in all cases when sold at auction, be struck off to the highest bidder, and when the auctioneer, or owner, or any person employed by them or either of them, shall be such bidder they shall be subject to the same duties as if struck off to any other person; but this section shall not be construed to render valid any sale which would otherwise be deemed fraudulent and void.

HISTORY: CL 1857, 980;—CL 1871, 1165;—How. 1274;—CL 1897, 5339;—CL 1915, 7028;—CL 1929, 9676;—CL 1948, 446.33.

SALE BY AUCTION: See Compilers' § 440.2328.

446.34 Auction duties; calculation.

Sec. 34. All duties shall be calculated on the sums for which the goods and property exposed for sale shall be respectively struck off to the purchaser thereof.

HISTORY: CL 1857, 981;—CL 1871, 1166;—How. 1275;—CL 1897, 5340;—CL 1915, 7029;—CL 1929, 9677;—CL 1948, 446.34.

446.35 Auctioneers; practice without delivery of bond, penalty.

Sec. 35. If any person shall act as an auctioneer in the sale of any goods or property liable to the payment of duties under the provisions of this chapter, without first having delivered to the county treasurer the bond herein required, such person shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding 500 dollars.

HISTORY: CL 1857, 982;—CL 1871, 1167;—How. 1276;—CL 1897, 5341;—CL 1915, 7030;—CL 1929, 9678;—CL 1948, 446.35.

Act 224, 1955, p. 334; Imd. Eff. Jun. 18.

AN ACT to regulate sales at public auction; to provide for the issuing of licenses; and to prescribe penalties for violations of the provisions of this act.

The People of the State of Michigan enact:

446.51 Sale of new merchandise at public auction; license required.

Sec. 1. It shall be unlawful for any person, firm or corporation to sell, dispose of, or offer for sale at public auction at any place outside the limits of any city or village in the state of Michigan, or within the limits of any village in the state of Michigan that has not by ordinance provided for the licensing of sales by auction, any new merchandise, unless such person, firm or corporation, and the owners of such merchandise, if it

is not owned by the vendors, shall have first secured a license as herein provided and shall have complied with the regulations hereinafter set forth.

HISTORY: New 1955, p. 334, Act 224, Imd. Eff. Jun. 18.

446.52 Licenses; application, filing, contents.

Sec. 2. Any person, firm or corporation desiring such license shall, at least 10 days prior to such proposed auction sale, file with the township clerk of the township wherein it is proposed to hold such auction sale, an application in writing duly verified by the person, firm or corporation proposing to sell, dispose of or offer for sale any new merchandise at public auction, which application shall state the following facts:

(1) The name, residence and postoffice address of the person, firm or corporation making the application, and if a firm or corporation, the name and address of the members of the firm or officers of the corporation, as the case may be;

(2) The name, residence and postoffice address of the auctioneer who will conduct such auction sale;

(3) A detailed inventory and description of all such new merchandise to be offered for sale at such auction and a valuation thereof;

(4) A statement as to whether or not the sale at public auction shall be with or without reservation.

HISTORY: New 1955, p. 335, Act 224, Imd. Eff. Jun. 18.

446.53 Licenses; bond, amount, beneficiaries, conditions, liability.

Sec. 3. At the time of filing said application, and as a part thereof, the applicant shall file and deposit with the township clerk a bond, with sureties to be approved by the township board, in the penal sum of 2 times the value of the merchandise proposed to be offered for sale at such auction as shown by the inventory filed, running to the state of Michigan and for the use and benefit of any purchaser of any merchandise at such auction who might have a cause for action of any nature arising from or out of such auction sale against the auctioneer or applicant; the bond to be further conditioned on the payment by the applicant of all taxes that may be payable by, or due from, the applicant to the state of Michigan, or any department or subdivision thereof, the payment of any fines that may be assessed by any court against the applicant or auctioneer for violation of the provisions of this act, and the satisfaction of all causes of action commenced within 1 year from date of such auction sale and arising therefrom: Provided, however, That the aggregate liability of the surety for all said taxes, fines and causes of action shall in no event exceed the sum of such bond.

Service of process on principal and surety under bond.

In such bond the applicant and the surety shall appoint the township clerk of the township in which such bond is filed, the agent of the applicant and the surety for the service of process. In the event of such service, the agent on whom such service is made shall, within 5 days after the service, mail by ordinary mail a true copy of the process served upon him to each party for whom he is served, addressed to the last known address of such party. Failure to so mail said copy shall not, however, affect the court's jurisdiction.

Jurisdiction, consent.

Such bond shall contain the consent of the applicant and surety that the circuit court of the county or the justice court of the township wherein the application and bond is filed shall have jurisdiction of all actions within the jurisdiction of the respective courts against the applicant or surety, or both, arising out of said sale.

Joinder of parties.

The state of Michigan, or any subdivision thereof, or any person having a cause of action against the applicant arising out of the sale of such new merchandise, may join

the applicant and the surety on such bond in the same action, or may in such action sue either such applicant or the surety alone.

HISTORY: New 1955, p. 335, Act 224, Imd. Eff. Jun. 18.

446.54 Licenses; fees.

Sec. 4. At the time of filing said application and bond the applicant shall pay to the township clerk a license fee in the sum of \$25.00 for each day it is supposed to hold such auction sale as shown by the application for such license.

HISTORY: New 1955, p. 336, Act 224, Imd. Eff. Jun. 18.

446.55 Licenses; issuance, transferability, validity.

Sec. 5. Upon the filing of such application and after the applicant has fully complied with all the provisions of this act, the township board, by the township clerk, shall issue to the applicant a license authorizing the holding of such auction sale as proposed in said application. Such license shall not be transferable, and shall be valid only in the township where issued, and shall not be valid in any village which has enacted an ordinance providing for the licensing of sales by auction.

HISTORY: New 1955, p. 336, Act 224, Imd. Eff. Jun. 18.

446.56 Report of sale and inventory of unsold merchandise; filing.

Sec. 6. Within 10 days after the last day of said auction the applicant shall file in duplicate with the township board a listing of all merchandise sold at such auction and the prices received therefor, together with a detailed inventory of all merchandise unsold at the close of such auction sale. The township clerk shall, immediately after receiving such listing of sales, forward a copy thereof to the department of revenue.

HISTORY: New 1955, p. 336, Act 224, Imd. Eff. Jun. 18.

446.57 Licensing of sales by auction; definitions.

Sec. 7. "New merchandise" as used in this act shall mean all merchandise not previously sold at retail. "Auction sale" as used in this act shall mean the offering for sale or selling of personal property to the highest bidder, or offering for sale or selling of personal property at a high price and then offering the same at successive lower prices until a buyer is secured.

HISTORY: New 1955, p. 336, Act 224, Imd. Eff. Jun. 18.

446.58 Cappers, boosters, shillers or false bids prohibited.

Sec. 8. At any such sale by auction, no person shall act as "bidder," or what is commonly known as a "capper," "booster" or "shiller," or offer or make any false bid, or offer any false bid or pretend to buy any article sold or offered for sale at any sale by auction.

HISTORY: New 1955, p. 336, Act 224, Imd. Eff. Jun. 18.

446.59 Nonapplication of act as to certain sales.

Sec. 9. The provisions of this act shall not extend to the sale at public auction of livestock, farm machinery or farm produce, used homestead goods or other items commonly sold at farm or homestead sales, or to auction sales by individuals of new merchandise, which was assessed personal property tax in the state of Michigan or is replacement stock of merchandise inventory which was assessed personal property tax in the county in which the sale is to be had, and to auction sales under a mortgage foreclosure or under the direction of a court or court officers of such sales as may be required by law. The owner of the personal property specified in this section may furnish the person or persons conducting the public auction with a statement that the

property set forth in the statement has been assessed as personal property in the state of Michigan or that it has been purchased as replacement for property that has been assessed, and the possession of such a statement shall absolve the person or persons to whom it is given from all liability under the provisions of this act.

HISTORY: New 1955, p. 336, Act 224, Imd. Eff. Jun. 18.

446.60 Violation of act; penalty.

Sec. 10. Any person, firm or corporation found to be in violation of this act shall be guilty of a misdemeanor and may be punished by a fine not to exceed \$100.00, or by imprisonment in the county jail not to exceed 90 days, or by both fine and imprisonment.

HISTORY: New 1955, p. 336, Act 224, Imd. Eff. Jun. 18.

Act 204, 1889, p. 284; Eff. Jul. 28.

AN ACT to authorize the township board of any township in the upper peninsula to license hawkers, peddlers and pawnbrokers, and hawking and peddling, and to regulate and license the sale or peddling of goods, wares, merchandise, refreshments or any kind of property or thing by persons going about from place to place in the township, for that purpose, or from any stand, cart, vehicle, or other device, in the streets, highways, or in or upon wharves, docks, open places or spaces, public grounds or buildings in the township, and to provide a forfeiture for every person who, without license, or contrary to the terms of any license granted to him, shall exercise any occupation or trade, or do anything in respect to which any license shall be required by any resolution or regulation of the township board, made or passed under authority of this act.

The People of the State of Michigan enact:

446.101 Hawkers, peddlers and pawnbrokers in upper peninsula; regulation and licensing by township board.

Sec. 1. That the township board of any township in the upper peninsula of Michigan may, at any meeting, regular or special, license hawkers, peddlers and pawnbrokers, and hawking and peddling, and may regulate and license the sale or peddling of goods, wares, merchandise, refreshments, or any kind of property or thing, by persons going about from place to place in the township for that purpose, or from any stand, cart, vehicle or other device, in the streets, highways, or in or upon the wharves, docks, open places or spaces, public grounds or public buildings in the township, Provided, That in no case such license shall exceed the sum of 100 dollars for peddling in such township.

HISTORY: How. 1266a;—Am. 1895, p. 271, Act 137, Imd. Eff. May 13;—Rep. 1897, p. 338, Act 248, Imd. Eff. June 2;—CL 1897, 5331c;—CL 1915, 6979;—CL 1929, 9679;—CL 1948, 446.101.

This section appears in its original form. Amendatory Act 137 of 1895, which attempted to extend the provisions of this act to the entire state, was held unconstitutional in *People v. DeBlaay*, 137 Mich. 402, 403, 100 N.W. 598.

By Act 248 of 1897 the legislature attempted to repeal this act, but Act 248 was held unconstitutional in *Rodgers v. Kent Cir. Judge*, 115 Mich. 441, 73 N.W. 381, leaving this act unrepealed and in force.

PAWNBROKERS: Specifically excepted from provisions of Act 21 of 1939 by Sec. 20, being Compilers' § 493.20; and also of Act 307 of 1925 by Sec. 1, being Compilers' § 493.1.

Licensing, etc., see Compilers' § 446.201 et seq.

TRANSIENT MERCHANTS: Sale of goods, see Compilers' § 445.371 to 445.378.

SECOND HAND AND JUNK DEALERS: Regulation, see Compilers' § 445.401 et seq.

446.102 Regulation and licensing; procedure; resolution of township board, record, posting, effect, affidavit as evidence.

Sec. 2. The action of the township board in licensing hawkers and peddlers, and in regulating and licensing the sale of goods, wares, merchandise, refreshments, or any kind of property or thing, under section 1 of this act, shall be by resolution of the board, which resolution shall be spread at large upon the records of its proceedings: Provided, That such resolution may be annulled or amended by resolution of the

township board, passed at any subsequent meeting thereof, and spread at length upon the records of its proceedings: Provided further, That such resolution, or any resolution annulling or amending the same, shall not take effect until 20 days after a written or printed copy of the same shall have been posted in 5 of the most public places in the township. The person or persons posting copies of any resolution, as in this section provided, shall make and file with the township clerk of the township an affidavit or affidavits of the fact of such posting. And in all suits, actions or proceedings where the passage of any resolution by the township board, authorized by the provisions of this act, or the posting of copies thereof, as above provided, shall come in question, a copy of such resolution, and of such affidavit or affidavits, certified under the hand of the township clerk of the township shall be prima facie evidence of the due passage of such resolution, and of the due posting of copies thereof.

HISTORY: How. 1266b;—Rep. 1897, p. 338, Act 248, Imd. Eff. June 2;—CL 1897, 5331d;—CL 1915, 6980;—CL 1929, 9680;—CL 1948, 446.102.

For attempted repeal of this act see last paragraph of history note to Compilers' § 446.101.

*NOTE: It is evident the word "large" should be "length".

446.103 Licenses; term, transferability.

Sec. 3. No license shall be granted for any term beyond the first Monday in May, next thereafter, nor shall any license be transferable.

HISTORY: How. 1266c;—Rep. 1897, p. 338, Act 248, Imd. Eff. June 2;—CL 1897, 5331e;—CL 1915, 6981;—CL 1929, 9681;—CL 1948, 446.103.

For attempted repeal of this act see last paragraph of history note to Compilers' § 446.101.

446.104 Licenses; fees, disposition.

Sec. 4. All sums received for licenses granted under authority of this act, shall be paid into the township treasury of the township granting the license, to the credit of the contingent fund.

HISTORY: How. 1266d;—Rep. 1897, p. 338, Act 248, Imd. Eff. June 2;—CL 1897, 5331f;—CL 1915, 6982;—CL 1929, 9682;—CL 1948, 446.104.

For attempted repeal of this act see last paragraph of history note to Compilers' § 446.101.

446.105 Licenses; unlawful use or failure to obtain, penalty; exemptions from act.

Sec. 5. Every person who, without license, shall, within the limits of the township, exercise any occupation or trade, or do anything for or in respect to which any license shall be required by resolution or regulation of the township board of any township, made or passed under authority of this act, or who shall be found selling or trading, or offering for sale or trade any goods, wares, merchandise, refreshments or any kind of property or thing, within the limits of the township, contrary to the terms of any license granted to him shall, for each offense, forfeit the sum of 50 dollars, or imprisonment in the county jail not to exceed 90 days, or both such fine and imprisonment in the discretion of the court: Provided, That nothing in this act contained shall include any person who shall sell or offer to sell agricultural, garden or dairy products, or any fruit, shade or ornamental tree, plant, shrub or bush, agricultural machinery, tools, implements or vehicles, and all kinds of meat and fish.

HISTORY: How. 1266e;—Rep. 1897, p. 338, Act 248, Imd. Eff. June 2;—CL 1897, 5331g;—CL 1915, 6983;—CL 1929, 9683;—CL 1948, 446.105.

For attempted repeal of this act see last paragraph of history note to Compilers' § 446.101.

Act 273, 1917, p. 700; Eff. Aug. 10.

AN ACT to regulate and license pawnbrokers in cities and incorporated villages of this state, having a population of more than 3,000.

The People of the State of Michigan enact:

446.201 Pawnbrokers in municipalities over 3,000; license required.

Sec. 1. No person, corporation or firm shall hereafter carry on the business of pawnbroker in any of the cities or incorporated villages of this state, having a population of more than 3,000, without having first obtained from the mayor of the city or president of the village where the business is to be carried on, a license subject to the provisions of this act, authorizing such person, corporation or firm to carry on such business.

HISTORY: CL 1929, 9684;—CL 1948, 446.201.

FORMER ACT: Act 334 of 1907, being CL 1915, 6006-6024.

Act 334 of 1907 was repealed in 1911, p. 154, Act 105, but the repealing act of 1911 was held unconstitutional in *People v. Quider*, 183 Mich. 82, 149 N.W. 1. See following cases as to leaving Act 334 of 1907 in force prior to repeal by Act 273 of 1917, this act. *Spry Lumber Co. v. Trust Co.*, 77 Mich. 199, 200, 43 N.W. 778; *Detroit v. Western Union Telegraph Co.*, 130 Mich. 474, 90 N.W. 283; *People v. DeBlaay*, 137 Mich. 402, 100 N.W. 598.

PAWNBROKERS: Specifically excepted from provisions of Act 21 of 1939 by Sec. 20, being Compilers' § 493.20; and also of Act 307 of 1925 by Sec. 1, being Compilers' § 493.1.

Licensing, etc., in upper peninsula see Compilers' § 446.101 et seq.

SECOND HAND AND JUNK DEALERS: Regulation, see Compilers' § 445.401.

FINGERPRINTS: See Compilers' § 445.471 et seq.

446.202 Licenses; issuance, contents, term, transferability, fee, bond.

Sec. 2. The mayor of any such city or president of such village may from time to time grant under his hand, and the official seal of his office, to any suitable person, corporation or firm, a license authorizing such person, corporation or firm to carry on the business of a pawnbroker subject to the provisions of this act. Said license shall designate the particular place in said city or incorporated village where such person, corporation or firm shall carry on said business, and no person, corporation or firm receiving said license shall carry on said business in any other place than the one designated in said license. Said license shall be for the period of 1 year from date of issuance, unless sooner revoked for cause, and shall not be transferable. Before any such license shall be issued the person applying therefor shall pay to the treasurer of the city or incorporated village an annual license fee of 250 dollars, and shall give a bond to the said city or incorporated village in its corporate name, in the penal sum of 3,000 dollars, with at least 2 sureties, to be approved by the city or village council conditioned for the faithful performance of the duties and obligations pertaining to the said business and for the payment of all costs and damages incurred by any violation of this act: Provided, That it shall be within the power of the common council of any city or village to fix the amount to be paid as such annual license fee at any amount not less than 50 dollars, nor more than 500 dollars.

HISTORY: CL 1929, 9685;—CL 1948, 446.202.

446.203 Pawnbroker; definition.

Sec. 3. Any person, corporation or member, or members of a copartnership or firm, who loans money on deposit, or pledge of personal property, or other valuable thing, other than securities or printed evidence of indebtedness, or who deals in the purchasing of personal property or other valuable thing on condition of selling the same back again at a stipulated price, is hereby defined to be a pawnbroker.

HISTORY: CL 1929, 9686;—CL 1948, 446.203.

446.204 Licensed pawnbroker; action upon bond.

Sec. 4. If any person shall be aggrieved by the conduct of any such licensed pawnbroker, and shall recover judgment against him therefor, such person may, after the return unsatisfied, either in whole or in part, of any execution issued upon said judgment, maintain an action in his own name upon the bond of the said pawnbroker in any court having jurisdiction of the amount of said judgment remaining unsatisfied.

HISTORY: CL 1929, 9687;—CL 1948, 446.204.

446.205 Record of property received; contents, inspection.

Sec. 5. Every such pawnbroker shall keep a book to be inspected by the chief of police or chief police officer of the city or village in which shall be written in English, at the time he shall receive any article of personal property, or other valuable thing by way of pledge or pawn, a description of such article, the amount of money loaned thereon, the rate of interest to be paid on such loan, the name, residence and general description of the person from whom, and the day and hour when such property was received; and such book, and the place where such business is carried on, and all articles of property therein, shall be subject to examination at any time by the mayor, president, city attorney, or other police officer of such city or village or by the prosecuting attorney or the sheriff or other police officer of the county in which said city or village is situated.

HISTORY: CL 1929, 9688;—CL 1948, 446.205.

446.206 Statement to police of property received; contents.

Sec. 6. Every such pawnbroker shall make daily, except Sunday, a sworn statement of his transactions, describing the goods or pledge received, and setting forth the name, residence and description of the person from whom the goods or pledge were received, to the chief of police or chief police officer of such city or village.

HISTORY: Am. 1927, p. 840, Act 347, Imd. Eff. June 2;—CL 1929, 9689;—CL 1948, 446.206.

446.207 Right to deal in second-hand property; pawned article, definition.

Sec. 7. No pawnbroker shall purchase any second-hand furniture, metals, clothing or other articles or thing, or sell, dispose of or keep for sale any such second-hand articles or thing, except they have been pawned to him, and are or have been sold at public auction to the highest bidder, as hereinafter provided. Any articles sold to such pawnbroker, upon the understanding that such article is to be purchased from such pawnbroker by the seller thereof, or by any person acting for such seller, shall be deemed to be pawned within the meaning of this section.

HISTORY: CL 1929, 9690;—CL 1948, 446.207.

SECOND-HAND DEALERS: See Compilers' § 445.401 et seq.

446.208 Purchaser's memorandum of pawn; contents.

Sec. 8. A pawnbroker, at the time of such loan, shall deliver to the person pawning or pledging any goods, article or thing, a memorandum or note signed by him, containing the substance of the entry required to be made by him in his book by section 6. No charge shall be made or received by any pawnbroker for any such entry, memorandum or note. The memorandum or note shall be consecutively numbered and upon its back shall be printed in English in type as large as that in which the public acts of this state are printed, the following words: "If interest or charges in excess of 3% per month, plus storage charges hereinafter provided, are asked or received, this loan is void and of no effect; and the borrower cannot be made to pay back the money loaned or any interest, or any charges or any part thereof, and the pawnbroker loses all right to the possession of the goods, article or thing pawned, and shall surrender the same to the borrower or pawnor upon due demand therefor."

HISTORY: CL 1929, 9691;—CL 1948, 446.208;—Am. 1965, p. 430, Act 252, Eff. Mar. 31, 1966.

446.209 Interest on loans; rate; storage charge; time of payment, computation.

Sec. 9. A licensed pawnbroker may charge upon any loan a rate of interest not to exceed 3% per month, except that he is not required to accept any interest less than 50 cents on a single loan. A pawnbroker may also charge 50 cents per month or fraction thereof for the storage of property, except jewelry, after 30 days but for not more than 4 months, under any single pledge or pawn. No pawnbroker or agent or employee thereof shall make a loan upon any deposit, pawn or pledge at a rate of interest and

charge or receive therefor in excess of the amounts provided for in this act. Interest on any loan shall not be payable in advance, and shall be computed on unpaid monthly balances only, but without compounding. A pawnbroker is not entitled to any examination fee or to make any charge in excess of the amounts provided for in this act.

HISTORY: CL 1929, 9692;—CL 1948, 446.209;—Am. 1965, p. 430, Act 252, Eff. Mar. 31, 1966.

446.210 Sale of pawned property at public auction; time, place; notice, affidavit of printer as to publication.

Sec. 10. No pawnbroker shall sell any pawn or pledge until the same shall have remained 6 months in his possession, and all such sales shall be at public auction to the highest bidder, and not otherwise. Such sale shall be held under the direction and control of the pawnbroker and in his regularly established place of business. Notice of such sale shall be published for at least 6 days previous thereto in 1 of the daily newspapers to be designated by the mayor or president, published in English, in the city or village where the business is carried on: Provided, That if there be no daily newspaper in such city or village, said notice shall be published at least 2 successive weeks, in a weekly newspaper, to be designated by the mayor or president, published in English, in such city or village. Such notice shall specify the time and place at which such sale is to take place and by whom it is to be conducted, and shall contain the same description of the articles or goods to be sold as was given in the memorandum or note delivered to the pawner under section 8 of this act, and shall give the number of such memorandum or note. An affidavit of the printer of such paper or of his foreman, or his principal clerk, annexed to a printed copy of such notice taken from the paper in which it was published and specifying the times when and papers in which it was published, shall be filed after the last day of such publication and before the day fixed for such sale with the county clerk of the county in which such sale is held. Such affidavit shall be kept in the office of the said county clerk as a public document, and open to the inspection of any person. A fee of 50 cents shall be paid by the party filing such affidavit to the county clerk for the filing of the same.

HISTORY: Am. 1927, p. 840, Act 347, Imd. Eff. June 2;—CL 1929, 9693;—CL 1948, 446.210.

446.211 Tender of debt and costs before sale; effect as to right to property.

Sec. 11. The borrower, at any time prior to the sale, may pay or tender to the pawnbroker the debt and interest and charges thereon, together with the cost of advertising the sale, if the sale has been advertised. The payment or tender shall reinvest the pawner with the title and right of possession to the property pledged.

HISTORY: CL 1929, 9694;—CL 1948, 446.211;—Am. 1965, p. 431, Act 252, Eff. Mar. 31, 1966.

446.212 Surplus resulting from sale; disposition.

Sec. 12. The surplus money, if any, arising from the sale, after deducting the amount of the loan, the interest and charges then due on the same, and the expense of advertising, shall be paid by the pawnbroker to the person who would be entitled to redeem the pledge or pawn if no sale had taken place.

HISTORY: CL 1929, 9695;—CL 1948, 446.212;—Am. 1965, p. 431, Act 252, Eff. Mar. 31, 1966.

446.213 Pawned property; destruction or defacing unlawful.

Sec. 13. No pawnbroker shall deface, scratch, obliterate, melt, separate or break into parts any particle or thing received by him in pawn or otherwise, or in any manner do, cause or suffer to be done by others, anything which shall destroy or tend to destroy the identity of such article or render the identification thereof more difficult.

HISTORY: CL 1929, 9696;—CL 1948, 446.213.

446.214 Pawned property; acceptance from posted person or minor unlawful.

Sec. 14. No pawnbroker shall receive any pledge, pawn, articles or thing whatever from any person after receiving from any 1 of the officers mentioned in section 5 of this act, or the parent or guardian of any minor or person of unsound mind, written notice that such person is a minor, or is of unsound mind, or neglects all lawful business, or that he habitually spends his time in frequenting houses of ill-fame, gambling houses or tippling houses, or that from drinking, gaming, idleness or debauchery of any kind he is squandering his earnings or wasting his estate, or that he is likely to bring himself or family to want, or to render himself or family a public charge, or that he is suspected of thievery. No pawnbroker shall receive any pawn from any person under 18 years of age.

HISTORY: CL 1929, 9897;—CL 1948, 446.214.

MINORS UNDER 18: Similar provisions, see Compilers' § 750.137.

RECEIVING STOLEN GOODS: Penalty, see Compilers' § 750.535 et seq.

Sec. 15.

HISTORY: CL 1929, 9898;—Rep. 1944, 1st Ex. Ses., p. 49, Act 29, Imd. Eff. Mar. 3.

This section covered search warrant, property pawned without owner's consent. Held unconstitutional in *Rassner v. Federal Collateral Society, Inc.*, 299 Mich. 306, 300 N.W. 45.

446.216 Bond of complainant; amount, surety.

Sec. 16. The said bond shall be in double the value of the property claimed, with such surety as such court shall approve, and shall be given to the person from whose possession the property was taken, with condition that the obligor so claiming the same will pay all the costs and damages that may be recovered against him by the obligee in any suit brought within 10 days from the date of such bond.

HISTORY: CL 1929, 9899;—CL 1948, 446.216.

446.217 Transaction of business on Sunday unlawful.

Sec. 17. No license granted under the provisions of this act shall authorize any business to be transacted by pawnbrokers on the first day of the week commonly called Sunday.

HISTORY: CL 1929, 9700;—CL 1948, 446.217.

SUNDAY: General provisions for observance, see Compilers' § 435.11 et seq.

446.218 Violation of act; penalty.

Sec. 18. Any person who shall violate any of the provisions of this act, whether as owner, or as clerk, agent, servant or employe, shall be guilty of a misdemeanor and upon conviction thereof in any court of competent jurisdiction be fined not less than 25 dollars nor more than 100 dollars, or by imprisonment in the county jail not less than 10 days nor more than 3 months, or by both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1929, 9701;—CL 1948, 446.218.

446.219 Violation of act; revocation of license.

Sec. 19. Upon any such conviction of any person doing business as a pawnbroker under the provisions of this act, or on conviction of any clerk, agent, servant or employe of any such person, the license of such person shall forthwith be revoked by the mayor of the city or president of the village, and no part of the license fee of such party shall be returned to him, and no further license as a pawnbroker shall be granted to such person for the period of 1 year from the date of such revocation.

HISTORY: CL 1929, 9702;—CL 1948, 446.219.

Sec. 20. (This was a repeal section.)

HISTORY: CL 1929, 9703;—Rep. 1945, p. 405, Act 267, Imd. Eff. May 25.

ACT REPEALED: Act 334, 1907.

Act 85, 1923, p. 111; Eff. Aug. 30.

AN ACT to provide for the licensing and regulation of the sale of drugs, nostrums, face powders, face creams, face bleaches, face lotions, cosmetics, tooth powders, tooth pastes, dentifrices and other toilet preparations or ointments or applications for the treatment of diseases, injuries or deformities, by itinerant and traveling vendors or hawkers and to provide a penalty for the violation thereof. Am. 1925, p. 212, Act 147, Eff. Aug. 27.

The People of the State of Michigan enact:

446.301 Peddlers of drugs and toilet preparations; license required, fee, term.

Sec. 1. Any itinerant or traveling vendor or hawker of any drug, nostrum, face powder, face cream, face bleach, face lotion, cosmetic, tooth powder, tooth paste, dentifrice or other toilet preparation, or any ointment or application of any kind for the treatment of any disease, injury or deformity, before offering for sale or selling any such drug, nostrum, face powder, face cream, face bleach, face lotion, cosmetic, tooth powder, tooth paste, dentifrice or other toilet preparation, or any ointment or application of any kind for the treatment of any disease, injury or deformity, shall pay to the director of the Michigan board of pharmacy an annual fee of 25 dollars, upon the receipt of which the said director shall issue a license for 1 year from the date of said payment.

HISTORY: CL 1929, 9704;—CL 1948, 446.301. Title Am. 1925, p. 212, Act 147, Eff. Aug. 27.

446.302 Peddlers of drugs and toilet preparations; definition.

Sec. 2. Itinerant or traveling vendors or hawkers under the meaning of this act shall include all persons who carry on the business described in section 1 hereof, by passing from house to house or haranguing the people on the public streets or in public places or by using any art or device for attracting crowds and therewith recommending their wares and offering them for sale or who travel from place to place and hire, lease or occupy any room, building or structure for the exhibition and sale of their wares.

HISTORY: CL 1929, 9705;—CL 1948, 446.302.

HAWKERS AND PEDDLERS: See note to Compilers' § 446.101.

446.303 Violation of act; penalty.

Sec. 3. Any violation of this act shall be a misdemeanor and any person upon conviction thereof shall be punished by a fine of not more than 300 dollars, or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1929, 9706;—CL 1948, 446.303.

446.304 Effect of act as to local tax or license.

Sec. 4. Nothing in this act shall be construed to prevent the collection of any tax or license that may be imposed by any county, township or municipal authority.

HISTORY: CL 1929, 9707;—CL 1948, 446.304.

TOWNSHIP LICENSE: Of hawkers and peddlers, in upper peninsula, see Compilers' §§ 446.101 to 446.105.

446.305 Inapplicability of act to certain sales.

Sec. 5. Nothing in this act contained shall be held or construed to affect sales by traveling representatives of regularly established jobbers or of manufacturers selling to the trade by sample for future delivery from their established place of business; nor any person selling products raised upon lands leased or owned by him; nor individuals handling vegetables, fruits or perishable farm products.

HISTORY: CL 1929, 9708;—CL 1948, 446.305.

446.306 Additional state license not required.

Sec. 6. Any person licensed under the provisions of this act shall not be required to obtain a state license as such vendor or hawker under any prior act.

HISTORY: CL 1929, 9709;—CL 1948, 446.306.

LICENSE: See Compilers' § 446.101 et seq.

CHAPTER 447. FOREIGN TRADE

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447.2	Foreign trade zones; application for establishment.	FOREIGN TRADE BRANCH OF DEPARTMENT OF AGRICULTURE	
447.3	Foreign trade zones; rules and regulations.	Act 23 of 1968	
INTERNATIONAL COMMERCE DIVISION			
Act 24 of 1968			
447.101	International commerce division; creation, director.	447.121	Foreign trade branch of department of agriculture marketing section; creation.
447.102	International commerce division; per-	447.122	Foreign trade branch; performance of duties within appropriations.
		447.123	Foreign trade branch; powers and duties.

Act 154, 1963, p. 218; Eff. Sep. 6.

AN ACT to authorize the establishment of foreign trade zones; and to provide for their operation and maintenance.

The People of the State of Michigan enact:

447.1 Foreign trade zones; definitions.

Sec. 1. As used in this act:

(a) "Act of congress" means the act of congress approved June 18, 1934, entitled "An act to provide for the establishment, operation and maintenance of foreign trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes".

(b) "Public corporation" means the state, or any county, township, city or village within the state, or any state or municipal authority or similar organization financed in whole or in part by public funds.

(c) "Private corporation" means any corporation organized pursuant to Act No. 327 of the Public Acts of 1931, as amended, being sections 450.1 to 450.192 of the Compiled Laws of 1948, for the purpose of establishing, operating and maintaining foreign trade zones according to the provisions of this act.

HISTORY: New 1963, p. 218, Act 154, Eff. Sep. 6.

447.2 Foreign trade zones; application for establishment.

Sec. 2. Any public or private corporation may make application for the privilege of establishing, operating and maintaining a foreign trade zone in accordance with the act of congress.

HISTORY: New 1963, p. 218, Act 154, Eff. Sep. 6.

447.3 Foreign trade zones; rules and regulations.

Sec. 3. Any public or private corporation, whose application is granted pursuant to the act of congress, may establish, operate and maintain a foreign trade zone subject to the conditions and restrictions of the act of congress and any amendments thereto, and under such rules and regulations and for the period of time that may be prescribed by the board established by the act of congress to carry out the provisions of this act.

HISTORY: New 1963, p. 218, Act 154, Eff. Sep. 6.

Act 24, 1968, p. 52; Imd. Eff. May 17.

AN ACT to create a division of international commerce within the department of commerce; and to prescribe its powers and duties.

The People of the State of Michigan enact:

447.101 International commerce division; creation, director.

Sec. 1. There is created in the department of commerce a division of international commerce. The head of the division of international commerce shall be the director who shall be directly responsible to the director of the department of commerce.

HISTORY: New 1968, p. 52, Act 24, Imd. Eff. May 17.

447.102 International commerce division; performance of duties within appropriations.

Sec. 2. The division of international commerce within available appropriations shall accomplish the duties of the division prescribed by section 3.

HISTORY: New 1968, p. 53, Act 24, Imd. Eff. May 17.

447.103 International commerce division; powers and duties.

Sec. 3. The division of international commerce shall serve as the focal point of the state for international activity and shall:

(a) Conduct its own research and contract for outside research, when necessary, on such subjects as United States and foreign tariffs, United States and foreign nontariff barriers and business practices, trade statistics, individual country and industry markets, identification of the assets of this state in product offerings and investment opportunities, advances in international transport technology, and seaway and port service improvements.

(b) Maintain a basic foreign trade library where the products of its research would be readily available.

(c) Serve as the clearing house for the interchange of market and product information between industry of this state and foreign interests.

(d) Prepare brochures, in foreign languages as required, which attractively and persuasively identify the international assets of this state in trade and investment.

(e) Conduct specialized advertising programs in conjunction with specific promotional campaigns.

(f) Collect and distribute to commercial libraries overseas directories, catalogues, brochures and other information of value to foreign businessmen.

(g) Prepare articles for publication in state, national and foreign media.

(h) Publish a series of specialized newsletters.

(i) Prepare news releases on matters of timely interest.

(j) Provide speakers bureau services for civic organizations and other private groups in this state.

(k) Maintain continuing contacts with business of this state to encourage and, when appropriate, assist them in selling abroad.

(l) Inform industrialists of this state of the advantages of overseas arrangements for local manufacturing through joint ventures and licensing.

(m) Develop programs of mutual assistance with banks, shipping agents, combination export managers, freight forwarders, international consultants, and other trade intermediaries of this state.

(n) Encourage and assist the expansion of international trade activities of the chambers of commerce, development commissions, trade associations and similar organizations in this state.

(o) Maintain continuing contacts with federal agencies, the Congress, international organizations, foreign embassies, consulates and trade promotion offices in the United States, regional organizations, and colleges and universities.

(p) Promote visits to this state by, and cooperate with, foreign businessmen and trade association representatives, to be coordinated where desirable with invitations to visit this state to the appropriate country's economic and commercial representatives in the United States.

(q) Coordinate state activities when appropriate for state presentation before the United States trade commission, interstate commerce commission, trade information committee, federal maritime administration, congressional committees, and other similar bodies when the international interests of the state can thus be advanced.

(r) Advertise and promote port utilization, including the mounting of missions to key shipping areas abroad.

(s) Publish and distribute shipping schedules.

(t) Serve as a central information and intelligence center for ports matters.

(u) Coordinate intervention in Great Lakes rate and service cases.

(v) Spearhead state activities to encourage improvements in the St. Lawrence seaway.

(w) Coordinate more active and effective state participation in assisting local groups applying for foreign trade zones.

HISTORY: New 1968, p. 53, Act 24, Imd. Eff. May 17.

Act 23, 1968, p. 52; Imd. Eff. May 17.

AN ACT to create a foreign trade branch of the marketing section of the department of agriculture; and to prescribe its powers and duties.

The People of the State of Michigan enact:

447.121 Foreign trade branch of department of agriculture marketing section; creation.

Sec. 1. There is created a foreign trade branch of the marketing section in the department of agriculture.

HISTORY: New 1968, p. 52, Act 23, Imd. Eff. May 17.

447.122 Foreign trade branch; performance of duties within appropriations.

Sec. 2. The foreign trade branch within available appropriations shall perform the duties of the branch prescribed by section 3.

HISTORY: New 1968, p. 52, Act 23, Imd. Eff. May 17.

447.123 Foreign trade branch; powers and duties.

Sec. 3. The foreign trade branch shall:

(a) Conduct research on foreign laws and regulations affecting sales of agricultural products of this state abroad.

(b) Identify foreign markets for agricultural commodities.

(c) Identify products of this state for promotion abroad.

(d) Design and execute commodity programs for individual country markets.

(e) Conduct programs to encourage greater awareness and participation of the farm community of this state in export sales.

(f) Encourage and assist the expansion of international activities by the various commodity commissions.

(g) Encourage and assist the expansion of international activities by farm organizations.

(h) Coordinate relationships and communications with the foreign agriculture service, national commodity groups, United States bureau of commerce, national trade associations and other national agencies in requests for agriculture trade leads either for Michigan suppliers or in cooperation with suppliers in other states.

(i) Encourage Michigan agricultural industry participation in F.A.S. and bureau of commerce sponsored trade fairs and missions.

(j) Organize, correlate and implement state, industry and commodity groups on foreign visits and trade missions; selecting potential market areas; developing and publishing market surveys for potential penetration by Michigan suppliers.

(k) Conduct foreign market research to determine areas where promotion of Michigan products should be concentrated.

(l) Develop or cause to be developed, multilingual promotional materials for foreign distribution. Develop English versions of foreign promotional presentations for domestic markets and be responsible for appropriate distribution of all trade material developed to aid Michigan shippers and foreign buyers.

HISTORY: New 1968, p. 52, Act 23, Imd. Eff. May 17.

CHAPTER 449. PARTNERSHIPS

UNIFORM PARTNERSHIP ACT

Act 72 of 1917

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Act 72, 1917, p. 119; Eff. Aug. 10.

AN ACT to define what shall constitute partnerships; the relation of partners to persons dealing with the partnership; the relation of partners to one another; to provide for the dissolution and winding up of partnerships; and to make uniform the law relating thereto.

The People of the State of Michigan enact:

PART I.

PRELIMINARY PROVISIONS.

449.1 Uniform partnership act; short title.

Sec. 1. (Name of act). This act may be cited as uniform partnership act.

HISTORY: CL 1929, 9841;—CL 1948, 449.1. This act was prepared under the supervision of the National Conference of Commissioners on Uniform State Laws, and recommended by such commission for passage by the several states. It has been adopted (those marked * being modified versions) by the legislatures in the following jurisdictions: Alaska, Arkansas, California, Colorado, Idaho, Illinois, Maryland, Massachusetts, Michigan, Minnesota, *Nebraska, Nevada, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, Wisconsin and Wyoming.

COMPILERS' NOTE: The catchlines in parentheses following the act section numbers of this act were incorporated as part of the act when enacted.

LIMITED PARTNERSHIPS: See Compilers' § 449.301 et seq.

PARTNERSHIP ASSOCIATIONS: See Compilers' § 449.301 et seq.

449.2 Uniform partnership act; definitions.

Sec. 2. (Definition of terms). In this act, "court" includes every court and judge having jurisdiction in the case; "business" includes every trade, occupation, or profession; "person" includes individuals, partnerships, corporations, and other associations; "bankrupt" includes bankrupt under the federal bankruptcy act or insolvent under any state insolvent act; "conveyance" includes every assignment, lease, mortgage, or incumbrance; "real property" includes land and any interest or estate in land.

HISTORY: CL 1929, 9842;—CL 1948, 449.2.

CONSTRUCTION OF STATUTES: See Compilers' § 8.3.

449.3 Uniform partnership act; interpretation of knowledge and notice.

Sec. 3. (Interpretation of knowledge and notice).

(1) A person has knowledge of a fact within the meaning of this act not only when he has actual knowledge thereof, but also when he has knowledge of such other facts as in the circumstances shows bad faith;

(2) A person has notice of a fact within the meaning of this act when the person who claims the benefit of the notice:

(a) States the fact to such person, or

(b) Delivers through the mail, or by other means of communication, a written statement of the fact to such person or to a proper person at his place of business or residence.

HISTORY: CL 1929, 9843;—CL 1948, 449.3.

449.4 Rules of construction.

Sec. 4. (Rules of construction).

(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act;

(2) The law of estoppel shall apply under this act;

(3) The law of agency shall apply under this act;

(4) This act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it;

(5) This act shall not be construed so as to impair the obligations of any contract existing when the act goes into effect, nor to affect any action or proceedings begun or right accrued before this act takes effect.

HISTORY: CL 1929, 9844;—CL 1948, 449.4.

449.5 Rules for cases not provided for in act.

Sec. 5. (Rules for cases not provided for in this act). In any case not provided for in this act the rules of law and equity, including the law merchant, shall govern.

HISTORY: CL 1929, 9845;—CL 1948, 449.5.

PART II.

NATURE OF A PARTNERSHIP.

449.6 Partnership; definition; effect of act as to prior and limited partnerships.

Sec. 6. (Partnership defined).

(1) A partnership is an association of 2 or more persons, which may consist of husband and wife, to carry on as co-owners a business for profit; any partnership heretofore established consisting of husband and wife only, formed since January 10, 1942 shall constitute a valid partnership.

(2) But any association formed under any other statute of this state, or any statute adopted by authority, other than the authority of this state, is not a partnership under this act, unless such association would have been a partnership in this state prior to the adoption of this act; but this act shall apply to limited partnerships except in so far as the statutes relating to such partnerships are inconsistent herewith.

HISTORY: CL 1929, 9846;—Am. 1941, p. 476, Act 272, Eff. Jan. 10, 1942;—CL 1948, 449.6;—Am. 1957, p. 63, Act 59, Eff. Sep. 27.

449.7 Rules for determining existence of partnership.

Sec. 7. (Rules for determining the existence of a partnership). In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by section 16 persons who are not partners as to each other are not partners as to third persons;

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property;

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived;

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) As a debt by installments or otherwise,

(b) As wages of an employe or rent to a landlord,

(c) As an annuity to a widow or representative of a deceased partner,

(d) As interest on a loan, though the amount of payment vary with the profits of the business,

(e) As the consideration for the sale of the good-will of a business or other property by installments or otherwise.

HISTORY: CL 1929, 9847;—CL 1948, 449.7.

449.8 Partnership property; definition.

Sec. 8. (Partnership property).

(1) All property originally brought into the partnership stock or subsequently acquired, by purchase or otherwise, on account of the partnership is partnership property;

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property;

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name;

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

HISTORY: CL 1929, 9848;—CL 1948, 449.8.

PART III.

RELATIONS OF PARTNERS TO PERSONS DEALING WITH THE PARTNERSHIP.

449.9 Partner as agent of partnership relative to partnership business.

Sec. 9. (Partner agent of partnership as to partnership business).

(1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership, unless the partner so acting has in fact no authority to act for the partnership in the particular matter, and the person with whom he is dealing has knowledge of the fact that he has no such authority;

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners;

(3) Unless authorized by the other partners or unless they have abandoned the business, 1 or more but less than all the partners have no authority to:

(a) Assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership,

(b) Dispose of the good-will of the business,

(c) Do any other act which would make it impossible to carry on the ordinary business of the partnership,

(d) Confess a judgment,

(e) Submit a partnership claim or liability to arbitration or reference;

(4) No act of a partner in contravention of a restriction on his authority shall bind the partnership to persons having knowledge of the restriction.

HISTORY: CL 1929, 9849;—CL 1948, 449.9.

449.10 Real property of partnership; conveyance of title.

Sec. 10. (Conveyance of real property of the partnership).

(1) Where title to real property is in the partnership name, any partner may convey a title to such property by a conveyance executed in the partnership name; but the partnership may recover such property unless the partner's act binds the partnership under the provisions of paragraph 1 of section 9, or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority;

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner, in his own name, passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of paragraph 1 of section 9;

(3) Where title to real property is in the name of 1 or more but not all the partners, and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partners' act does not bind the partnership under the provisions of paragraph 1 of section 9, unless the purchaser or his assignee, is a holder for value, without knowledge;

(4) Where the title to real property is in the name of 1 or more or all the partners, or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name, or in his own name, passes the equitable interest of the partner-

ship, provided the act is one within the authority of the partner under the provisions of paragraph 1 of section 9;

(5) Where the title to real property is in the names of all the partners a conveyance executed by all the partners passes all their rights in such property.

HISTORY: CL 1929, 9850;—CL 1948, 449.10.

See note under Compilers' § 554.1.

FRAUDULENT CONVEYANCES: See Compilers' § 506.18.

449.11 Partnership; effect of admission of partner.

Sec. 11. (Partnership bound by admission of partner). An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this act is evidence against the partnership.

HISTORY: CL 1929, 9851;—CL 1948, 449.11.

449.12 Partnership; effect of knowledge of or notice to partner.

Sec. 12. (Partnership charged with knowledge of or notice to partner). Notice to any partner of any matter relating to partnership affairs, and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner, operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

HISTORY: CL 1929, 9852;—CL 1948, 449.12.

449.13 Partnership; liability for wrongful acts of partner.

Sec. 13. (Partnership bound by partner's wrongful act). Where, by any wrongful act or omission of any partner acting in the ordinary course of the business or the partnership, or with the authority of his copartners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

HISTORY: CL 1929, 9853;—CL 1948, 449.13.

449.14 Partnership; effect of partner's breach of trust.

Sec. 14. (Partnership bound by partner's breach of trust). The partnership is bound to make good the loss:

(a) Where 1 partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(b) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

HISTORY: CL 1929, 9854;—CL 1948, 449.14.

449.15 Partners; joint and severable liability.

Sec. 15. (Nature of partner's liability). All partners are liable:

(a) Jointly and severally for everything chargeable to the partnership under sections 13 and 14;

(b) Jointly for all other debts and obligations of the partnership; but any partner may enter into a separate obligation to perform a partnership contract.

HISTORY: CL 1929, 9855;—CL 1948, 449.15.

449.16 Partnership by estoppel; liability.

Sec. 16. (Partner by estoppel).

(1) When a person, by words spoken or written or by conduct, represents himself, or consents to another representing him to any one, as a partner in an existing partnership or with 1 or more persons not actual partners, he is liable to any such person to whom such representation has been made, who has on the faith of such representation,

given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner he is liable to such person, whether the representation has or has not been made or communicated to such person, so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made;

(a) When a partnership liability results, he is liable as though he were an actual member of the partnership,

(b) When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately;

(2) When a person has been thus represented to be a partner in an existing partnership, or with 1 or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact, with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results; but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

HISTORY: CL 1929, 9656;—CL 1948, 449.16.

449.17 Incoming partner; liability.

Sec. 17. (Liability of incoming partner). A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.

HISTORY: CL 1929, 9657;—CL 1948, 449.17.

PART IV.

RELATIONS OF PARTNERS TO ONE ANOTHER.

449.18 Rules for determining rights and duties of partners.

Sec. 18. (Rules determining rights and duties of partners). The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(a) Each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied; and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits;

(b) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property;

(c) A partner, who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute, shall be paid interest from the date of the payment or advance;

(d) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made;

(e) All partners have equal rights in the management and conduct of the partnership business;

(f) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs;

(g) No person can become a member of a partnership without the consent of all partners;

(h) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners; but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

HISTORY: CL 1929, 9858;—CL 1948, 449.18.

DISSOLUTION: For application of subd. (a) to liability of partners on dissolution, see Compilers' § 449.40.

449.19 Partnership books; location, accessibility.

Sec. 19. (Partnership books). The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

HISTORY: CL 1929, 9859;—CL 1948, 449.19.

449.20 Partner; duty to render information.

Sec. 20. (Duty of partners to render information). Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

HISTORY: CL 1929, 9860;—CL 1948, 449.20.

449.21 Partner; accountability as fiduciary.

Sec. 21. (Partner accountable as a fiduciary).

(1) Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property;

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

HISTORY: CL 1929, 9861;—CL 1948, 449.21.

449.22 Partner; right to formal account.

Sec. 22. (Right to an account). Any partner shall have the right to a formal account as to partnership affairs:

(a) If he is wrongfully excluded from the partnership business or possession of its property by his copartners,

(b) If the right exists under the terms of any agreement,

(c) As provided by section 21,

(d) Whenever other circumstances render it just and reasonable.

HISTORY: CL 1929, 9862;—CL 1948, 449.22.

449.23 Partnership; continuation beyond fixed term.

Sec. 23. (Continuation of partnership beyond fixed term).

(1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term, without any settlement or liquidation of the partnership affairs, is prima facie evidence of a continuation of the partnership.

HISTORY: CL 1929, 9863;—CL 1948, 449.23.

PART V.

PROPERTY RIGHTS OF A PARTNER.

449.24 Partner; extent of property rights.

Sec. 24. (Extent of property rights of a partner). The property rights of a partner are (1) his rights in specific partnership property, (2) his interest in the partnership, and (3) his right to participate in the management.

HISTORY: CL 1929, 9864;—CL 1948, 449.24.

449.25 Partner; rights in specific partnership property.

Sec. 25. (Nature of a partner's right in specific partnership property).

(1) A partner is a co-owner with his partners of specific partnership property holding as a tenant in partnership;

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this act and to any agreement between the partners, has an equal right with his partners to possess specific partnership property for partnership purposes; but he has no right to possess such property for any other purpose without the consent of his partners,

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of the rights of all the partners in the same property,

(c) A partner's right in specific partnership property is not subject to attachment or execution, except on a claim against the partnership. When partnership property is attached for a partnership debt, the partners, or any of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws,

(d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose,

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs, or next of kin.

HISTORY: CL 1929, 9865;—CL 1948, 449.25.

449.26 Partner; interest in partnership as personal property.

Sec. 26. (Nature of partner's interest in the partnership).

A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property.

HISTORY: CL 1929, 9866;—CL 1948, 449.26.

449.27 Partner's interest; assignment, effect.

Sec. 27. (Assignment of partner's interest).

(1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled;

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners.

HISTORY: CL 1929, 9867;—CL 1948, 449.27.

449.28 Partner's interest; subject to charging order.

Sec. 28. (Partner's interest subject to charging order).

(1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require;

(2) The interest charged may be redeemed at any time before foreclosure or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) With separate property, by any 1 or more of the partners, or

(b) With partnership property, by any 1 or more of the partners with the consent of all the partners whose interests are not so charged or sold;

(3) Nothing in this act shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership.

HISTORY: CL 1929, 9668;—CL 1948, 449.28.

PART VI.**DISSOLUTION AND WINDING UP.****449.29 Dissolution of partnership; definition.**

Sec. 29. (Dissolution defined). The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

HISTORY: CL 1929, 9669;—CL 1948, 449.29.

449.30 Dissolution; partnership not terminated.

Sec. 30. (Partnership not terminated by dissolution). On dissolution the partnership is not terminated, but continues until the winding up of partnership affairs is completed.

HISTORY: CL 1929, 9670;—CL 1948, 449.30.

449.31 Dissolution; causes.

Sec. 31. (Causes of dissolution). Dissolution is caused:

(1) Without violation of the agreement between the partners:

(a) By the termination of the definite term or particular undertaking specified in the agreement,

(b) By the express will of any partner when no definite term or particular undertaking is specified,

(c) By the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking,

(d) By the expulsion of any partner from the business bona fide in accordance with such power conferred by the agreement between the partners;

(2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time;

(3) By any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership;

- (4) By the death of any partner;
- (5) By the bankruptcy of any partner or the partnership;
- (6) By decree of court under section 32.

HISTORY: CL 1929, 9871;—CL 1948, 449.31.

449.32 Dissolution; decree of court.

Sec. 32. (Dissolution by decree of court).

- (1) On application by or for a partner the court shall decree a dissolution whenever:
 - (a) A partner has been declared a lunatic in any judicial proceeding or is shown to be of unsound mind,
 - (b) A partner becomes in any other way incapable of performing his part of the partnership contract,
 - (c) A partner has been guilty of such conduct as tends to effect prejudicially the carrying on of the business,
 - (d) A partner wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,
 - (e) The business of the partnership can only be carried on at a loss,
 - (f) Other circumstances render a dissolution equitable;
- (2) On the application of the purchaser of a partner's interest under sections 28 or 29:
 - (a) After the termination of the specified term or particular undertaking,
 - (b) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued.

HISTORY: CL 1929, 9872;—CL 1948, 449.32.

449.33 Dissolution; effect as to authority of partner.

Sec. 33. (General effect of dissolution on authority of partner). Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership:

- (1) With respect to the partners:
 - (a) When the dissolution is not by the act, bankruptcy or death of a partner, or
 - (b) When the dissolution is by such act, bankruptcy or death of a partner, in cases where section 34 so requires;
- (2) With respect to persons not partners, as declared in section 35.

HISTORY: CL 1929, 9873;—CL 1948, 449.33.

449.34 Dissolution; liability of partner.

Sec. 34. (Right of partner to contribution from copartners after dissolution). Where the dissolution is caused by the act, death or bankruptcy of a partner, each partner is liable to his copartners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless:

- (a) The dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution, or
- (b) The dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

HISTORY: CL 1929, 9874;—CL 1948, 449.34.

449.35 Dissolution; power of partner to bind partnership.

Sec. 35. (Power of partner to bind partnership to third persons after dissolution).

- (1) After dissolution a partner can bind the partnership except as provided in paragraph 3:

(a) By any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution,

(b) By any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction:

(I) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution, or

(II) Though he had not so extended credit, had nevertheless known of the partnership prior to dissolution, and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place, or in each place if more than 1, at which the partnership business was regularly carried on;

(2) The liability of a partner under paragraph (1b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution:

(a) Unknown as a partner to the person with whom the contract is made, and

(b) So far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it;

(3) The partnership is in no case bound by any act of a partner after dissolution:

(a) Where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs, or

(b) Where the partner has become bankrupt, or

(c) Where the partner has no authority to wind up partnership affairs, except by a transaction with one who:

(I) Had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority, or

(II) Had not extended credit to the partnership prior to dissolution, and, having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in paragraph (1bII);

(4) Nothing in this section shall affect the liability under section 16 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business.

HISTORY: CL 1929, 9875;—CL 1948, 449.35.

NOTE: Sec. 16, above referred to, is Compilers' § 449.16.

COMPILERS' NOTE: Section 35 of this act in the final draft as prepared by the National Conference of Commissioners on Uniform State Laws is as follows:

"(1) If the partnership is not dissolved because it has become unlawful to carry on the business, a partner cannot, after dissolution, bind the partnership to third persons by any act which is not necessary to wind up the partnership affairs or to complete transactions then unfinished unless,

"(a) Such third person, having had relations with the partnership by which a credit was extended upon the faith of the partnership, has had no knowledge or notice of the dissolution; or

"(b) Such third person, not having had business relations with the partnership by which a credit was extended to the partnership, has no knowledge or notice of the dissolution, and the fact of dissolution, has not been advertised in a newspaper of general circulation of the place (or of each place if more than one) at which the partnership business was regularly carried on

"(2) The partnership is in no case bound by the acts of a partner who has become bankrupt; but this provision does not affect the liability of any person who, as declared by section 16, after bankruptcy, has represented himself, or consented to another's representing him to be a partner of the bankrupt."

449.36 Dissolution; effect as to partner's existing liability.

Sec. 36. (Effect of dissolution on partner's existing liability).

(1) The dissolution of the partnership does not of itself discharge the existing liability of any partner;

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor and the person or partnership continuing the business; and such agreement may be in-

ferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business;

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations;

(4) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts.

HISTORY: CL 1929, 9876;—CL 1948, 449.36.

449.37 Dissolution; rights of partner to wind up partnership affairs.

Sec. 37. (Right to wind up). Unless otherwise agreed, the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs: Provided, however, That any partner, his legal representative, or his assignee, upon cause shown, may obtain winding up by the court.

HISTORY: CL 1929, 9877;—CL 1948, 449.37.

449.38 Dissolution; rights of partner to application of partnership property.

Sec. 38. (Rights of partners to application of partnership property).

(1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner, as against his copartners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities, and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner, bona fide under the partnership agreement, and if the expelled partner is discharged from all partnership liabilities, either by payment or agreement under section 36(2), he shall receive in cash only the net amount due him from the partnership;

(2) When dissolution is caused in contravention of the partnership agreement the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have:

(I) All the rights specified in paragraph 1 of this section, and

(II) The right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement,

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name, either by themselves or jointly with others, may do so, during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court, or pay to any partner who has caused the dissolution wrongfully, the value of his interest in the partnership at the dissolution, less any damages recoverable under clause (2aII) of this section, and in like manner indemnify him against all present or future partnership liabilities,

(c) A partner who has caused the dissolution wrongfully shall have:

(I) If the business is not continued under the provisions of paragraph (2b) all the rights of a partner under paragraph 1, subject to clause (2aII) of this section,

(II) If the business is continued under paragraph (2b) of this section the right as against his copartners and all claiming through them in respect of their interests in the partnership, to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid to him in cash, or the payment secured by bond approved by the court, and to be released from all existing

liabilities of the partnership; but in ascertaining the value of the partner's interest the value of the good will of the business shall not be considered.

HISTORY: CL 1929, 9678;—CL 1948, 449.38.

449.39 Dissolution; rights of partner when partnership dissolved for fraud or misrepresentation.

Sec. 39. (Rights where partnership is dissolved for fraud or misrepresentation). Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of 1 of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled:

(a) To a lien on, or right of retention of, the surplus of the partnership property after satisfying the partnership liabilities to third persons for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him, and

(b) To stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect of the partnership liabilities, and

(c) To be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

HISTORY: CL 1929, 9679;—CL 1948, 449.39.

449.40 Dissolution; rules for distribution of assets and liabilities.

Sec. 40. (Rules for distribution). In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(a) The assets of the partnership are

(I) The partnership property,

(II) The contributions of the partners necessary for the payment of all the liabilities specified in clause (b) of this paragraph;

(b) The liabilities of the partnership shall rank in order of payment, as follows:

(I) Those owing to creditors other than partners,

(II) Those owing to partners other than for capital and profits,

(III) Those owing to partners in respect of capital,

(IV) Those owing to partners in respect of profits;

(c) The assets shall be applied in the order of their declaration in clause (a) of this paragraph to the satisfaction of the liabilities;

(d) The partners shall contribute, as provided by section 18(a) the amount necessary to satisfy the liabilities; but if any, but not all, of the partners are insolvent, or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities, and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities;

(e) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in clause (d) of this paragraph;

(f) Any partner or his legal representative shall have the right to enforce the contributions specified in clause (d) of this paragraph, to the extent of the amount which he has paid in excess of his share of the liability;

(g) The individual property of a deceased partner shall be liable for the contributions specified in clause (d) of this paragraph;

(h) When partnership property and the individual properties of the partners are in the possession of a court for distribution, partnership creditors shall have priority on

partnership property and separate creditors on individual property, saving the rights of lien or secured creditors as heretofore;

(i) Where a partner has become bankrupt or his estate is insolvent the claims against his separate property shall rank in the following order:

(I) Those owing to separate creditors,

(II) Those owing to partnership creditors,

(III) Those owing to partners by way of contribution.

HISTORY: CL 1929, 9880;—CL 1948, 449.40.

NOTE: Sec. 18, above referred to, is Compilers' § 449.18.

SETTLEMENT WITH CREDITORS: See Compilers' § 449.151 et seq.

449.41 Dissolution; liability of persons continuing business.

Sec. 41. (Liability of persons continuing the business in certain cases).

(1) When any new partner is admitted into an existing partnership, or when any partner retires and assigns, or the representative of the deceased partner assigns, his rights in partnership property to 2 or more of the partners, or to 1 or more of the partners and 1 or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business;

(2) When all but 1 partner retire and assign, or the representative of a deceased partner assigns, their rights in partnership property to the remaining partner, who continues the business without liquidation of partnership affairs, either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business;

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in paragraphs 1 and 2 of this section, with the consent of the retired partners or the representative of the deceased partner, but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made;

(4) When all the partners or their representatives assign their rights in partnership property to 1 or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business;

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of section 38(2b), either alone or with others, and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business;

(6) When a partner is expelled and the remaining partners continue the business either alone or with others, without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business;

(7) The liability of a third person becoming a partner in the partnership continuing the business, under this section to the creditors of the dissolved partnership shall be satisfied out of partnership property only;

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section the creditors of the dissolved partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business, on account of the retired or deceased partner's interest in the dissolved partnership or

on account of any consideration promised for such interest or for his right in partnership property;

(9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud;

(10) The use by the person or partnership continuing the business of the partnership name, or the name of a deceased partner as part thereof, shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

HISTORY: CL 1929, 9881;—CL 1948, 449.41.

449.42 Dissolution; rights of retiring or deceased partner when business continued.

Sec. 42. (Rights of retiring or estate of deceased partner when the business is continued). When any partner retires or dies, and the business is continued under any of the conditions set forth in section 41(1, 2, 3, 5, 6), or section 38(2b), without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest, or, at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership: Provided, That the creditors of the dissolved partnership as against the separate creditors, or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by section 41(8) of this act.

HISTORY: CL 1929, 9882;—CL 1948, 449.42.

SURVIVING PARTNER: Suits by or against opposite party, see (Jud. Act) Compilers' § 600.2160.

449.43 Dissolution; accrual of rights.

Sec. 43. (Accrual of actions). The right to an account of his interest shall accrue to any partner, or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary.

HISTORY: CL 1929, 9883;—CL 1948, 449.43.

PART VII.

MISCELLANEOUS PROVISIONS.

Sec. 44. (This was a repeal section.)

HISTORY: CL 1929, 9884;—Rep. 1945, p. 405, Act 267, Imd. Eff. May 25.

Act 164, 1913, p. 285; Eff. Aug. 14.

AN ACT to require the filing of certificates of copartnership, fixing the liability of copartners and providing a penalty for violation of the provisions of this act.

The People of the State of Michigan enact:

449.101 Copartnerships; certificate required, filing, contents.

Sec. 1. No 2 or more persons shall hereafter be engaged in carrying on any business as copartners unless such persons shall first make and file with the county clerk of the county in which such copartnership business is or shall be located, a certificate in writing, to be signed by each, and verified by the affidavit of 1 of the members of said copartnership, setting forth the full name of each and every person composing the said copartnership, and the residence of each, the name and style of the firm, and the

length of time for which it is to continue, if limited by the partnership contract, and also the locality of their place of business; which certificate shall be kept in the office of the said county clerk, as a public document, and open to the inspection of any person: Provided, That any copartnership that has filed the certificate required by Act No. 101 of the Public Acts of 1907, shall not be required to file the certificate herein provided for.

HISTORY: CL 1915, 6354;—CL 1929, 9929;—CL 1948, 449.101.

NOTE: Act 101 of 1907, above referred to, is Compilers' § 445.1 et seq.

CERTIFICATES: For law requiring filing when business is carried on under assumed or fictitious name, see Compilers' §§ 445.1 to 445.5.

Certificate of limited partnership, see Compilers' § 449.201 et seq.

449.101a Copartnership certificate; term, renewal, fee, notice, destruction.

Sec. 1a. Said certificate when acknowledged and filed as required in section 1 shall authorize the persons signing same to conduct their business as copartners for a period of 5 years. Within 90 days prior to the expiration date, a renewal certificate may be filed with the county clerk upon payment of a fee of \$3.00 on forms to be provided by the county clerk. Such renewal certificates will extend the right to the persons signing same to conduct their business as copartners for an additional 5 year period from the date of expiration of the original certificate or renewal if it has previously been renewed. Between the ninetieth day and the thirtieth day prior to the expiration date of an outstanding certificate, the county clerk shall mail to the persons whose certificate will expire, renewal certificate blank forms, in triplicate, together with a notice on a form to be provided by the county clerk (1) that the certificate authorizing and etc., et al. to carry on a business as copartners expires at 5:00 p.m. on the day of, and, (2) that failure to file a renewal certificate and pay a fee of \$3.00 on or before the expiration date above mentioned will constitute a violation of section 6 of this act rendering such persons liable to the punishment provided for therein. The notice herein required shall be mailed by the county clerk to the last known address of persons whose certificates or renewal certificates will expire as stated on the original or renewal certificate, as the case may be. Six years after an original or renewal certificate has expired the county clerk may destroy the certificate.

HISTORY: Add. 1955, p. 203, Act 138, Eff. Oct. 14.

449.101b Copartnership certificate; renewal, notice.

Sec. 1b. Persons now carrying on business as copartners under the provisions of this act shall file a renewal certificate as is herein prescribed within 5 years after this act shall take effect, and after notice from the county clerk as is herein provided, which notice shall be given within 90 to 30 days prior to the expiration of the 5-year period.

HISTORY: Add. 1955, p. 203, Act 138, Eff. Oct. 14.

449.102 Copartnership certificate; name change, procedure, interim effect.

Sec. 2. In case there shall be at any time after the making and filing of said certificate, any change in the name or style of said firm, or in the time of its existence, then a new certificate, verified as before specified, shall in like manner be filed as required by section 1 of this act, before such change shall take effect; and until such new certificate shall have been made and filed, as above specified, the individual members of the firm, as set forth in the certificate on file, shall be held to be the actual members of the firm, and in all respects holden and liable for any obligation, debt or liability, incurred by the said copartnership.

HISTORY: CL 1915, 6355;—CL 1929, 9930;—CL 1948, 449.102.

449.103 Copartnership certificate; certified copy as evidence.

Sec. 3. A certified copy of the said certificate, or renewal certificate, on file in the county clerk's office, signed by the county clerk, and attested by the seal of the circuit

court of the county, shall be held to be good and sufficient evidence of any or all the facts in said certificate, or renewal certificate stated and set forth.

HISTORY: CL 1915, 6356;—CL 1929, 9931;—CL 1948, 449.103;—Am. 1955, p. 203, Act 138, Eff. Oct. 14.

449.104 Copartnership certificate; filing; assumed name, rejection by county clerk.

Sec. 4. Persons now owning or conducting any such business as copartners shall file such certificate as hereinbefore prescribed within 90 days after this act shall take effect, and persons hereafter owning, conducting or transacting business as aforesaid shall, before commencing said business, file such certificate in the manner hereinbefore prescribed. The several county clerks of this state are hereby authorized to reject any assumed name which is likely to mislead the public, or any assumed name already filed in the county or so nearly similar thereto as to lead to confusion or deception.

HISTORY: CL 1915, 6357;—CL 1929, 9932;—Am. 1931, p. 457, Act 273, Eff. Sept. 18;—CL 1948, 449.104.

449.104a Copartnership under assumed name; change of business location certificate, attachment.

Sec. 4a. Whenever a copartnership operating under an assumed name has changed or changes its place of business, it shall be the duty of 1 of the members of such copartnership to file with the county clerk with whom the certificate required under the provisions of section 1 of this act was filed, a certificate stating the change in business location, which certificate shall be attached by the county clerk to the certificate, or renewal certificate, filed under the provisions of this act, and, in case the business location is changed to some other county or counties in this state, to file the assumed name certificate required under the provisions of section 1 of this act with the clerk of such county, before doing any business in such county.

HISTORY: Add. 1931, p. 457, Act 273, Eff. Sep. 18;—CL 1948, 449.104a;—Am. 1955, p. 204, Act 138, Eff. Oct. 14.

449.104b Copartnership under assumed name; discontinuance of business certificate; use of name by others, objection.

Sec. 4b. Whenever a copartnership operating under an assumed name shall go out of business, it shall be the duty of 1 of the members of such copartnership to file a certificate with the clerk of the county or counties in which such copartnership transacted business, of the discontinuance of such copartnership in such county or counties which certificate shall be attached by the county clerk to the certificate or renewal certificate filed under the provisions of this act. In case the certificate required under the provisions of this section is not filed, any person or persons desiring to use the assumed name in such certificate shall file an affidavit, accompanied by a filing fee of \$3.00 with the county clerk that such person or persons have thoroughly investigated the facts and setting forth further facts showing that such copartnership has in fact gone out of business. Thereupon the county clerk shall forthwith send by registered mail to such copartnership at the address on file in his office a copy of the affidavit, and further stating that an application has been filed to use such assumed name and further notifying him or them that unless objection is made within 10 days that the certificate or renewal certificate filed under provisions of this act will be revoked. The county clerk shall file his own affidavit of mailing and the registered receipt with the original certificate or renewal certificate and if no objection is filed in 10 days the county clerk is hereby authorized to permit such person or persons applying to use the assumed name of such concern, on the filing of the certificate required under the provisions of section 1 of this act.

HISTORY: Add. 1931, p. 458, Act 273, Eff. Sep. 18;—CL 1948, 449.104b;—Am. 1955, p. 204, Act 138, Eff. Oct. 14.

449.105 Copartnership certificates; alphabetical index; filing and copy fees.

Sec. 5. The several county clerks of this state shall keep an alphabetical index of all certificates and renewal certificates, provided for herein, and for the indexing and filing of such certificates and renewal certificates they shall receive a fee of \$3.00, to be paid by the party filing the same. Upon the payment of the said sum of \$3.00, the payer thereof shall be entitled to 3 certified copies of such certificate or renewal certificate without extra charge, with additional copies at \$1.00 each. The county clerk shall, upon request of any person, supply certified copies of the original or renewal certificates upon payment of a fee of \$2.00 per copy.

HISTORY: CL 1915, 6358;—CL 1929, 9933;—Am. 1947, p. 447, Act 280, Eff. Oct. 11;—CL 1948, 449.105;—Am. 1955, p. 204, Act 138, Eff. Oct. 14.

449.106 Violation of act; penalty; effect on validity and enforcement of contracts.

Sec. 6. Any 2 or more persons owning, carrying on or conducting or transacting business as aforesaid, who shall fail to comply with the provisions of this act, shall each be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$10.00 nor more than \$100.00 or by imprisonment in the county jail for a term not exceeding 30 days or by both such fine and imprisonment in the discretion of the court; and each day any person or persons shall violate any provisions of this act shall be deemed a separate offense: Provided, however, The fact that a penalty is provided herein for non-compliance with the provisions of this act shall not be construed to avoid contracts, but any copartnership failing to file the certificate or renewal certificate required by this act shall be prohibited from bringing any suit, action or proceeding in any of the courts of this state until after full compliance with the provisions of this act.

HISTORY: CL 1915, 6359;—Am. 1919, p. 465, Act 265, Eff. Aug. 14;—CL 1929, 9934;—CL 1948, 449.106;—Am. 1955, p. 204, Act 138, Eff. Oct. 14.

Act 181, 1859, p. 508; Eff. May 18.

AN ACT to provide for settlement and compromises by partners and joint debtors with their creditor or creditors.

The People of the State of Michigan enact:

449.151 Copartnerships; settlements with creditors; discharge of partner not party.

Sec. 1. That whenever any firm or copartnership shall be dissolved by mutual consent or otherwise it shall and may be lawful for any 1 or more of the individuals composing such firm or copartnership to make a separate settlement or compromise with any 1 or all of the creditors of such firm or copartnership and such settlement or compromise shall be a full and complete discharge both in law and in equity to the debtor or debtors making such settlement or compromise and to such debtor or debtors only of and from all and every liability to the creditor or creditors with whom the same is made or incurred by reason of his or their connection with such firm or copartnership Provided however, that in case of such settlement or compromise the copartner or copartners who are not parties to the same shall be discharged from all liability to the creditor or creditors except for their joint ratable portion of such copartnership debt.

HISTORY: CL 1871, 6199;—How. 7783;—CL 1897, 10449;—CL 1915, 14581;—CL 1929, 9935;—CL 1948, 449.151.

REPEAL: This act was expressly excepted from the repeal of Ch. 288, CL 1897, by Act 314 of 1915, p. 479, Eff. Jan. 1, 1916 (Jud. Act), see Compilers' § 681.1.

449.152 Settlements with creditors; written discharge by creditors, bar to recovery.

Sec. 2. Every such debtor or debtors making such settlement or compromise shall take from the creditor or creditors or their attorney with whom he may make the same a receipt or memorandum in writing exonerating and discharging him or them from all and every individual liability incurred by reason of such connection with such firm or copartnership whether such liability was incurred as endorsee acceptors or otherwise which receipt or memorandum shall refer to the instrument as evidence of the indebtedness and may be given in evidence by such debtor or debtors under the general issue in bar of any creditors right or of recovery against him or them or any indebtedness or liability so settled or compromised and if such liability shall be by judgment in any court of this state then on production to and filing in such court a receipt or memorandum signed by such creditor agent or attorney entitled in such cause describing such judgment then the justice before whom such judgment may remain or if in a court of record then the clerk of such court shall discharge such judgment of record so far as such debtor or debtors so settling or compromising shall be concerned.

HISTORY: CL 1871, 6200;—How. 7784;—CL 1897, 10450;—CL 1915, 14582;—CL 1929, 9936;—CL 1948, 449.152.

449.153 Settlements with creditors; rights against undischarged partners not impaired; right to set off and defense.

Sec. 3. Such settlement or compromise with the individual member of a firm or copartnership shall not be so construed as to discharge the other copartners except as provided in the first section of this act nor shall it impair the right of the creditors to proceed in law or in equity against the members of such firm or copartnership as have not been discharged and it shall not be necessary to make such person or persons as have been discharged by such settlement or compromise parties to any suit with the other copartners who have not been discharged, and the member or members of such firm or copartnership so proceeded against shall be entitled to set off any demand against said creditor or creditors which could have been set off had such suit been brought against all the individuals comprising such firm or copartnership nor shall such settlement, compromise or discharge of an individual of a firm or copartnership prevent the other members of such firm or copartnership from availing themselves of any defense at law or equity that would have been available had not this act been passed except that they shall not set up the discharge of 1 or more partners as the discharge of the other copartners unless it shall expressly appear in the receipt or memorandum that all were intended to be discharged.

HISTORY: CL 1871, 6201;—How. 7785;—CL 1897, 10451;—CL 1915, 14583;—CL 1929, 9937;—CL 1948, 449.153.

449.154 Settlements with creditors; contribution between partners.

Sec. 4. Such settlement or compromise of 1 or more members of such firm or copartnership with a creditor of such firm or copartnership shall in no wise affect the right of the other partners to demand and recover from their copartners making such settlement or compromise their ratable portions of such firm or copartnership debt in the same manner and to the same extent as if this act had not been passed.

HISTORY: CL 1871, 6202;—How. 7786;—CL 1897, 10452;—CL 1915, 14584;—CL 1929, 9938;—CL 1948, 449.154.

449.155 Extension of act to joint debtors.

Sec. 5. The provisions of this act shall extend to *joint debtors in the same manner as it now extends to copartners and such joint debtors are hereby authorized individually to settle or compromise and be discharged from their joint indebtedness in the same manner as is herein provided for the settlement and compromise of copartners.

HISTORY: CL 1871, 6203;—How. 7787;—CL 1897, 10453;—CL 1915, 14585;—CL 1929, 9939;—CL 1948, 449.155.

*NOTE: It is evident the word "joint" should be "joint".

Act 110, 1931, p. 170; Eff. Sep. 18.

AN ACT to authorize the formation of limited partnerships; to define the liability of the partners, the relation of partners to one another and to persons dealing with the partnerships; to provide for the dissolution and winding up of such partnerships; to make uniform the law relating thereto and to repeal chapter 33 of the Revised Statutes of 1846, being sections 9885 to 9908, inclusive, of the Compiled Laws of 1929, except as affecting certain existing partnerships.

The People of the State of Michigan enact:

449.201 Limited partnership; definition.

Sec. 1. Limited partnership defined. A limited partnership is a partnership formed by 2 or more persons under the provisions of section 2, having as members 1 or more general partners and 1 or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership.

HISTORY: CL 1948, 449.201. This act was prepared under the supervision of the National Conference of Commissioners on Uniform State Laws, and recommended by such commissioners for passage by the several states. It has been adopted (those marked * being modified versions) by the legislatures in the following jurisdictions: Alaska, Arizona, California, Colorado, Florida, Idaho, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, *Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington and Wisconsin.

NOTE: This act repeals Ch. 33, R.S. 1846, CL 1929, 9885-9908, except as to existing partnerships. Ch. 33 is not included in this compilation. The catchlines following the act section numbers were incorporated as part of the act as enacted.

449.202 Limited partnerships; formation.

Sec. 2. Formation. (1) Two or more persons desiring to form a limited partnership shall

- (a) Sign and swear to a certificate, which shall state
 - I. The name of the partnership,
 - II. The character of the business,
 - III. The location of the principal place of business,
 - IV. The name and place of residence of each member; general and limited partners being respectively designated,
 - V. The term for which the partnership is to exist,
 - VI. The amount of cash and a description of and the agreed value of the other property contributed by each limited partner,
 - VII. The additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they shall be made,
 - VIII. The time, if agreed upon, when the contribution of each limited partner is to be returned,
 - IX. The share of the profits or the other compensation by way of income which each limited partner shall receive by reason of his contribution,
 - X. The right, if given, of a limited partner to substitute an assignee as contributor in his place, and the terms and conditions of the substitution,
 - XI. The right, if given, of the partners to admit additional limited partners,
 - XII. The right, if given, of 1 or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority,
 - XIII. The right, if given, of the remaining general partner or partners to continue the business on the death, retirement or insanity of a general partner, and
 - XIV. The right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.
- (b) File for record the certificate in the office of the county clerk of the county in which the principal place of business of the partnership shall be situated. Said clerk

shall record said certificate at length in a book to be kept by him for that purpose and such book shall be subject at all reasonable hours to the inspection of all persons.

(2) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of paragraph (1).

HISTORY: CL 1948, 449.202.

449.203 Limited partnerships; business conducted; firms.

Sec. 3. Business which may be carried on. A limited partnership may carry on any business which a partnership without limited partners may carry on, except such business as is now required to be licensed by the commissioner of banking or the commissioner of insurance of the state of Michigan: Provided, That limited partnerships shall be considered "firms" for the purpose of licensing under the provisions of part 2 of chapter 3 of Act No. 256 of the Public Acts of 1917.

HISTORY: Am. 1941, p. 428, Act 252, Imd. Eff. June 16;—CL 1948, 449.203.

NOTE: Part 2, Ch. 3, Act 256, 1917, above referred to, is Compilers' repealed § 513.1 et seq. See § 500.1400 et seq.

449.204 Limited partners; contribution.

Sec. 4. Character of limited partner's contribution. The contributions of a limited partner may be cash or other property, but not services.

HISTORY: CL 1948, 449.204.

449.205 Limited partners; use of surname, effect as to liability.

Sec. 5. A name not to contain surname of limited partner; exceptions.

(1) The surname of a limited partner shall not appear in the partnership name, unless

(a) It is also the surname of a general partner, or

(b) Prior to the time when the limited partner became such the business had been carried on under a name in which his surname appeared.

(2) A limited partner whose name appears in a partnership name contrary to the provisions of paragraph (1) is liable as a general partner to partnership creditors who extend credit to the partnership without actual knowledge that he is not a general partner.

HISTORY: CL 1948, 449.205.

449.206 Limited partnership; liability for false statements in certificate.

Sec. 6. Liability for false statements in certificate. If the certificate contains a false statement, one who suffers loss by reliance on such statement may hold liable any party to the certificate who knew the statement to be false.

(a) At the time he signed the certificate, or

(b) Subsequently, but within a sufficient time before the statement was relied upon to enable him to cancel or amend the certificate, or to file a petition for its cancellation or amendment as provided in section 25(3).

HISTORY: CL 1948, 449.206.

449.207 Limited partners; nonliability to creditors.

Sec. 7. Limited partner not liable to creditors. A limited partner shall not become liable as a general partner unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business.

HISTORY: CL 1948, 449.207.

449.208 Limited partners; additional partners, admittance.

Sec. 8. Admission of additional limited partners. After the formation of a limited partnership, additional limited partners may be admitted upon filing an amendment to the original certificate in accordance with the requirements of section 25.

HISTORY: CL 1948, 449.208.

449.209 General partners; rights, powers and liabilities.

Sec. 9. Rights, powers and liabilities of a general partner. (1) A general partner shall have all the rights and powers and be subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners have no authority to

- (a) Do any act in contravention of the certificate,
- (b) Do any act which would make it impossible to carry on the ordinary business of the partnership,
- (c) Confess a judgment against the partnership,
- (d) Possess partnership property, or assign their rights in specific partnership property, for other than a partnership purpose,
- (e) Admit a person as a general partner,
- (f) Admit a person as a limited partner, unless the right so to do is given in the certificate,
- (g) Continue the business with partnership property on the death, retirement or insanity of a general partner, unless the right so to do is given in the certificate.

HISTORY: CL 1948, 449.209.

449.210 Limited partners; rights.

Sec. 10. Rights of a limited partner. (1) A limited partner shall have the same rights as a general partner to

- (a) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them,
 - (b) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable, and
 - (c) Have dissolution and winding up by decree of court.
- (2) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in sections 15 and 16.

HISTORY: CL 1948, 449.210.

449.211 Limited partners; person erroneously believing himself to be, status.

Sec. 11. Status of person erroneously believing himself a limited partner. A person who has contributed to the capital of a business conducted by a person or partnership erroneously believing that he has become a limited partner in a limited partnership, is not, by reason of his exercise of the rights of a limited partner, a general partner with the person or in the partnership carrying on the business, or bound by the obligations of such person or partnership; provided that on ascertaining the mistake he promptly renounces his interest in the profits of the business, or other compensation by way of income.

HISTORY: CL 1948, 449.211.

449.212 General and limited partner; one person.

Sec. 12. One person both general and limited partner. (1) A person may be a general partner and a limited partner in the same partnership at the same time.

- (2) A person who is a general, and also at the same time a limited partner, shall have

all the rights and powers and be subject to all the restrictions of a general partner; except that, in respect to his contribution, he shall have the rights against the other members which he would have had if he were not also a general partner.

HISTORY: CL 1948, 449.212.

449.213 Limited partner; loans and other business transactions.

Sec. 13. Loans and other business transactions with limited partner. (1) A limited partner also may loan money to and transact other business with the partnership, and, unless he is also a general partner, receive on account of resulting claims against the partnership, with general creditors, a pro rata share of the assets. No limited partner shall in respect to any such claim

(a) Receive or hold as collateral security any partnership property, or

(b) Receive from a general partner or the partnership any payment, conveyance, or release from liability, if at the time the assets of the partnership are not sufficient to discharge partnership liabilities to persons not claiming as general or limited partners,

(2) The receiving of collateral security, or a payment, conveyance, or release in violation of the provisions of paragraph (1) is a fraud on the creditors of the partnership.

HISTORY: CL 1948, 449.213.

449.214 Limited partners; relation inter se.

Sec. 14. Relation of limited partners inter se. Where there are several limited partners the members may agree that 1 or more of the limited partners shall have a priority over other limited partners as to the return of their contributions, as to their compensation by way of income, or as to any other matter. If such an agreement is made it shall be stated in the certificate, and in the absence of such a statement all the limited partners shall stand upon equal footing.

HISTORY: CL 1948, 449.214.

449.215 Limited partners; compensation.

Sec. 15. Compensation of limited partner. A limited partner may receive from the partnership the share of the profits or the compensation by way of income stipulated for in the certificate: Provided, That after such payment is made, whether from the property of the partnership or that of a general partner, the partnership assets are in excess of all liabilities of the partnership except liabilities to limited partners on account of their contributions and to general partners.

HISTORY: CL 1948, 449.215.

449.216 Limited partners; contribution, withdrawal or reduction.

Sec. 16. Withdrawal or reduction of limited partner's contribution. (1) A limited partner shall not receive from a general partner or out of partnership property any part of his contribution until

(a) All liabilities of the partnership, except liabilities to general partners and to limited partners on account of their contributions, have been paid or there remains property of the partnership sufficient to pay them,

(b) The consent of all members is had, unless the return of the contribution may be rightfully demanded under the provisions of paragraph (2), and

(c) The certificate is cancelled or so amended as to set forth the withdrawal or reduction.

(2) Subject to the provisions of paragraph (1) a limited partner may rightfully demand the return of his contribution

(a) On the dissolution of a partnership, or

(b) When the date specified in the certificate for its return has arrived, or

(c) After he has given 6 months' notice in writing to all other members, if no time is

specified in the certificate either for the return of the contribution or for the dissolution of the partnership.

(3) In the absence of any statement in the certificate to the contrary or the consent of all members, a limited partner, irrespective of the nature of his contribution, has only the right to demand and receive cash in return for his contribution.

(4) A limited partner may have the partnership dissolved and its affairs wound up when

(a) He rightfully but unsuccessfully demands the return of his contribution, or

(b) The other liabilities of the partnership have not been paid, or the partnership property is insufficient for their payment as required by paragraph (1a) and the limited partner would otherwise be entitled to the return of his contribution.

HISTORY: CL 1948, 449.216.

449.217 Limited partners; liability to partnership.

Sec. 17. Liability of limited partner to partnership. (1) A limited partner is liable to the partnership.

(a) For the difference between his contribution as actually made and that stated in the certificate as having been made, and

(b) For any unpaid contribution which he agreed in the certificate to make in the future at the time and on the conditions stated in the certificate.

(2) A limited partner holds as trustee for the partnership

(a) Specific property stated in the certificate as contributed by him, but which was not contributed or which has been wrongfully returned, and

(b) Money or other property wrongfully paid or conveyed to him on account of his contribution.

(3) The liabilities of a limited partner as set forth in this section can be waived or compromised only by the consent of all members; but a waiver or compromise shall not affect the right of a creditor of a partnership who extended credit or whose claim arose after the filing and before a cancellation or amendment of the certificate, to enforce such liabilities.

(4) When a contributor has rightfully received the return in whole or in part of the capital of his contribution, he is nevertheless liable to the partnership for any sum, not in excess of such return with interest, necessary to discharge its liabilities to all creditors who extended credit or whose claims arose before such return.

HISTORY: CL 1948, 449.217.

449.218 Limited partner; interest in partnership, personal property.

Sec. 18. Nature of limited partner's interest in partnership. A limited partner's interest in the partnership is personal property.

HISTORY: CL 1948, 449.218.

449.219 Limited partner; assignment of interest.

Sec. 19. Assignment of limited partner's interest. (1) A limited partner's interest is assignable.

(2) A substituted limited partner is a person admitted to all the rights of a limited partner who has died or has assigned his interest in a partnership.

(3) An assignee, who does not become a substituted limited partner, has no right to require any information or account of the partnership transactions or to inspect the partnership books; he is only entitled to receive the share of the profits or other compensation by way of income, or the return of his contribution, to which his assignor would otherwise be entitled.

(4) An assignee shall have the right to become a substituted limited partner if all the

members (except the assignor) consent thereto or if the assignor, being thereunto empowered by the certificate, gives the assignee that right.

(5) An assignee becomes a substituted limited partner when the certificate is appropriately amended in accordance with section 25.

(6) The substituted limited partner has all the rights and powers, and is subject to all the restrictions and liabilities of his assignor, except those liabilities of which he was ignorant at the time he became a limited partner and which could not be ascertained from the certificate.

(7) The substitution of the assignee as a limited partner does not release the assignor from liability to the partnership under sections 6 and 17.

HISTORY: CL 1948, 449.219.

449.220 General partner; effect of retirement, death or insanity.

Sec. 20. Effect of retirement, death or insanity of a general partner. The retirement, death or insanity of a general partner dissolves the partnership, unless the business is continued by the remaining general partners

(a) Under a right so to do stated in the certificate, or

(b) With the consent of all members.

HISTORY: CL 1948, 449.220.

449.221 Limited partner; effect of death.

Sec. 21. Death of limited partner. (1) On the death of a limited partner his executor or administrator shall have all the rights of a limited partner for the purpose of settling his estate, and such power as the deceased had to constitute his assignee a substituted limited partner.

(2) The estate of a deceased limited partner shall be liable for all his liabilities as a limited partner.

HISTORY: CL 1948, 449.221.

449.222 Limited partner; rights of creditors.

Sec. 22. Rights of creditors of limited partner. (1) On due application to a court of competent jurisdiction by any judgment creditor of a limited partner, the court may charge the interest of the indebted limited partner with payment of the unsatisfied amount of the judgment debt; and may appoint a receiver, and make all other orders, directions, and inquiries which the circumstances of the case may require.

(2) The interest may be redeemed with the separate property of any general partner, but may not be redeemed with partnership property.

(3) The remedies conferred by paragraph (1) shall not be deemed exclusive of others which may exist.

(4) Nothing in this act shall be held to deprive a limited partner of his statutory exemption.

HISTORY: CL 1948, 449.222.

449.223 Limited partnership; dissolution, payment of liabilities.

Sec. 23. Distribution of assets. (1) In settling accounts after dissolution the liabilities of the partnership shall be entitled to payment in the following order:

(a) Those to creditors, in the order of priority as provided by law, except those to limited partners on account of their contributions, and to general partners.

(b) Those to limited partners in respect to their share of the profits and other compensation by way of income on their contributions,

(c) Those to limited partners in respect to the capital of their contributions,

(d) Those to general partners other than for capital and profits,

- (e) Those to general partners in respect to profits,
- (f) Those to general partners in respect to capital.

(2) Subject to any statement in the certificate or to subsequent agreement, limited partners share in the partnership assets in respect to their claims for capital, and in respect to their claims for profits or for compensation by way of income on their contributions respectively, in proportion to the respective amounts of such claims.

HISTORY: CL 1948, 449.223.

449.224 Limited partnership certificate; amendment or cancellation, conditions.

Sec. 24. When certificate shall be cancelled or amended. (1) The certificate shall be cancelled when the partnership is dissolved or all limited partners cease to be such.

(2) A certificate shall be amended when

(a) There is a change in the name of the partnership or in the amount or character of the contribution of any limited partner,

(b) A person is substituted as a limited partner,

(c) An additional limited partner is admitted,

(d) A person is admitted as a general partner,

(e) A general partner retires, dies or becomes insane, and the business is continued under section 20,

(f) There is a change in the character of the business of the partnership,

(g) There is a false or erroneous statement in the certificate,

(h) There is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution,

(i) A time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate, or

(j) The members desire to make a change in any other statement in the certificate in order that it shall accurately represent the agreement between them.

HISTORY: CL 1948, 449.224.

449.225 Limited partnership certificate; amendment or cancellation, requirements.

Sec. 25. Requirements for amendment and for cancellation of certificate. (1) The writing to amend a certificate shall

(a) Conform to the requirements of section 2(1a) as far as necessary to set forth clearly the change in the certificate which it is desired to make, and

(b) Be signed and sworn to by all members, and an amendment substituting a limited partner or adding a limited or general partner shall be signed also by the member to be substituted or added, and when a limited partner is to be substituted, the amendment shall also be signed by the assigning limited partner.

(2) The writing to cancel a certificate shall be signed by all members.

(3) A person desiring the cancellation or amendment of a certificate, if any person designated in paragraphs (1) and (2) as a person who must execute the writing refuses to do so, may petition the circuit court in the county in which the principal place of business of the partnership shall be situated to direct a cancellation or amendment thereof.

(4) If the court finds that the petitioner has a right to have the writing executed by a person who refuses to do so, it shall order the county clerk in the office where the certificate is recorded to record the cancellation or amendment of the certificate; and where the certificate is to be amended, the court shall also cause to be filed for record in said office a certified copy of its decree setting forth the amendment.

(5) A certificate is amended or cancelled when there is filed for record in the office of the county clerk where the certificate is recorded,

(a) A writing in accordance with the provisions of paragraph (1), or (2), or

(b) A certified copy of the order of court in accordance with the provisions of paragraph (4).

(6) After the certificate is duly amended in accordance with this section, the amended certificate shall thereafter be for all purposes the certificate provided for by this act.

HISTORY: CL 1948, 449.225.

449.226 Limited partnerships; parties to actions.

Sec. 26. Parties to actions. A contributor, unless he is a general partner, is not a proper party to proceedings by or against a partnership, except where the object is to enforce a limited partner's right against or liability to the partnership.

HISTORY: CL 1948, 449.226.

449.227 Uniform limited partnership act; short title.

Sec. 27. Name of act. This act may be cited as the uniform limited partnership act.

HISTORY: CL 1948, 449.227.

449.228 Rules of construction of act.

Sec. 28. Rules of construction. (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act.

(2) This act shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(3) This act shall not be so construed as to impair the obligations of any contract existing when the act goes into effect, nor to affect any action or proceedings begun or right accrued before this act takes effect.

HISTORY: CL 1948, 449.228.

449.229 Rules for cases not provided for in act.

Sec. 29. Rules for cases not provided for in this act. In any case not provided for in this act the rules of law and equity, including the law merchant, shall govern.

HISTORY: CL 1948, 449.229.

449.230 Existing limited partnership; provisions.

Sec. 30. Provisions for existing limited partnerships. (1) A limited partnership formed under any statute of this state prior to the adoption of this act, may become a limited partnership under this act by complying with the provisions of section 2; provided the certificate sets forth

(a) The amount of the original contribution of each limited partner, and the time when the contribution was made, and

(b) That the property of the partnership exceeds the amount sufficient to discharge its liabilities to persons not claiming as general or limited partners by any amount greater than the sum of the contributions of its limited partners.

(2) A limited partnership formed under any statute of this state prior to the adoption of this act, until or unless it becomes a limited partnership under this act, shall be governed by the provisions of chapter 33 of the Revised Statutes of the state of Michigan for 1846, as amended, being sections 9885 to 9908, both inclusive, of the Compiled Laws of the state of Michigan for the year 1929, except that such partnership shall not be renewed unless so provided in the original agreement.

HISTORY: CL 1948, 449.230.

NOTE: Ch. 33, R.S. 1846, above referred to, is not included in this compilation, in view of repeal in Sec. 31.

449.231 Repeal.

Sec. 31. Act repealed. Except as affecting existing limited partnerships to the extent set forth in section 30, chapter 33 of the Revised Statutes of the state of Michigan for 1846, as amended, being sections 9885 to 9908, both inclusive, of the Compiled Laws of the state of Michigan for 1929, is hereby repealed.

HISTORY: CL 1948, 449.231.

NOTE: See note under preceding section.

Act 191, 1877, p. 207; Eff. Aug. 21.

AN ACT authorizing the formation of partnership associations, in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances.

The People of the State of Michigan enact:

449.301 Partnership associations; formation; capital stock; articles of association, contents, recording, certification.

Sec. 1. When any 3 or more persons may desire to form a partnership association, for the purpose of conducting any lawful business or occupation within the United States or elsewhere, whose principal office or place of business shall be established and maintained within this state, by subscribing and contributing capital thereto, which capital shall alone be liable for the debts of such association, it shall and may be lawful for such persons to sign and acknowledge, before some officer competent to take acknowledgment of deeds, a statement in writing, or articles of association, in which shall be set forth the full names of such persons, and the amount of capital of said association subscribed for by each; the total amount of capital, and when and how to be paid: Provided, however, That the amount of capital stock subscribed shall not be less than 50 per cent of the authorized capital stock and the amount of capital stock paid in at the time of executing the articles of association shall not be less than 10 per cent of the authorized capital. Said articles of association shall also state the character of the business to be conducted, and the location of the same whether or not the capital subscribed shall be subject to the restrictive provisions of section 4 of this act, and unless the articles of association expressly declare that the capital subscribed shall not be subject to the provisions of said section 4 such capital shall be subject to the provisions of said section 4 so far as the same prohibits the members from transferring their interests and the transferee from becoming a member without the consent of the other members; the name of the association, with the word "limited" added thereto as part of the same; the contemplated duration of said association, which shall not in any case exceed 20 years, and the names of the officers of said association selected in conformity with the provisions of this act. Contributions to the capital stock may be in real or personal estate, at a valuation to be approved by all the members subscribing to the capital of such association; but where property has been contributed as part of the capital, a schedule containing the names of the parties so contributing, with a description and valuation of the property so contributed, shall be inserted in such statement or articles; and any amendment of said statement or articles shall be made only in like manner; which said statement and amendment shall be recorded in the office of the secretary of state of this state and in the office of clerk of the county in which such association has its principal office, at the expense of the association; and until said statement or articles are so recorded the same shall not be deemed valid or operative nor authorize the association to commence or conduct business thereunder. The secretary of state and the county clerk, in whose office such articles of association shall be

recorded, shall each certify upon every such article of association recorded by him, the time when it was received with a reference to the book and page where the same was recorded, and the record or transcript of the record, certified by the secretary of state, of this state, and under the seal thereof, shall be received in all the courts of this state as prima facie evidence of the due formation, existence and capacity of such association in any suit or proceedings brought by or against the same.

HISTORY: How. 2365;—CL 1897, 8079;—Am. 1903, p. 399, Act 244, Imd. Eff. June 18;—CL 1915, 7950;—CL 1929, 9909;—CL 1948, 449.301.

NOTE: This act and the balance of this chapter held not repealed by the corporation code, Act 327, 1931. Attorney General v. Hill-Davis Co., 261 Mich. 89, 245 N.W. 579.

UNIFORM PARTNERSHIP ACT: See Compilers' § 449.1 et seq.

LIMITED PARTNERSHIPS: See Compilers' § 449.201 et seq.

PARTNERSHIP ASSOCIATION LIMITED: Continuance of existence, see Act 105 of 1919, being Compilers' §§ 449.371 to 449.373.

ASSUMED NAME: See Compilers' § 445.1 et seq.

CHANGE IN NAME: See Compilers' § 449.102 et seq.

CERTIFICATE: Filing, see Compilers' § 449.101 et seq.

SURVIVING PARTNER: Suits by or against opposite party, see (Jud. Act) Compilers' § 800.2160.

SETTLEMENT WITH CREDITORS: See Compilers' § 449.151 et seq.

449.302 Partnership associations; liability of members; labor debts.

Sec. 2. The members of any such partnership association shall not be liable under any judgment, decree, or order which shall be obtained against such association, or for any debt or engagement of such company, further or otherwise than is hereinafter provided, that is to say: if any execution or other process in the nature of execution, either at law or in equity, shall have been issued against the property or effects of the company, and if there cannot be found sufficient thereof whereon to levy or enforce such execution or other process, then such execution or other process may be issued against any of the members to the extent of the portions of their subscriptions respectively, in the capital of the association not then paid up: Provided always, That no such execution shall issue against any member, except upon an order of court or of a judge of the court in which the action, suit, or other proceeding shall have been brought or instituted; and the said court or judge may compel the production of the books of the association, showing the names of the members thereof, and the amount of capital remaining to be paid upon their respective subscriptions, and from them or other sources of information, ascertain the truth in regard thereto, and may order execution to issue accordingly; and the said association shall be and it is hereby required to keep a subscription list book for that purpose and the same shall be open to inspection by the creditors and members of the association, at all reasonable times: Provided, That nothing herein contained shall be construed to exempt the members of such partnership association from individual liability for all labor performed for the association.

HISTORY: How. 2366;—CL 1897, 8080;—CL 1915, 7951;—CL 1929, 9910;—CL 1948, 449.302.

449.303 Partnership associations; limited as last word in name; effect of omission.

Sec. 3. The word "limited" shall be the last word of the name of every partnership association formed under the provisions of this act; and every such association shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the association is carried on, in a conspicuous position, in letters easily legible, and shall have its full name mentioned in legible characters in all notices, advertisements, and other official publications of such association, and in all bills of exchange, promissory notes, checks, orders for money, bills of lading, invoices, receipts, letters, and other writings used in the transaction of the business of the partnership association: Provided, That the omission of the word "limited" in the use of the name of the partnership association shall render each and every member of such partnership liable for any indebtedness, damage, or liability arising therefrom.

HISTORY: How. 2367;—CL 1897, 8081;—CL 1915, 7952;—CL 1929, 9911;—CL 1948, 449.303.

449.304 Partnership associations; interest, transfer; death of member, effect; scope, limitation.

Sec. 4. Interest in said association shall be personal estate, and may be transferred under such rules and regulations as the association may prescribe, but no transferee of any interest, or the representatives of any decedent, or of any insolvent shall be entitled thereafter to any participation in the subsequent business of said association, unless he or she be elected thereto by a vote of a majority of the members in number and value of their interests, and any change of ownership, whether by sale, death, bankruptcy, or otherwise, which shall not be followed by election to the association, shall entitle the owner only to his interest in the association at a price and upon terms to be mutually agreed upon, and in default of such agreement the price and terms shall be fixed by an appraiser appointed by the circuit court of the county where such association has its principal office, subject to the approval of said court: Provided, That it may be stipulated and agreed in the statement in writing by which said association is organized, or by amendment filed thereafter, that on the death of any member his interest, if the representatives of his estate so elect, shall continue in the association during the continuance thereof and that the representatives of his estate may select some person who shall thereupon become a member of such association in place of such deceased member, with all his rights, privileges and responsibilities: Provided, however, That nothing herein contained shall affect the right of members to transfer their interest in associations heretofore organized under the provisions of Act 192 of the Public Acts of 1877, as amended.

HISTORY: Am. 1881, p. 259, Act 216, Imd. Eff. June 3;—How. 2368;—Am. 1885, p. 16, Act 21, Imd. Eff. March 17;—CL 1897, 6062;—Am. 1903, p. 400, Act 244, Imd. Eff. June 18;—CL 1915, 7953;—CL 1929, 9912;—CL 1948, 449.304.

NOTE: Act 192 of 1877, above referred to, is an act making an appropriation for the institution for the deaf, dumb and blind. The reference to Act 192 of 1877 is apparently erroneous. Doubtless Act 191 of 1877 was intended, which is the present act.

449.305 Partnership associations; meetings, notice; managers; debts and liabilities; rules.

Sec. 5. There shall be at least 1 meeting of the members of the association in each year, written notice of which shall be duly served on each member of the association 10 days prior to said meeting, at 1 of which there shall be elected not less than 3 nor more than 7 managers of said association, 1 of whom shall be the chairman, 1 the treasurer and 1 the secretary, who shall hold their respective offices for 1 year and until their successors are duly installed; and no debt shall be contracted nor liability incurred for said association except by 1 or more of said managers, and no liability for an amount exceeding \$500.00, except against the person incurring it, shall bind the said association unless reduced to writing and signed by at least 2 managers, except in case of associations for the purpose of buying and selling merchandise, a majority of the interest in such association may select 1 of the managers each year to purchase merchandise required in the business of the association, make contracts and sign notes for the same: Provided, Such power given in writing fully setting forth the extent to which such manager may make purchases and contract debt for the association, which shall be signed by a majority of the members in number and value of their interest, and such power of purchasing and contracting debts shall be strictly limited to the ordinary business of the association: And also provided, That at the time of the formation of such association, rules, not inconsistent with the provisions of this act, may be adopted for the management thereof, which shall only be amended by the consent in writing of 3/4 in number and value of interest.

HISTORY: Am. 1881, p. 259, Act 216, Imd. Eff. Jun. 3;—How. 2369;—CL 1897, 6063;—CL 1915, 7954;—CL 1929, 9913;—CL 1948, 449.305;—Am. 1955, p. 213, Act 146, Eff. Oct. 14.

449.306 Partnership associations; division of profits, impairment of capital.

Sec. 6. The association may, from time to time, divide the profits of its business in such manner and in such an amount as a majority of its managers may determine,

which profits so divided shall not at the time diminish or impair the capital of the said association; and any one consenting to a dividend, which shall diminish or impair the capital, shall be liable to any person or persons interested or injured thereby to the amount of such diminution or impairment.

HISTORY: How. 2370;—CL 1897, 6084;—CL 1915, 7954;—CL 1929, 9914;—CL 1948, 449.306.

449.307 Partnership associations; loan of credit, name or capital, interest.

Sec. 7. It shall not be lawful for such association to loan its credit, its name, or its capital to any member of said association, and for such loan to any other person or association, the consent in writing of a majority in number and value of interest shall be requisite, and in no case shall the credit of the association be loaned except the regular business of the association is to be directly benefitted thereby.

HISTORY: How. 2371;—CL 1897, 6085;—CL 1915, 7956;—CL 1929, 9915;—CL 1948, 449.307.

449.308 Partnership associations; dissolution, conditions.

Sec. 8. Such association may be dissolved:

First, Whenever the period fixed for the duration of the association expires.

Second, Whenever, by vote of a majority in number and value of interest it shall be so determined, and notice of such winding up shall be given by publication in 2 newspapers published in the proper city or county, at least 4 consecutive weeks; and immediately upon the commencement of said advertising, said association shall cease to carry on its business, except so far as may be required for the beneficial winding up thereof.

HISTORY: How. 2372;—CL 1897, 6086;—CL 1915, 7957;—CL 1929, 9916;—CL 1948, 449.308.

449.309 Partnership associations; dissolution, distribution of property.

Sec. 9. When any such partnership association shall be dissolved by the voluntary action thereof, its property shall be applied and distributed as follows:

First, To the payment of all debts for wages of labor;

Second, To the satisfaction of its other liabilities and indebtedness;

Third, After payment thereof, the same shall be distributed to and among the members thereof, in proportion to their respective interests, in the following manner:

Fourth, 3 liquidating trustees shall be elected by the members of the association, who shall have full power and authority to wind up the concern, and distribute the net assets thereof among the members, under the direction of the circuit court of the proper county.

HISTORY: How. 2373;—CL 1897, 6087;—CL 1915, 7958;—CL 1929, 9917;—CL 1948, 449.309.

449.310 Partnership associations; real estate, ownership and conveyance; service of process.

Sec. 10. All real estate owned or purchased by any association, created under and by virtue of this act, shall be held and owned and conveyance thereof shall be made in the association name; said association shall sue and be sued in their association name; and when suit is brought against any such association, service of process and other papers in such suit prior to appearance therein by defendant, shall be made upon the chairman, secretary or treasurer thereof: Provided, If no such officer reside in the county where the principal office or place *or business or [of] such association is located, or no such officer be found in such county within 5 days after the commencement of such suit, service of such process and papers may be made upon such association by service thereof upon any clerk, agent or attorney thereof in its office or place of business named in its articles of incorporation, which service shall be as complete and effective as if made upon each and every member of such association.

HISTORY: How. 2374;—CL 1897, 6088;—Am. 1905, p. 278, Act 188, Imd. Eff. June 7;—CL 1915, 7959;—CL 1929, 9918;—CL 1948, 449.310.

*NOTE: It is evident "or" should be "of".

The amendatory act of 1905 contains a sec. 2 setting forth that all acts and parts of acts in conflict with this act are hereby repealed.

SERVICE OF PROCESS: In court of record, see Compilers' § 600.1920, in justice's court, see Compilers' § 600.6735.

449.311 Saving clause.

Sec. 11. That no amendment, modification, or repeal of this act shall affect anything duly done, right acquired, liability incurred or penalty, forfeiture or other punishment incurred or to be incurred, in respect of any offense against the provisions of this act before such amendment, modification, or repeal comes into operation.

HISTORY: How. 2375;—CL 1897, 6089;—CL 1915, 7960;—CL 1929, 9919;—CL 1948, 449.311.

449.312 Partnership associations; franchise fee to accompany articles of association; void contracts; specific tax.

Sec. 12. Every such partnership association organized after this act takes effect, shall at the time of recording its statement in writing, or articles of association, pay to the secretary of state a franchise fee of 1/2 of 1 mill upon each dollar of its total authorized capital stock, and a proportionate fee upon every subsequent increase thereof; no statement in writing, or articles of association, shall be received by the secretary of state for recording unless accompanied by the fee provided for in this act, and every partnership association heretofore organized which shall hereafter increase its authorized capital, shall pay a franchise fee of 1/2 of 1 mill upon each dollar of such increase of authorized capital, and a proportionate fee upon each subsequent increase thereof: Provided, The fee herein provided shall in no case be less than 5 dollars. All contracts made in this state after the first day of January, 1904 by any partnership association organized after this act becomes operative, which has not first paid the franchise fee required to be paid by this act shall be wholly void. The franchise fee provided by this act shall be deemed and held to be specific taxes and shall be paid into the state treasury, and shall be applied to the objects and purposes prescribed in section 1, article 14 of the constitution of this state.

HISTORY: Add. 1903, p. 400, Act 244, Imd. Eff. June 18;—CL 1915, 7961;—CL 1929, 9920;—CL 1948, 449.312.

NOTE: Sec. 1 of Art. XIV, above referred to, is a reference to the 1850 constitution. For provision in 1908 constitution, see Const. X, 1.

REPEAL BY IMPLICATION: This and the following section were repealed by Act 233 of 1923, amending Act 85 of 1921. See Compilers' § 450.303 et seq. (Sec. 7 of amendatory Act 233 of 1923 was repealed by amendatory Act of 1927.) Whitney Realty Co. v. Secy. of State, 228 Mich. 96, 199 N.W. 689.

449.313 Partnership associations; annual report; time, contents, blanks, examination, filing; failure, duties of attorney general; dissolution notice; penalties, collection.

Sec. 13. Every partnership association heretofore or hereafter organized under this act shall annually, in the month of January or February, make duplicate reports for the fiscal year last ending, of such association, on suitable blanks to be furnished by the secretary of state, as hereinafter provided. Such report shall state the amount of capital subscribed, and the amount thereof actually paid in, in cash, and the amount thereof paid in property, if any; the amount of capital invested in real and personal estate, and the present actual value of the same as near as may be estimated; the amount of debts of the association, and the amount of credits, and the present estimated value of the credits; the name and postoffice address of each member and the amount of capital held by each at the date of such report; the name and postoffice address of each officer and manager of the association and such other information as the secretary of state may require. It shall be the duty of the secretary of state in the month of December, in each year, to mail to each such association suitable blanks on which shall be printed a copy of this section. Such reports shall be signed by a majority of the managers and verified by the oath of the secretary of the association, and deposited in the office of the secretary of state within the said month of January or February. The secretary of state shall carefully examine such reports, and if upon such examination

they shall be found to comply with all the requirements of this section, he shall file 1 of them in his office and shall forward the other by mail or express to the county clerk of the county in which the principal office, in this state, for the transaction of the business of said association is situated. And it shall be the duty of such county clerk, upon receipt of such report to immediately cause the same to be filed in his office. If any of the managers of any such association shall wilfully neglect or refuse to make and deposit the report required by this section, within the time herein specified, they shall each be liable for all the debts of such association contracted during the period of such neglect or refusal, and subject to a penalty of 25 dollars, and in addition thereto the sum of 5 dollars for each and every secular day after the first of March in each year during the pendency of such neglect or refusal, which penalty shall be for the use and benefit of the general fund of this state. The secretary of state shall, during the last week of June of each year, report to the attorney general in writing, the name and post-office address of each and every association which has failed to comply with the provisions of this section. And upon the receipt of such report, it shall be the duty of the attorney general to institute proceedings in any court of competent jurisdiction, to collect said penalties, and all necessary expenses incurred by the attorney general in such proceedings shall be audited by the board of state auditors, and paid from the general fund of the state. And in case an association organized or doing business under the provisions of this act shall be dissolved by process of law, or whose term of existence shall terminate by limitation, or whose property and franchises shall be sold at mortgage sale or at private sale, it shall be the duty of the last board of managers of such association, within 30 days thereafter, to give written notice of such change to the secretary of state and the county clerk of the county where the principal office of such association is located, signed by a majority of such last board of managers, which said notice shall be recorded as amendments are required to be recorded. And in case of neglect to give such notice, they shall be subject to the same penalties provided in case of neglect to make annual reports, which said penalties shall be collected and applied in the same manner as in case of neglect in making annual reports. The neglect or refusal to file the reports, required by this section to be filed, shall be deemed to be wilful when the report required is not filed within the time herein limited. Whenever any association has neglected or refused to make and file its report within 20 days after the time limited in this section, the secretary of state shall cause notice of that fact to be given by mail to such association, and to each last known officer and manager thereof, directed to their respective postoffice addresses. The certificate of the secretary of state or his deputy, of the mailing of such notices, shall be prima facie evidence in all courts and places of that fact, and that such notices were duly received by said association. All actions and suits based on the neglect or refusal of the officers or managers of such associations to make and file the reports required by this section, shall be commenced within 2 years next after such neglect or refusal has occurred, and not afterwards.

HISTORY: Add. 1903, p. 401, Act 244, Imd. Eff. June 18;—Am. 1905, p. 87, Act 63, Eff. Sept. 16;—CL 1915, 7962;—CL 1929, 9921,—CL 1948, 449.313.

REPEAL BY IMPLICATION: See note to preceding section.

PENALTY: Suit for, see (Jud. Act) Compilers' § 600.4805 et seq.

449.314 Existing associations; articles, filing; penalty; franchise fee.

Sec. 14. Every partnership association heretofore organized, is required to file a copy of its statement in writing or articles of association, verified by the oath of the secretary of the board of managers or certified by the register of deeds of the county in which said statement or articles were recorded, as a full and true copy of the same with its date of record together with all amendments to such statement or articles if any have been made and recorded, in the office of the secretary of state of this state on or before the first day of January 1904. The officers and managers of every such

partnership association failing to file such copy of its statement in writing or articles within the time herein prescribed, shall each be subject to a penalty of 25 dollars, and in addition thereto the sum of 5 dollars for each and every secular day after January first, 1904. Such penalty shall be for the same use, and shall be collected in the same manner, by the attorney general, as prescribed in section 13 of this act: Provided, That partnership associations already organized shall not be required to pay a franchise fee upon their recording articles of association under this act.

HISTORY: Add. 1903, p. 402, Act 244, Imd. Eff. June 18;—CL 1915, 7963;—CL 1929, 9922;—CL 1948, 449.314.

449.315 Existing associations; articles, amendment, procedure; evidence.

Sec. 15. Every association organized or existing under the provisions of this act may, at any annual meeting or any meeting duly called for that purpose by a resolution adopted by a vote of 2/3 in value of interest of its capital stock, amend its articles of association in any manner not inconsistent with the provisions of this act, but such amendments shall not become operative until a copy of such resolutions, signed by the chairman and secretary of the board of managers of such association, shall have been recorded as is provided herein for the recording of the original articles of association when such amendment shall have the same force and effect as though said amendments had been included in the original articles, and a record or copy of the record of such resolution certified as provided in section 1 for the certification of the original articles of association shall be received in all courts of this state as prima facie evidence of the things therein stated.

HISTORY: Add. 1903, p. 403, Act 244, Imd. Eff. June 18;—CL 1915, 7964;—CL 1929, 9923;—CL 1948, 449.315.

449.316 Existing associations; reorganization as corporation, procedure; franchise fee; period of existence.

Sec. 16. Every partnership association now existing, organized under Act No. 191 of the Public Acts of 1877, as amended, being chapter 160 of the Compiled Laws of 1897, may at any time reorganize under any act providing for the incorporation of companies for a purpose or purposes for which such association was organized: Provided, Such reorganization is authorized and directed by a vote of 2/3 in interest of the members holding the capital stock of any such partnership association, at a regular meeting of the members of such association, or at a meeting called expressly for that purpose in accordance with the by-laws or statement in writing by which it was organized. The resolution or other action by which said vote is expressed shall be certified in duplicate by the executive officers of the association so reorganizing, and attached to its articles of incorporation when the same are recorded; and in addition to said resolution or other action the said officers shall certify the name of the association and the date upon which the same was organized under the statute now known as chapter 160 of the Compiled Laws of 1897, and every such association so organized before this act becomes operative may reorganize as herein provided without paying the franchise fee provided in Act No. 182 of the Public Acts of 1891, being section 8574 of the Compiled Laws of 1897: Provided, That the period for the existence of the corporation so organized shall be coincident with the period of existence remaining to the partnership association at the date of its reorganization as above provided.

HISTORY: Add. 1903, p. 403, Act 244, Imd. Eff. June 18;—Am. 1911, p. 434, Act 252, Eff. Aug. 1;—CL 1915, 7965;—CL 1929, 9924;—CL 1948, 449.316.

NOTE: Act 191 of 1877, above referred to, is the present act. Act 182 of 1891, above referred to, is CL 1915, 11352 to 11355, repealed by Act 309 of 1929, being CL 1929, 121.

GENERAL CORPORATION ACT: See Act 327 of 1931, being Compilers' § 450.1 et seq.

Act 45, 1909, p. 72; Eff. Sep. 1.

AN ACT to secure to the minority of members in partnership associations organized under the provisions of Act No. 191 of the Public Acts of 1877, and acts amendatory

thereto, the same being compiler's chapter 160 of the Compiled Laws of 1897, the power of electing a representative membership in the boards of managers of such partnership associations.

The People of the State of Michigan enact:

449.351 Partnership associations; election of managers, procedure, time, number.

Sec. 1. In all elections for managers of partnership associations organized under the provisions of chapter 160 of the Compiled Laws of 1897 and acts amendatory thereto, every member of such partnership association shall have the right to vote in person or by proxy the number of shares owned by him for as many persons as there may be managers to be elected, or to cumulate said shares and give 1 candidate as many votes as will equal the number of managers multiplied by the number of his shares of stock; or to distribute them on the same principal among as many candidates as he shall think fit. All such partnership associations shall elect their managers annually, and the entire number of managers shall be balloted for at 1 and the same time and not separately: Provided, That the by-laws of any such partnership association shall not be so amended as to reduce the number of managers of such partnership association, in case the votes of a sufficient number of shares are recorded against such proposed amendment, which, if cumulatively voted as herein provided, would elect 1 or more managers where the same number of shares, if cumulatively voted, would not be sufficient to elect the same number of managers of the reduced board of managers.

HISTORY: CL 1915, 7966;—CL 1929, 9925;—CL 1948, 449.351.

NOTE: See note under Compiler's § 449.301.

Act 105, 1919, p. 180; Eff. Aug. 14.

AN ACT to provide for the extension of the life of partnership associations limited, organized under the laws of this state, whose term of existence would otherwise expire or has already expired and to fix the rights, duties and liabilities of such partnership associations limited. Am. 1925, p. 33, Act 25, Eff. Aug. 27.

The People of the State of Michigan enact:

449.371 Partnership associations limited; continuance of existence, procedure; evidence; franchise fee.

Sec. 1. Any partnership association limited, organized under the general laws of this state whose term is about to expire by limitation, may at any time within 2 years next preceding the expiration of such term, by a vote of at least 2/3 of its capital, at any annual meeting or at any special meeting of its members called for that purpose, direct the continuance of its existence for such further term, not exceeding 20 years from the expiration of its former term, as may be expressed in a resolution for that purpose. Upon the adoption of such resolution at the annual meeting or any special meeting called in accordance with the by-laws of the organization, it shall be the duty of the chairman and secretary to make, sign and acknowledge duplicate articles of association, to which shall be appended a copy of the proceedings of such meeting, certified by the secretary and verified by his oath, which articles of association shall be recorded in the same public offices where the original articles of association of partnership associations limited are required to be recorded, at the expense of said corporation, and the record thereof or a certified copy of such record, shall be prima facie evidence of the facts therein recited: Provided, That such partnership association lim-

ited shall at the time of filing such articles of association, pay the same franchise fee as would be required in the case of an original organization of such association.

HISTORY: CL 1929, 9940;—CL 1948, 449.371.

NOTE: See note under Compilers' § 449.301.

449.372 Partnership associations limited; renewal, powers conferred; articles and by-laws, amendment.

Sec. 2. The renewed term of such partnership association limited shall begin from the expiration of its former term, and an association which has thus been renewed shall be the same association and hold and own all the rights, franchises and property held and owned by the association before renewal and be subject to all its liabilities, and have the same members and the same officers. The articles of association and by-laws thereof may be changed or amended by the association in the manner required by law.

HISTORY: CL 1929, 9941;—CL 1948, 449.372.

449.373 Partnership associations limited; expired term, extension.

Sec. 3. Extension after expiration of term. Any such partnership association limited whose term has expired but which has not been wound up or dissolved and which has nevertheless, inadvertently continued its active business beyond such term, may with the consent of at least 4/5 of its capital stock renew its existence for such further term not exceeding 20 years from the expiration of its former term in the same manner as is provided in sections 1 and 2 of this act in relation to a partnership association limited, whose term is about to expire and it shall be the duty of the officers and directors de facto, to do and perform all things required of such officers and directors de jure as provided in said sections 1 and 2 in relation to calling a special meeting of the stockholders and members of such partnership association limited and submitting the question to them of renewing its existence and the filing of renewing articles, but no such partnership association limited de facto shall be permitted to renew its existence unless such action is taken within 3 years next after its term has expired, and such renewal shall in nowise relieve such partnership association limited from any penalties that may have accrued against it under any law of this state but such renewal shall entitle the partnership association to all the rights, privileges, immunities and powers conferred upon partnership associations limited, renewing their existence before or at the expiration of their terms.

HISTORY: Add. 1925, p. 33, Act 25, Eff. Aug. 27;—CL 1929, 9942;—CL 1948, 449.373.

COMPILERS' NOTE: The catchline following the act section number of this section was incorporated as a part of the section when enacted.

CHAPTER 450. CORPORATIONS

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- 450.421 Ecclesiastical corporations; charters, revival; certificate of continuance; filing articles.
- 450.422 Ecclesiastical corporations; rights, contracts; restoration.

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- 450.431 Profit corporations; void charters, revival; filing reports, fees, penalties; time limitation.
- 450.432 Profit corporations; compliance with act; rights restoration; contract validation.

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Act 327, 1931, p. 568; Eff. Sep. 18.

AN ACT to provide for the organization, regulation and classification of corporations; to provide their rights, powers and immunities; to prescribe the conditions on which corporations may exercise their powers; to provide for the inclusion of certain existing corporations within the provisions of this act; to prescribe the terms and conditions upon which foreign corporations may be admitted to do business within this state; to require certain annual reports to be filed by corporations; to prescribe penal-

ties for the violations of the provisions of this act; and to repeal certain acts and parts of acts relating to corporations.

The People of the State of Michigan enact:

450.1 Michigan general corporation act; short title.

Sec. 1. Act; short title. This act and all amendments hereto hereafter made shall be known and may be cited as the "Michigan General Corporation Act."

HISTORY: CL 1948, 450.1.

COMPILERS' NOTE: The catchlines following the act section numbers of this act were incorporated as a part of the act when enacted.

FORMER ACTS: See acts listed under section 191 of this act. Also in running down the former acts of any particular section, reference should be made to the citation, including notes, set forth in the antecedent history of the section.

CITED IN OTHER SECTIONS: Sections 450.1 to 450.192; 450.1 to 450.568 are cited in §§ 390.771, 395.121, 447.1, 450.224, 450.253, 450.715, 487.595, 487.855, and 830.252.

450.2 Michigan general corporation act; definitions.

Sec. 2. As used in this act:

(a) Except as otherwise indicated "corporation" means a corporation formed or existing under the laws of this state.

(b) "Articles" means articles of incorporation, all amendments thereto and agreements of consolidation and merger and includes what has heretofore been referred to as articles of association or charters and amendments thereto of corporations governed by this act.

(c) "Incorporator" shall be a natural person who, or a corporation or a partnership which, signs the articles.

(d) "Director" and "directors" shall be construed to be synonymous with "trustee" and "trustees" respectively. "Directors", when used in relation to any power or duty requiring collective action, shall be construed to mean "board of directors".

(e) "Registered office" shall mean the place designated in the articles or in any certificate filed as provided in section 79 of this act as the office of the corporation in this state.

(f) "Shareholder" and "shareholders" shall be construed to be synonymous with "member" and "members" respectively.

(g) "Share of stock" and "shares of stock" shall be construed to be synonymous with membership in nonstock corporations.

(h) Wherever it is provided in this act that any notice or statement shall be published such publication shall be in a newspaper printed in the English language. If there shall be no newspaper published and circulating in the county where any notice or statement is required to be published, such notice or statement may be published in any newspaper having general circulation in such county.

(i) "Administrator" means the Michigan department of treasury. Wherever in this act the term "secretary of state" or "corporation and securities commission" is used it shall be deemed to refer to the department of treasury.

HISTORY: CL 1948, 450.2;—Am. 1949, p. 269, Act 229, Eff. Sep. 23;—Am. 1967, p. 262, Act 194, Eff. Nov. 2.

This section supersedes part of Sec. 10 of Ch. 1 of Pt. 1 of Act 84 of 1921, being CL 1929, 9952.

450.3 Incorporators; applicability of act.

Sec. 3. One or more incorporators may incorporate under this act for the purpose of carrying on any lawful business except those desiring to incorporate the following:

Banking corporations, industrial banks, insurance corporations, fraternal benefit societies, trust, deposit and security companies, building and loan associations, summer resort associations, railroad, bridge and tunnel companies, union depot companies, train railway companies, street railway companies, brine pipe line companies, telegraph companies, telephone companies, safety and collateral deposit companies, ca-

nal, river and harbor improvement companies, cemetery, burial and cremation associations, and agricultural and horticultural fair societies; the provisions of this act shall be applicable to such corporations, except insurance, railroad, bridge, tunnel companies, union depot companies, and building and loan associations, unless otherwise provided in, or inconsistent with, the act under which a particular corporation is or shall have been formed.

HISTORY: Am. 1935, p. 311, Act 194, Imd. Eff. June 6;—Am. 1937, p. 65, Act 51, Imd. Eff. May 25;—CL 1948, 450.3;—Am. 1949, p. 269, Act 229, Eff. Sep. 23;—Am. 1962, p. 186, Act 169, Eff. Mar. 28, 1963.

This section as originally enacted superseded part of Sec. 1 of Ch. 1 of Pt. 1 of Act 84 of 1921, being CL 1929, 9943, and superseded Sec. 8 of Ch. 1 of Pt. 1 of Act 84 of 1921, Am. 1921, 1st Ex. Ses., p. 791, Act 20, Imd. Eff. June 15, being CL 1929, 9950.

450.4 Articles of incorporation; contents.

Sec. 4. (1) Articles of incorporation shall be signed in ink and shall be acknowledged by at least 1 of the incorporators before an officer authorized to take acknowledgments by the laws of this state and shall state, in the English language, a—the name of the corporation; b—the purpose or purposes for which the corporation is formed; c—the location and postoffice address of its first registered office in this state; d—the name of the corporation's first resident agent; e—if the corporation is to be authorized to issue only 1 class of stock, the total number of shares of stock which the corporation shall have authority to issue and (i) the par value of each of such shares, or (ii) a statement that all such shares are to be without par value and the book value and price fixed for sale or exchange, if any, of such shares, or, if the corporation is to be authorized to issue more than 1 class of stock, the total number of shares of all classes of stock which the corporation shall have authority to issue and (i) the number of the shares of each class thereof that are to have a par value and the par value of each share of each such class, (ii) the number of such shares that are to be without par value and the book value and price fixed for sale or exchange, if any, of such shares, and (iii) a statement of all or any of the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof; f—the names and places of residence or business of each of the incorporators and the number and class of shares subscribed for by each; g—the names and addresses of the first board of directors; h—the term of the corporation existence.

Permitted contents.

(2) The articles may contain any other provisions consistent with the laws of this state for regulating the business of the corporation and for the conduct of its affairs, and any provisions creating, defining, limiting and regulating the exercise of the powers of the corporation or of the directors or of the shareholders or of any class or classes of shareholders, or for the purpose of creating and defining rights and privileges of the shareholders among themselves.

Initial provision for compromise, arrangement or reorganization.

(3) The articles may also contain the following provision: Whenever a compromise or arrangement or any plan of reorganization of this corporation is proposed between this corporation and its creditors or any class of them or between this corporation and its shareholders or any class of them, any court of equity jurisdiction within the state, may on the application of this corporation or of any creditor or any shareholder thereof, or on the application of any receiver or receivers appointed for this corporation, order a meeting of the creditors or class of creditors, or of the shareholders or class of shareholders to be affected by the proposed compromise or arrangement or reorganization, to be summoned in such manner as said court directs. If a majority in number representing 3/4 in value of the creditors or class of creditors, or of the shareholders or class of shareholders to be affected by the proposed compromise or arrangement or reorganization, agree to any compromise or arrangement or to any reorganization of this corporation as a consequence of such compromise or arrangement, said

compromise or arrangement and said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, or on all the shareholders or class of shareholders and also on this corporation.

Amendment, jurisdiction of court.

Whenever the foregoing provision is included in the original articles of any corporation, all persons who become creditors or shareholders thereof shall be deemed to have become creditors or shareholders subject in all respects to said provision, and the same shall be absolutely binding upon them; and whenever the said provision is inserted in the articles of any corporation, by an amendment of such articles, all persons who become creditors or shareholders of such corporation after such amendment becomes legally effective, shall be deemed to have become such creditors or shareholders, subject in all respects to the said provisions, and the same shall be absolutely binding upon them. Any court of equity jurisdiction within this state shall have the power to administer and enforce the said provision and to restrain, *pendente lite*, all actions and proceedings against any such corporation with respect to which the court so restraining shall have begun the administration or enforcement of said provision and to appoint a temporary receiver or receivers for such corporation and to grant to such receiver or receivers such powers as shall be deemed proper.

HISTORY: Am. 1935, p. 311, Act 194, Imd. Eff. June 6;—Am. 1943, p. 214, Act 160, Imd. Eff. Apr. 17;—CL 1948, 450.4;—Am. 1951, p. 350, Act 239, Eff. Sep. 28;—Am. 1953, p. 183, Act 155, Eff. Oct. 2;—Am. 1962, p. 186, Act 169, Eff. Mar. 28, 1963;—Am. 1967, p. 262, Act 194, Eff. Nov. 2.

This section as originally enacted superseded part of Sec. 1 of Ch. II of Pt. I of Act 84 of 1921, Am. 1929, p. 646, Act 267, Eff. Aug. 28, being CL 1929, 9953; and Sec. 4 of Ch. II of Pt. I of Act 84 of 1921, being CL 1929, 9956.

450.5 Articles of incorporation; filing; corporate existence, shareholders; minimum paid in capital.

Sec. 5. (1) The original articles shall be delivered to the administrator. If the administrator finds that the articles conform to law he shall, when all fees and charges have been paid as required by law, file the original articles in his office. He shall prepare and return a true copy of the articles to the incorporators and shall prepare and forward another true copy by mail or express to the county clerk of the county in which the corporation shall have its registered office. The administrator and the several county clerks receiving articles for filing shall each certify upon such articles and upon all amendments thereto the date when the same were received and filed except as in section 42 of this act provided.

(2) Upon the filing of the articles in the office of the administrator the corporate existence shall begin and those persons who subscribed to shares prior to the filing of the articles, whether by signing the articles or otherwise, or their assigns shall be shareholders in the corporation.

(3) Any profit corporation formed under this act shall have a minimum paid in capital of not less than \$1,000.00 with which the corporation will commence business.

HISTORY: CL 1948, 450.5;—Am. 1953, p. 184, Act 155, Eff. Oct. 2;—Am. 1967, p. 263, Act 194, Eff. Nov. 2.

This section supersedes part of Sec. 2 of Ch. II of Pt. I of Act 84 of 1921, being CL 1929, 9954.

CITED IN OTHER SECTIONS: The above section is cited in § 450.411.

450.6 Corporate name; words required and prohibited; foreign and non-profit corporations.

Sec. 6. No corporation for profit shall be incorporated under this act unless there shall appear in its proposed name the word "Corporation", "Company", "Incorporated", or one of the abbreviations "Corp.", "Co." or "Inc."

No corporation shall assume any name which is likely to mislead the public, or any name already in use by any other existing corporation of this state, or corporation lawfully carrying on business in this state, or so nearly similar thereto as to lead to confusion or deception: Provided, That in the case of a foreign corporation applying for ad-

mission to this state whose name is similar to that of any domestic corporation or of any foreign corporation already admitted into this state, but each having respectively the name of a different locality as a part of its corporate name, such names so distinguished shall not be deemed sufficiently similar as to lead to confusion or deception: And provided further, That no corporation formed or existing under or subject to the provisions of this act shall assume any name which implies that it is a banking corporation, an insurance or surety company or a trust company, and no such corporation shall use the words, "bank", "industrial bank", "deposit", "insurance", "surety", "security", "trust", "trust company", or "guaranty" or "building and loan" in its corporate name, or use any combination of the letters or words along with other letters or words in its corporate name to indicate or convey the idea of a bank or banking or industrial banking activity or security: And provided further, That any nonprofit corporation formed or existing under or subject to the provisions of this act as a bona fide insurance trade association shall be entitled to use the word insurance as a part of its corporate name: Provided, That such name clearly indicates that the nonprofit corporation is an insurance trade association and is not engaged in the insurance business.

HISTORY: CL 1948, 450.6;—Am. 1954, p. 40, Act 34, Eff. Aug. 13;—Am. 1961, p. 17, Act 15, Eff. Sep. 8.

This section supersedes with additions Sec. 3 of Ch. II of Part I of Act 84 of 1921, Am. 1927, p. 804, Act 335, Eff. Sept. 5, being CL 1929, 9955.

450.6a Corporate name; application for reservation, fee, transfer.

Sec. 6a. Any person may file with the corporation and securities commission an application to reserve a corporate name on a form provided by the commission, and accompanied by a \$10.00 fee. If the commission finds that the name is available for corporate use, it shall reserve the same for the exclusive use of the applicant for a period expiring at the end of the second full calendar month following the month in which the reservation was filed. After the expiration of the period of reservation, 10 calendar days shall elapse before a new reservation of the same name, or a name so nearly similar as to lead to confusion or deception, is filed with the commission. The right to the exclusive use of a name so reserved may be transferred to any other person, partnership or corporation by filing in the office of the commission a notice of such transfer, on a form provided by the commission, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

HISTORY: Add. 1962, p. 133, Act 139, Eff. Mar. 28, 1963.

450.7 Corporations; first meeting; notice, contents, waiver.

Sec. 7. First meeting. The first meeting of every corporation, unless otherwise provided in the act under which a particular corporation is or shall have been formed, shall be called by a notice signed by any incorporator designating the time and place of the meeting, which place may be either within or without this state, and stating the purpose for which such meeting is called. Such notice shall be personally served on all the incorporators at least 2 days before the date set for such meeting, or if all the incorporators shall be present at such meeting or shall, in writing, waive notice and fix a time and place of meeting, then no notice whatever shall be required of such first meeting.

HISTORY: CL 1948, 450.7. This section supersedes part of Sec. 3 of Ch. 55 of the Revised Statutes of 1946, being CL 1857, 2145;—Am. 1967, p. 69, Act 50, Imd. Eff. March 13;—CL 1871, 3430;—How. 4862;—CL 1897, 8529;—CL 1915, 11330;—CL 1929, 10155.

450.8 Preincorporation contracts; validity and effect.

Sec. 8. Preincorporation contracts. No contract made by the incorporators for or on behalf of any corporation to be formed preliminary to the filing of the articles shall be deemed to be invalid or ineffectual because made prior to such filing, and all property held by such incorporators for the benefit of the proposed corporation shall be deemed to be the property of such corporation.

HISTORY: CL 1948, 450.8. This section supersedes part of Sec. 2 of Ch. II of Pt. I of Act 84 of 1921, being CL 1929, 9954.

450.9 Articles or papers required; effect of filing.

Sec. 9. Effect of filing papers required to be filed. The filing of the articles or any other papers pursuant to the provisions of this act is required for the purpose of affording all persons the opportunity of acquiring knowledge of the contents thereof, but no person dealing with the corporation shall be charged with or be entitled to assert constructive notice of the contents of any such articles or papers by reason of such filing except shareholders, officers and directors of the corporation and except as provided in subsection 3 of section 4 of this act.

HISTORY: CL 1948, 450.9.

450.10 Corporations; powers.

Sec. 10. Every corporation, unless otherwise provided, or inconsistent with the act under which a particular corporation is or shall have been formed shall have power:

- a—to have succession, by its corporate name, for the term stated in its articles;
- b—to sue and be sued, complain and defend, in any court of law or equity or to be a party to any proceedings before any board or commission or other public body of this state or any other state or government;
- c—to have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise;
- d—to acquire, purchase, hold and convey real and personal estate and to mortgage or lease any such real or personal estate with or without any of its franchises, corporate or otherwise; the power to hold real and personal estate shall include the power to take the same by gift, devise or bequest;
- e—to appoint such officers and agents as the business of the corporation shall require and to allow them suitable compensation;
- f—to make, alter, amend and repeal by-laws for the regulation and government of its affairs, including the certification and transfer of its stock;
- g—to conduct its business in this state, other states, the District of Columbia, the territories and colonies of the United States and in foreign countries and the territories and colonies thereof and have 1 or more offices out of this state and to acquire, purchase, hold, mortgage, pledge, assign, transfer and convey real and personal property out of this state, provided such powers are not specifically denied in the object set forth in its articles;
- h—to acquire, purchase, hold, sell and transfer shares of its own capital stock: Provided, That no corporation shall use its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of the capital of the corporation: And provided further, That any corporation which purchases its own capital stock shall keep its books and records and prepare its annual report to the state and its annual report to its shareholders in such manner as to indicate clearly the cumulative effect of such purchases, either by showing the cost of such respective purchases as a deduction from surplus or by classifying its surplus accounts in such manner as to show the amount of surplus applied to such purchases and which therefore shall not be available for dividends of any kind or for additional purchase of its own stock or for any other purpose: And provided further, That shares of its own capital stock belonging to the corporation shall not be voted directly or indirectly: And provided further, That nothing in this section shall be construed as limiting the exercise of the rights given by section 37 of this act;
- i—to guarantee, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of, the shares of the capital stock of, or any bonds, securities or evidence of indebtedness created by, any other corporation or corporations of this state or any other state, country, nation or government, banking corporations or trust companies: Provided, Such stock of banking corporations or trust companies is acquired as a part of a

plan of reorganization of such banking corporation or trust company, and, while the owner of the same, to exercise all the rights, powers and privileges of ownership including the right to vote thereon if such right be an incident of the same: Provided, That any corporation organized or doing business in this state under this act shall not have the power to guarantee or anywise become surety upon any bond or other undertaking securing the deposit of public moneys; the guaranty, purchase, holding, sale, assignment, transfer, mortgaging, pledging and other disposition by any corporation of the shares of the capital stock of, or any bonds, securities or evidence of indebtedness created by banking corporations, industrial banks, trust, deposit and security companies, and the exercise by any corporation, while the owner of the same, of any of the rights, powers and privileges of ownership, including the right to vote thereon if the right be an incident of the same during the period from October 15, 1933, until the effective date of this act is hereby validated.

j—to borrow money and issue, sell or pledge bonds, promissory notes, bills of exchange, debentures, and other obligations and evidences of indebtedness whether secured by mortgage, pledge or otherwise, or unsecured;

k—to make contributions for public welfare. Public welfare as used in this section shall include, among other things, charitable, scientific, educational and religious purposes, subject to such limitations, if any, as may be contained in its articles of incorporation or any amendments thereto;

l—to indemnify any and all of its directors or officers or former directors or officers or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against expenses actually and necessarily incurred by them in connection with the defense of any action, suit or proceeding in which they, or any of them, are made parties, or a party, by reason of being or having been directors or a director or officer of the corporation, or of such other corporation, except in relation to matters as to which any such director or officer or former director or officer or person shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty and to such matters as shall be settled by agreement predicated on the existence of such liability;

m—the powers of a corporation, except as otherwise provided, shall be exercised by the board of directors.

HISTORY: Am. 1933, p. 276, Act 186, Eff. Oct. 17;—Am. 1934, 1st Ex. Ses., p. 117, Act 34, Imd. Eff. March 28;—Am. 1935, p. 312, Act 194, Imd. Eff. June 6;—Am. 1947, p. 301, Act 209, Eff. Oct. 11;—CL 1948, 450.10;—Am. 1953, p. 186, Act 156, Eff. Oct. 2.

This section supersedes and merges part of Sec. 1 of Ch. 55 of the Revised Statutes of 1846, being CL 1857, 2143;—CL 1871, 3428;—How. 4860;—CL 1897, 8527;—CL 1915, 11328;—CL 1929, 10153; and Sec. 1 of Ch. I of Pt. II of Act 84 of 1921, Am. 1927, p. 805, Act 335, Eff. Sept. 5, being CL 1929, 9983; and Sec. 12 of Ch. II of Pt. II of Act 84 of 1921, Am. 1921, 1st Ex. Ses., p. 792, Act 20, Imd. Eff. June 15;—Am. 1927, p. 809, Act 335, Eff. Sept. 5, being CL 1929, 10012; and Sec. 8 of Ch. III of Pt. I of Act 84 of 1921;—Am. 1923, p. 245, Act 153, Eff. Aug. 30;—Am. 1925, p. 692, Act 363, Eff. Aug. 27;—Am. 1929, p. 651, Act 267, Eff. Aug. 28, being CL 1929, 9968; and Sec. 2 of Ch. I of Pt. II of Act 84 of 1921, Am. 1925, p. 340, Act 232, Eff. Aug. 27;—Am. 1927, p. 805, Act 335, Eff. Sept. 5;—Am. 1929, p. 653, Act 267, Eff. Aug. 28, being CL 1929, 9984; and Sec. 5 of Ch. II of Pt. I of Act 84 of 1921, Am. 1929, p. 649, Act 267, Eff. Aug. 28, being CL 1929, 9958; and Sec. 13 of Ch. II of Pt. II of Act 84 of 1921, Am. 1927, p. 810, Act 335, Eff. Sept. 5, being CL 1929, 10013.

450.10a Corporations; powers; membership or participation in partnership, proviso.

Sec. 10a. Every corporation, unless otherwise provided or inconsistent with the act under which it is formed, may become a member of or participant in any partnership, whether the corporation is a general or limited partner, joint venture or any other business enterprise or business entity for carrying on any or all of the purposes for which the corporation is formed: Provided, however, That such partnership or other entity shall not engage in any business or transaction in which its corporate member could not engage, nor acquire or hold any interest in property, whether real, personal or intangible, which the corporate member could not lawfully acquire or hold.

HISTORY: Add. 1968, p. 494, Act 288, Eff. Nov. 15.

Former section 450.10a (Sec. 10a, Act 23, 1949, p. 19, Imd. Eff. Mar. 29, as added) was repealed by Act 239, 1951, p. 354, Eff. Sept. 28. It authorized corporations to construct, purchase, sell, lease or rent dwelling facilities for its employees.

450.10b Repealed. 1951, p. 354, Act 239, Eff. Sep. 28.

Section made it a misdemeanor to require any person to purchase, rent or lease corporate facilities as condition of employment unless required for protecting persons or property.

450.11 Corporations; plea of ultra vires, limitation of power.

Sec. 11. Ultra vires acts. The plea of ultra vires shall not be made by anyone except by (1) the corporation in an action between it and a director or officer thereof or a person having actual knowledge of the ultra vires character of the act or (2) by either party in an action between a shareholder and the corporation. The foregoing provision shall be construed as a limitation on the power of a corporation.

The plea of ultra vires shall not be made by any foreign corporation or any other party in any action brought in this state except (1) between such corporation and a director or officer thereof or a person having actual knowledge of the ultra vires character of the act or (2) by either party in an action between a shareholder and the corporation.

HISTORY: Am. 1935, p. 314, Act 194, Imd. Eff. June 6;—CL 1948, 450.11.

450.12 Corporations; terms of existence.

Sec. 12. Term of existence. The term of existence of every corporation shall be as fixed by the articles not exceeding the period which may be fixed by the constitution of this state. Corporations organized without capital stock for religious, benevolent, social or fraternal purposes, may incorporate without fixing any definite term in their articles, and the terms of such corporations shall be deemed to be perpetual, subject to the right of the legislature to alter, repeal or amend this section in accordance with the constitution.

HISTORY: CL 1948, 450.12. This section supersedes part of Sec. 5 of Ch. II of Pt. I of Act 84 of 1921, Am. 1929, p. 649, Act 267, Eff. Aug. 28, being CL 1929, 9956.

450.13 Corporations; directors.

Sec. 13. 1. The business of every corporation formed or existing under this act shall be managed by a board of at least 3 directors who need not be shareholders unless the articles so provide. A director shall hold office for the term for which he was named or elected, and/or until a successor is elected and qualified.

First directors, term.

2. Each director named in the articles shall hold office until the first annual meeting of the shareholders and/or until a successor is elected and qualified.

Removal of director.

3. At any meeting of the shareholders of any corporation called for the purpose of removing any director, such director may, by a vote of a majority of all the shares of stock outstanding and entitled to vote, or by a vote of a majority in number of all the members of such corporation in the case of a corporation without capital stock, be removed from office for cause and another be elected in the place of the person: Provided, That the shareholders shall have the right to vote cumulatively on such removal and no director shall be removed against whose removal sufficient votes shall be recorded to have elected a director on the election of a full board or a division thereof, if the board should be classified: And, provided further, That any cumulative shares so voted against the removal of any director shall not be voted against the removal of any other director during the term of which the board or a division thereof, as the case may be, shall have been elected: And, provided further, That no more than 1 meeting of shareholders shall be held and vote recorded for the removal of any individual director during the term for which he is elected if such term shall be for 2 years or less: And, provided further, That the number of directors of any corporation shall not be reduced in case the votes of a sufficient number of shares are recorded against such proposed reduction, which, if cumulatively voted, would elect 1 or more directors,

where the same number of shares if voted cumulatively would not be sufficient to elect the same number of directors of the board so reduced.

Directors, number, qualifications, classification, term of office, election, meeting, powers and duties, vacancies, quorum, executive committee.

4. The number, qualifications, classification, terms of office, manner of election, time and place of meeting, and the powers and duties of the directors may, subject to the provisions of this act, be prescribed by the articles or bylaws: Provided, however, That directors shall be elected annually unless a term of more than 1 year shall be so prescribed, in which event at least 1/3, as near as may be, of the members of the board shall be elected each year. As to corporations formed or existing under this act except as otherwise prescribed in the articles or bylaws;

(a) Vacancies in the board of directors shall be filled by the remaining members of the board, and each person so elected shall be a director until his successor is elected by the shareholders who may make such election at the next annual meeting of the shareholders, or at any special meeting duly called for that purpose and held prior thereto;

(b) The meetings of the board of directors may be held at such place, whether in this state or elsewhere, as a majority of the directors may from time to time determine;

(c) A majority of the board of directors shall be necessary to constitute a quorum for the transaction of business, and the acts of a majority of the directors present at a meeting at which a quorum is present shall be the acts of the board of directors: Provided, That if the directors shall severally and/or collectively consent in writing to any action to be taken by the corporation such action shall be as valid corporate action as though it had been authorized at a meeting of the directors: And provided further, That the articles or bylaws may provide that if the number of directors shall consist of more than 7 members, less than a majority but in no event less than 1/3 of the members may constitute a quorum: And provided further, That a majority of those directors present at a legally called meeting may adjourn the meeting to another date whether or not a quorum is present;

(d) The board of directors may, by resolution passed by a majority of the whole board, designate 2 or more of their number to constitute an executive and/or any other committee, who, to the extent provided in said resolution, shall have and exercise the authority of the board of directors in the management of the business of the corporation between the meetings of the board.

Interest in contracts, burden of proving fairness.

5. No contract of any corporation made with any director of such corporation or with a partnership or other group or association of which any such director shall be a member or with any other corporation of which such director may be a member or director and no contract between corporations having common directors shall be invalid because of such respective facts alone. When the validity of any such contract is questioned, the burden of proving the fairness to the contracting parties of any such contract shall be upon such director, partnership, other group or association, or corporation who shall be asserting the validity of such contract.

HISTORY: Am. 1943, p. 215, Act 160, Imd. Eff. April 17;—CL 1948, 450.13;—Am. 1949, p. 269, Act 229, Eff. Sep. 23;—Am. 1962, p. 187, Act 169, Eff. Mar. 28, 1963.

This section as originally enacted superseded and merged part of Sec. 6 of Ch. II of Pt. I of Act 84 of 1921, Am. 1929, p. 650, Act 267, Eff. Aug. 28, being CL 1929, 9959; and Sec. 3 of Ch. I of Pt. II of Act 84 of 1921, being CL 1929, 9945; and Sec. 6 of Ch. I of Pt. II of Act 84 of 1921, Am. 1927, p. 807, Act 335, Eff. Sept. 5, being CL 1929, 9968; and Sec. 7 of Ch. I of Pt. II of Act 84 of 1921, Am. 1929, p. 654, Act 267, Eff. Aug. 28, being CL 1929, 9969; and Sec. 8-b of Ch. I of Pt. II of Act 84 of 1921, Add. 1929, p. 656, Act 267, Eff. Aug. 28, being CL 1929, 9992.

450.14 Corporations; failure to elect directors, effect.

Sec. 14. If it shall happen at any time that an election of directors is not made on the day designated therefor, the corporation shall not for that reason be dissolved; but it

shall be lawful on any other day to which the shareholders meeting has been duly adjourned, or at any subsequent duly called meeting, to hold such election. All acts of directors so holding over shall be valid until their successors are duly chosen and qualified.

HISTORY: CL 1948, 450.14;—Am. 1962, p. 188, Act 160, Eff. Mar. 28, 1963.

This section supersedes Sec. 4 of Ch. I of Pt. II of Act 84 of 1921, being CL 1929, 9986.

450.15 Board of directors; officers and agents, appointment, powers and duties, removal, bond, vacancies.

Sec. 15. The board of directors of all corporations formed or existing under this act shall select a president, a secretary, and a treasurer, and may select a chairman of the board and 1 or more vice presidents, assistant secretaries, and assistant treasurers. No one of the officers, except the chairman of the board and the president, need be a director but a vice president who is not a director cannot succeed to or fill the office of chairman of the board or president. Any 2 of the above offices except those of president and vice president may, unless otherwise provided by the bylaws, be held by the same person but no officer shall execute, acknowledge, or verify any instrument in more than 1 capacity. The board may also appoint such other officers and agents as they may deem necessary for the transaction of the business of the corporation. All officers and agents shall have such authority and perform such duties in the management of the property and affairs of the corporation, as may be delegated by the board of directors. Except as otherwise prescribed in the bylaws, the chairman of the board may sign, swear to, execute, file, certify, or acknowledge, in place of the president, any documents, instruments, agreements, articles, statements, certificates or reports, required or permitted by this act to be signed, sworn to, executed, filed, certified or acknowledged by the president. Without limitation on any right of an officer or agent to recover damages for breach of contract, the board of directors may remove any officer or agent whenever in their judgment the business interests of the corporation will be served thereby. The board of directors may secure the fidelity of any or all of such officers by bond or otherwise. Unless otherwise provided in the bylaws the board of directors shall have power to fill any vacancies in any offices occurring from whatever reason.

HISTORY: Am. 1947, p. 302, Act 208, Eff. Oct. 11;—CL 1948, 450.15;—Am. 1968, p. 57, Act 29, Imd. Eff. May 17.

This section supersedes part of Sec. 5 of Ch. I of Pt. II of Act 84 of 1921, Am. 1927, p. 806, Act 335, Eff. Sept. 5;—Am. 1929, p. 654, Act 267, Eff. Aug. 28, being CL 1929, 9987.

450.16 Corporations; bylaws.

Sec. 16. The shareholders or the board of directors of a corporation may make and alter any bylaws: Provided, That the board of directors shall not make or alter any bylaws fixing their number qualifications, classifications, or term of office.

HISTORY: CL 1948, 450.16;—Am. 1962, p. 188, Act 160, Eff. Mar. 28, 1963.

This section supersedes part of Sec. 5 of Ch. I of Pt. II of Act 84 of 1921, Am. 1927, p. 806, Act 335, Eff. Sept. 5;—Am. 1929, p. 654, Act 267, Eff. Aug. 28, being CL 1929, 9987.

450.17 Capital stock; division into classes, series, variations.

Sec. 17. The shares of the capital stock of a corporation formed or existing under this act may be divided into classes with such rights, voting power, preferences and restrictions as may be provided for in the articles. Any or all of the shares may have par value or may have no par value as provided in the articles: Provided, That par value shares shall have a par value of at least \$1.00. If the articles so provide, the shares of any preferred or special class may be divided into and issued in series. Each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. All shares of the same class shall be identical, except as to the following relative rights and preferences, as to which there may be variations between different series:

- (a) The rate of dividend and the extent of further participation in dividend distribution, if any.
- (b) The price at and the terms and conditions on which the shares are redeemable.
- (c) The amount payable upon shares in event of voluntary or involuntary liquidation.
- (d) Sinking fund provisions for the redemption or purchase of shares.
- (e) The terms and conditions on which shares are convertible.

Voting rights in different series of same class.

Different series of the same class of shares shall constitute different classes of shares for the purpose of voting or consent by classes when a particular series is affected in a different manner than any other series of the same class.

Division into series by board; sinking fund; certificate, filing.

If the articles shall expressly vest authority in the board of directors, then, to the extent that the articles shall not have established series and fixed and determined variations in the relative rights and preferences as between series, the board of directors shall have authority to divide the shares of any preferred or special class into series and, within the limitations set forth in this section and in the articles, fix and determine the relative rights and preferences of the shares of any series so established: Provided, That the board of directors shall not create a sinking fund for the redemption or purchase of shares of any series unless provision for a sinking fund at least as beneficial to all issued and outstanding shares of the same class shall either then exist or be at the same time created. A certificate containing the resolution of the board of directors establishing and designating the series and fixing and determining the relative rights and preferences thereof shall be executed in the name of the corporation and under its corporate seal by its president or vice-president and attested by its secretary or an assistant secretary and acknowledged by the officer signing the same. Such certificate shall be filed as provided in section 5 and, upon such filing, the resolution shall become effective and shall constitute an amendment to the articles of incorporation.

Statement of operations and properties, contents.

The statement of operations and properties of the corporation required by section 45 to be communicated or distributed to each shareholder shall contain an accurate summary of all action taken by the board of directors pursuant to this section during the period covered by such statement of operations and properties.

HISTORY: Am. 1935, p. 314, Act 194, Imd. Eff. June 6;—CL 1948, 450.17;—Am. 1956, p. 184, Act 97, Eff. Aug. 11;—Am. 1967, p. 263, Act 194, Eff. Nov. 2.

This section as originally enacted superseded part of Sec. 1 of Ch. II of Pt. II of Act 84 of 1921, Am. 1927, p. 807, Act 335, Eff. Sept. 5;—Am. 1929, p. 657, Act 267, Eff. Aug. 28, being CL 1929, 10000.

450.18 Capital stock; consideration for shares with par value.

Sec. 18. Consideration for shares with par value. Shares with par value shall be issued or subscriptions therefor taken for an amount of consideration which shall be not less than the par value thereof. Securities of a corporation convertible into shares of stock with par value may be issued for an amount of consideration not less than the aggregate par value of the shares into which such securities are convertible. Nothing herein contained shall be construed to prevent a corporation from paying or allowing a reasonable underwriting discount or sales commission in compensation of services performed in sale of its securities.

HISTORY: Am. 1943, p. 217, Act 160, Imd. Eff. April 17;—CL 1948, 450.18.

450.19 Capital stock; consideration for shares without par value, issuance.

Sec. 19. Consideration for shares without par value. Shares without par value may be issued or subscriptions therefor taken by corporations formed or existing under this act from time to time for such consideration as may be fixed from time to time by the

board of directors, unless in the articles the power to fix such consideration shall have been reserved to the shareholders, in which event such power shall be exercised by the shareholders by consent in writing (a) without a meeting, or (b) by a vote at a meeting, in each case by the holders of record of 2/3 of the total number of shares of each class of stock then outstanding and entitled to vote in respect thereto. Any and all shares without par value so issued, for which the consideration so fixed has been paid or delivered in good faith, shall be deemed full-paid stock and shall not be liable to any further call or assessments thereon, and the holders of such shares shall not be liable for any further payments in respect of such shares under the provisions of this act. Nothing herein contained shall be construed to prevent a corporation from paying or allowing a reasonable underwriting discount or sales commission in compensation of services performed in sale of its securities.

HISTORY: Am. 1943, p. 217, Act 160, Imd. Eff. April 17;—CL 1948, 450.19. This section as originally enacted superseded part of Sec. 10 of Ch. II of Pt. II of Act 84 of 1921, Am. 1927, p. 809, Act 335, Eff. Sept. 5, being CL 1929, 10010.

450.20 Capital and surplus.

Sec. 20. Capital and surplus. Any corporation formed or existing under this act may by resolution of its board of directors determine that only a part of the consideration which shall be received by the corporation for any of the shares of its capital stock which it shall issue from time to time shall be capital: Provided, That in case any of the shares issued shall be shares having a par value, the amount of the part of such consideration so determined to be capital shall be in excess of the aggregate par value of the shares issued for such consideration having a par value, unless all the shares issued shall be shares having a par value, in which case the amount of the part of such consideration so determined to be capital need be only equal to the aggregate par value of such shares: And provided further, That the amount of the consideration received for any shares without par value which shall be determined to be capital shall be at least equal to 50 per cent of the consideration received for such shares. In each such case the board of directors shall specify in dollars the part of such consideration which shall be capital. If the board of directors shall not have determined (a) before or at the time of issue of any shares of the capital stock of the corporation issued for cash, or (b) within 60 days after the issue of any shares of the capital stock of the corporation issued for property other than cash what part of the consideration for such shares shall be capital, the capital of the corporation in respect of such shares shall be an amount equal to the aggregate par value of such shares having a par value, plus the amount of the consideration for such shares without par value. The capital of such corporation may be increased from time to time by resolution of the board of directors directing that a portion of the net worth of the corporation in excess of the amount so determined to be capital be transferred to capital. The capital of such corporation represented by shares without par value, may be decreased from time to time by resolution of the board of directors and such board of directors may (1) credit its surplus with the amount of capital represented by such decrease, to the extent that the capital represented by its shares after such decrease shall not be impaired, and/or (2) charge off to such extent any losses which it may have had from operations, revaluations of its properties or otherwise: Provided, That if such capital be decreased so that the amount attributable to shares without par value shall not be at least equal to 50 per cent of the consideration received for such shares, before such decrease shall become effective the corporation shall by its treasurer or assistant treasurer notify by mail each of its known unsecured creditors at his last known address of the action taken, and its next annual report to the state, and its next annual report to its shareholders shall contain a clear statement of the action taken and the percentage of the consideration received by the corporation for its shares without par value represented by the capital as decreased. The affidavit of the officer of the corporation preparing and mailing such

notice that such notice has been mailed to such known unsecured creditors shall be conclusive evidence of giving notice as provided in this section. The excess, if any, at any given time, of the total net assets of the corporation over the amount so determined to be capital shall be surplus. A corporation shall at all times keep its books in such manner as to indicate clearly the division of the surplus accounts between surplus arising from earnings and surplus arising from other sources and it shall likewise indicate clearly such items in its annual reports to the state and its annual reports to its shareholders. Nothing in this act contained shall prevent a corporation from declaring a stock dividend from surplus created as in this section provided.

HISTORY: Am. 1935, p. 314, Act 194, Imd. Eff. June 6;—CL 1948, 450.20. This section as originally enacted superseded and merged part of Sec. 5-a of Ch. II of Pt. II of Act 84 of 1921, Add. 1929, p. 658, Act 267, Eff. Aug. 28, being CL 1929, 10005; and Sec. 10 of Ch. II of Pt. II of Act 84 of 1921, Am. 1927, p. 809, Act 335, Eff. Sept. 5, being CL 1929, 10010.

450.21 Capital stock; obligation of shareholders as to payment.

Sec. 21. Obligation of shareholders to pay for shares. Shares of capital stock shall be issued only for money, or for other property, real or personal, tangible or intangible, actually conveyed or transferred to the corporation for its use and lawful purposes or in its possession as surplus or for labor or services actually rendered to the corporation.

Every person who subscribes for par value shares or to whom such shares are issued, except as a share dividend, shall be obligated to pay the corporation therefor, in money or other property or labor or services, not less than the par value thereof. Every person who shall subscribe for shares without par value or to whom such shares are issued except as a share dividend shall be obligated to pay the corporation therefor, in money or such other property or labor or services, such amount of consideration for each share as may have been determined as in this act provided.

Where shares are issued for which promissory notes, drafts or obligations of the purchaser may be given, certificates therefor shall not be delivered until such promissory notes, drafts or obligations are fully paid; no shares shall be issued for future services.

Where shares are issued for any consideration other than cash, the judgment of the board of directors as to the value thereof shall be conclusive unless it shall be shown that the directors acted in bad faith or failed to exercise reasonable care in determining such value.

HISTORY: CL 1948, 450.21. This section supersedes with additions and merges part of Sec. 2 of Ch. II of Pt. II of Act 84 of 1921, being CL 1929, 10001; and Sec. 9 of Ch. II of Pt. II of Act 84 of 1921, Am. 1927, p. 808, Act 335, Eff. Sept. 5; Am. 1929, p. 660, Act 267, Eff. Aug. 28, being CL 1929, 10009.

450.22 Capital stock dividends; source; earned surplus of dissolved corporation.

Sec. 22. The directors of every corporation formed or existing under this act, subject to any restrictions contained in its articles, shall have power to declare and pay dividends upon the shares of its capital stock from earned surplus except as hereinafter provided. In determining earned surplus, appreciation of value of the assets of the corporation shall not be included until realized: Provided, That appreciation of value shall not be construed to include any increases which result from readjustment of previous reductions of value to correctly reflect the accounts of the corporation at the time of such determination of earned surplus: And provided further, That nothing in this section contained shall prevent any earned surplus which a corporation may have at the date of its dissolution from being carried into the earned surplus account of a corporation formed or existing under this act which owned all the issued and outstanding stock of the dissolved corporation at the date of its dissolution: In determining what is earned surplus the judgment of the board of directors shall be conclusive unless it shall be shown that the directors acted in bad faith or were grossly negligent.

Nothing in this section contained shall prevent a corporation from declaring and paying dividends upon its preferred stock from any surplus: Provided, That if such dividend shall be declared and paid from any surplus other than earned surplus, the

shareholders receiving the same shall be advised of that fact at the time of payment to them and the next annual statement of accounts to be given to the shareholders shall indicate the surplus from which such dividend was paid.

Nothing in this act contained shall prevent a corporation, whose business consists substantially of the exploitation of wasting assets, from paying dividends without making deduction for the depletion of such assets resulting from lapse of time or from the consumption or sale of such assets incidental to their exploitation.

No stock dividend from shares without par value shall be declared unless there shall be transferred to capital at least the equivalent in value per share of such dividend as equals the average original consideration per share of the shares without par value outstanding at the time of such declaration which is carried as capital.

Nothing contained in this act shall prevent a corporation, whose capital is not impaired, from declaring stock dividends from appreciation of the value of the assets of such corporation.

Nothing contained in this section shall prevent the directors of any corporation, or the shareholders thereof if the articles shall so provide, from setting apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose or from abolishing any such reserve in the manner in which it was created.

HISTORY: Am. 1935, p. 315, Act 194, Imd. Eff. June 6;—Am. 1943, p. 217, Act 160, Imd. Eff. April 17;—CL 1948, 450.22;—Am. 1954, p. 305, Act 124, Eff. Aug. 13.

This section as originally enacted superseded and merged part of Sec. 3 of Ch. II of Pt. II of Act 84 of 1921, being CL 1929, 10002; and Sec. 4 of Ch. II of Pt. II of Act 84 of 1921, being CL 1929, 10003; and Sec. 6 of Ch. II of Pt. II of Act 84 of 1921, Am. 1925, p. 692, Act 363, Eff. Aug. 27;—Am. 1927, p. 805, Act 335, Eff. Sept. 5, being CL 1929, 10006.

450.23 Capital stock dividends; payment.

Sec. 23. No corporation formed or existing under this act, nor the directors thereof, shall pay or authorize the payment of dividends upon any shares of the capital stock of the corporation except in accordance with the provisions of this act. Dividends may be paid in cash, in property, in obligations of the corporation or in shares of the capital stock, in the case of shares with par value at par, and in the case of shares without par value at such price as may be fixed as in section 19 of this act provided.

HISTORY: Am. 1935, p. 316, Act 194, Imd. Eff. June 6;—CL 1948, 450.23;—Am. 1956, p. 185, Act 97, Eff. Aug. 11.

450.23a Corporations; partial liquidation, conditions.

Sec. 23a. The board of directors of a corporation may, from time to time, distribute to its shareholders in partial liquidation, out of capital or surplus of the corporation, a portion of its assets, in cash or property, subject to the following provisions:

(a) No such distribution shall be made at a time when the corporation is insolvent or when such distribution would render the corporation insolvent.

(b) No such distribution shall be made unless the articles of incorporation so provide or such distribution is authorized by the affirmative vote of the holders of at least 2/3 of the outstanding shares of each class whether or not entitled to vote thereon by the provisions of the articles of incorporation of the corporation.

(c) No such distribution shall be made to the holders of any class of shares unless all cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends shall have been fully paid.

(d) No such distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation.

(e) Each such distribution, when made, shall be identified as a distribution in partial liquidation and the amount per share disclosed to the shareholders receiving the same concurrently with the distribution thereof.

(f) No such partial liquidation shall be made from capital, until a certificate of such proposed action signed for the corporation by its president or a vice-president, with its corporate seal affixed thereto and attested by its secretary or an assistant secretary, and acknowledged by the officer signing the same shall be filed as provided in section 5.

HISTORY: Add. 1956, p. 185, Act 97, Eff. Aug. 11;—Am. 1967, p. 264, Act 194, Eff. Nov. 2.

450.24 Employees' stock; payment; pre-emptive rights.

Sec. 24. Employees' stock. A corporation formed or existing under this act may, upon such terms and restrictions as it may impose, provide and carry out a plan for the allotment and sale of any or all of its unissued shares or of shares purchased or to be purchased, to the employees of the corporation or to the employees of subsidiary corporations or to a trustee on their behalf, and for the payment of such shares in installments or at 1 time, and for the establishment of a special fund or funds in which such employees during the period of their employment or other period of time may be privileged to share on such terms and conditions as may be imposed in respect thereof: Provided, That shares otherwise subject to pre-emptive rights under the provisions of section 31 of this act may be allotted and sold under such plan free from such pre-emptive rights only with the written consent or vote of the holders of a majority of the shares entitled to exercise pre-emptive rights with respect thereto: Provided further, That any such allotment or sale may be cancelled by mutual agreement between the corporation and any such employee or trustee or in any other legal manner.

HISTORY: CL 1948, 450.24. This section supersedes with additions and merges part of Sec. 14 of Ch. II of Pt. II of Act 84 of 1921, Am. 1927, p. 810, Act 335, Eff. Sept. 5; Am. 1929, p. 660, Act 267, Eff. Aug. 29, being CL 1929, 10014; and Sec. 15 of Ch. II of Pt. II of Act 84 of 1921, being CL 1929, 10015; and Sec. 16 of Ch. II of Pt. II of Act 84 of 1921, being CL 1929, 10016.

450.25 Stock certificates; contents.

Sec. 25. Every shareholder in a corporation shall be entitled to have a certificate of stock signed by, or in the name of the corporation by the chairman of the board or the president or a vice president and the treasurer or an assistant treasurer or the secretary or an assistant secretary of such corporation, sealed with its seal, certifying the number and class of shares represented by such certificate. Where such certificate is signed (1) by a transfer agent or an assistant transfer agent or (2) by a transfer clerk acting on behalf of such corporation and a registrar, the signature of any such chairman of the board, president, vice president, treasurer, assistant treasurer, secretary or assistant secretary or the seal of the corporation may be a facsimile. In case any officer or officers, who shall have signed, or whose facsimile signature or signatures shall have been used on, any such certificate or certificates, shall cease to be such officer or officers of such corporation, whether because of death, resignation, or otherwise, before such certificate or certificates shall have been delivered by such corporation, such certificate or certificates may nevertheless be adopted by such corporation and delivered as though the person or persons who signed such certificate or certificates or whose facsimile signature or signatures shall have been used thereon had not ceased to be such officer or officers of such corporation. Each such certificate representing shares issued by a corporation which is authorized to issue shares of more than 1 class shall set forth on the face or back thereof, or shall state that the corporation will furnish to any shareholder, upon request and without charge, a full statement of the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions of the shares of each class authorized to be issued, and if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined, and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series. If such stock is not full-paid such certificate shall also state the amount paid.

Nothing in this section shall be construed to amend sections 8103 or 8204 of Act No. 174 of the Public Acts of 1962, being sections 440.8103 and 440.8204 of the Compiled Laws of 1948.

HISTORY: CL 1948, 450.25;—Am. 1954, p. 305, Act 124, Eff. Aug. 13;—Am. 1963, p. 397, Act 233, Eff. Jan. 1, 1964;—Am. 1968, p. 57, Act 29, Imd. Eff. May 17.

This section supersedes with additions and merges Sec. 4-a of Ch. II of Pt. I of Act 84 of 1921, Add. 1929, p. 649, Act 267, Eff. Aug. 28, being CL 1929, 9957; and part of Sec. 8 of Ch. II of Pt. II of Act 84 of 1921, Am. 1929, p. 659, Act 267, Eff. Aug. 28, being CL 1929, 10008.

450.26 Repealed. 1962, p. 317, Act 174, Eff. Jan. 1, 1964.

Section related to substituted certificates; rights of corporation.

450.27 Capital stock subscriptions; calls.

Sec. 27. Subscriptions; calls. At any time after a corporation formed or existing under this act is authorized to commence business, the directors may, if its whole capital stock has not been subscribed, offer its capital stock up to the amount authorized in the articles for subscription thereto.

The capital stock of such corporation shall be paid in such amounts and at such times as the directors may require. The directors may, from time to time, call upon each holder of stock not fully paid up for the payment of such sum of money, not exceeding in the aggregate the balance remaining unpaid on such stock, and such sum so called shall be paid to the corporation at such times and by such installments or calls as the directors shall direct, said directors having caused to be given at least 20 days notice of the time and place of such payments by written notice mailed at least 20 days before the time of such payment to each shareholder at his last known postoffice address, and, if the directors so determine, by publication in a newspaper published and circulating in the county in this state where such corporation has its registered office.

HISTORY: CL 1948, 450.27. This section supersedes with additions part of Sec. 11 of Ch. II of Pt. II of Act 84 of 1921, being CL 1929, 10011.

JUDICATURE ACT: Remedies against stockholder, see Compilers' § 600.2909 et seq.

450.28 Capital stock subscriptions; defaults in payments, sale.

Sec. 28. Same; defaults in payment. When any shareholder fails to pay any call upon his stock properly made by the directors at the time when such payment is due, the directors may collect the amount of such call or any balance thereof remaining unpaid, from such delinquent shareholder by an action at law, or they may sell at public sale such part of the shares of such delinquent shareholder as will pay all or any part of the assessments then due from him with interest and all incidental expenses, and shall transfer the shares so sold to the purchaser, who shall be entitled to a certificate therefor. Notice of the time and place of such sale and of the sum due on each share shall be given by advertisement once a week for the 3 successive weeks next preceding the date fixed for the sale, in a newspaper published and circulating in the county in this state where such corporation has its registered office, and such notice shall be mailed by the corporation to such delinquent shareholder at his last known postoffice address, at least 20 days before the date fixed for such sale. If no bidder can be had to pay the amount due on the stock or if the amount is not collected by an action at law, brought within the county where such corporation has its registered office, the said stock shall be forfeited to the corporation and the amount previously paid in by such delinquent shareholder on the stock shall be forfeited to the corporation. Anyone, who shall purchase such stock from any such delinquent shareholder at any time after the corporation shall have published the first notice of sale as in this section provided, shall have only the rights against the corporation of such delinquent shareholder.

HISTORY: CL 1948, 450.28. This section supersedes with additions and merges part of Sec. 11 of Ch. II of Pt. II of Act 84 of 1921, being CL 1929, 10011; and Sec. 4 of Ch. III of Pt. II of Act 84 of 1921, Am. 1929, p. 660, Act 267, Eff. Aug. 28, being CL 1929, 10021; and Sec. 5 of Ch. III of Pt. II of Act 84 of 1921, being CL 1929, 10022.

450.29 Capital stock; liability of shareholders, pledges and fiduciaries.

Sec. 29. Liability of pledges and fiduciaries. No person holding shares of the capital stock of any corporation as collateral security shall be personally liable as a shareholder; but the person pledging such shares shall be considered the holder thereof and shall be liable as a shareholder. No executor, administrator, guardian or trustee, unless he shall have voluntarily and without authority invested the trust funds in such shares, shall be personally liable as a shareholder, but the estate and funds in the hands of such executor, administrator, guardian or trustee shall be liable.

HISTORY: CL 1948, 450.29.

450.30 Shareholders; right to contribution.

Sec. 30. Shareholder's right to contribution. If any shareholder of any corporation shall be compelled by any action to pay the debts of any creditor of the corporation, or any part thereof, he shall have the right to call upon any or all the shareholders, who might have been compelled to pay such debt by such creditor, to contribute their pro rata share of the sum so paid by him as aforesaid, and may sue them, jointly or severally, or any number of them, and recover in such action the amount due from the shareholder or shareholders so sued. Nothing in this section contained shall be construed as taking away any of the remedies provided by the judicature act of 1915 and any amendments thereto.

HISTORY: CL 1948, 450.30. This section supersedes part of Sec. 9 of Ch. III of Pt. II of Act 84 of 1921, being CL 1929, 10028.

NOTE: The Judicature Act of 1915, above referred to, is Compilers' repealed § 600.1 et seq. See § 600.101 et seq. Contribution, see Compilers' § 450.519 and (Jud. Act) Compilers' repealed § 620.42. See GCR 775.

450.31 Shareholders; pre-emptive right.

Sec. 31. The articles of any corporation formed or existing under this act may provide that the shareholders shall have no pre-emptive right to subscribe for any additional shares of capital stock or other obligations convertible into shares to be issued by the corporation or may provide any restrictions or limitations on such rights as may be desired.

Unless otherwise provided in the articles, a shareholder of a corporation shall have no pre-emptive right to subscribe for shares:

- (a) which are to be allotted for consideration other than cash or as a share dividend; or
- (b) which are to be allotted to satisfy conversion rights; or
- (c) which have once been allotted and are thereafter held by the corporation as treasury shares; or
- (d) which have been released from pre-emptive right by the vote or written consent of the holders of 2/3 of the shares of each class entitled to such right.

Shares which have been offered to shareholders having a pre-emptive right to them at a price or upon terms duly fixed, and which have not been subscribed for by them within the time duly fixed by the board of directors, may be thereafter offered for subscription to any other person or persons at a price and upon terms not less favorable to the corporation than those at which they were offered to such shareholders, subject to the provisions of sections 18 and 19 of this act.

HISTORY: Am. 1947, p. 302, Act 209, Eff. Oct. 11;—CL 1948, 450.31. This section supersedes with additions part of Sec. 4 of Ch. II of Pt. I of Act 84 of 1921, being CL 1929, 9956.

450.32 Election of directors; voting rights, cumulative voting.

Sec. 32. In all elections for directors of any corporation organized under any general law of this state, other than municipal, insurance, banking corporations, nonprofit corporations, cooperative corporations, industrial banking corporations, trust companies, building and loan associations, cooperative savings associations and summer resort associations, every stockholder entitled to vote shall have the right to vote in person or

by proxy the number of shares of stock owned by him for as many persons as there may be directors to be elected, or to cumulate said shares and give 1 candidate as many votes as will equal the number of directors multiplied by the number of shares of his stock, or to distribute them on the same principle among as many candidates as he shall think fit. The entire number of directors to be elected shall be balloted for at one and the same time and not separately.

Closing of stock transfer books.

The board of directors shall have power to close the stock transfer books of the corporation for a period not exceeding 60 days preceding the original date fixed for any meeting of shareholders or the date for payment of any dividend or the date for the allotment of rights or the date when any change or conversion or exchange of capital stock shall go into effect. In lieu of closing the stock transfer books as aforesaid, the bylaws may fix or authorize the board of directors to fix in advance a date, not exceeding 60 days preceding the original date fixed for any meeting of shareholders, or the date for the payment of any dividend, or the date for the allotment of rights or the date when any change or conversion or exchange of capital stock shall go into effect, as a record date for the determination of the shareholders entitled to notice of, and to vote at, any such meeting, or entitled to receive payment of any such dividend, or to any such allotment of rights, or to exercise the rights in respect of any such change, conversion or exchange of capital stock. In such case only such shareholders as shall be shareholders of record on the date so fixed shall be entitled to such notice of, and to vote at, such meeting, or to receive payment of such dividend, or to receive such allotment of rights, or to exercise such rights notwithstanding any transfer of any stock on the books of the corporation or otherwise after any such record date fixed as aforesaid. Nothing in this section shall affect the rights of a shareholder and his transferee or transferor as between themselves.

Vote required for quorum and transaction of business.

Subject to the provisions of this act and to the provisions of the act under which any particular corporation is or shall have been formed in respect of the vote that shall be required for a specified action, the articles of any corporation may specify the number of shares or the amount of other securities having voting power the holders of which shall be present or represented by proxy at any meeting in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business.

HISTORY: Am. 1937, p. 869, Act 350, Eff. Oct. 29;—Am. 1943, p. 218, Act 160, Imd. Eff. April 17;—Am. 1947, p. 303, Act 209, Eff. Oct. 11;—CL 1948, 450.32;—Am. 1949, p. 282, Act 232, Eff. Sept. 23;—Am. 1964, p. 80, Act 78, Imd. Eff. May 12.

This section as originally enacted superseded with additions and merged part of Sec. 8 of Ch. I of Pt. II of Act 84 of 1921, Am. 1927, p. 807, Act 335, Eff. Sept. 5, being CL 1929, 9988; and Sec. 8 of Ch. I of Pt. II of Act 84 of 1921, Am. 1929, p. 654, Act 267, Eff. Aug. 28, being CL 1929, 9990, and Sec. 8-a of Ch. I of Pt. II of Act 84 of 1921, Add. 1929, p. 655, Act 267, Eff. Aug. 28, being CL 1929, 9991; and Sec. 11-a of Ch. I of Pt. II of Act 84 of 1921, Add. 1929, p. 656, Act 267, Eff. Aug. 28, being CL 1929, 9996.

450.33 Election of directors; fiduciary shareholders.

Sec. 33. Same; fiduciary shareholders. Persons holding shares of the capital stock of any corporation in a fiduciary capacity shall be entitled to vote the shares so held, and persons whose shares are pledged shall be entitled to vote, unless in the transfer by the pledgor on the books of the corporation he shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee or his proxy may represent said shares and vote thereon.

HISTORY: CL 1948, 450.33. This section supersedes part of Sec. 8 of Ch. I of Pt. II of Act 84 of 1921, Am. 1929, p. 654, Act 267, Eff. Aug. 28, being CL 1929, 9990.

450.34 Election of directors; voting trust, filing.

Sec. 34. Voting trusts. One or more shareholders may by agreement in writing deposit shares of the capital stock of any corporation, with or transfer shares of capital stock to any person or persons, or corporation or corporations, domestic or foreign, authorized to act as trustee or trustees, for the purpose of vesting in such person, per-

sons, corporation or corporations the right to vote thereon, or for such other lawful purposes as may be agreed for any period of time determined by such agreement, not exceeding 10 years, upon terms and conditions stated in such agreement, pursuant to which such person, persons or corporations shall act. After filing an unexecuted copy of such agreement in the registered office of the corporation in this state, which copy shall be open to the inspection of any shareholder of the corporation or any depositor under said agreement daily during business hours, the certificates for shares so transferred shall be surrendered and cancelled, and new certificates therefor shall be issued to such transferee or transferees, who may be designated voting trustees, and in the entry of such transferee or transferees as owners of such shares in the proper books of the issuing corporation that fact shall be noted, and thereupon said transferee or transferees may vote upon the shares so transferred during the period in such agreement specified and thereafter until those entitled to receive certificates of stock under such agreement shall have received the same. Shares standing in the name of such voting trustees, may be voted either in person or by proxy. In any case where 2 or more persons are designated as voting trustees and the right and method of voting any shares standing in their names at any meeting of the corporation are not fixed by the agreement appointing said trustees, the right to vote said shares and the manner of voting the same at any such meeting shall be determined by a majority of said trustees, or if they be equally divided as to the right and manner of voting the same in any particular case, the vote of said shares in such case shall be divided equally among said trustees.

HISTORY: Am. 1933, p. 277, Act 186, Eff. Oct. 17;—Am. 1934, 1st Ex. Ses., p. 118, Act 34, Imd. Eff. March 28;—CL 1948, 450.34. This section as originally enacted superseded part of Sec. 8 of Ch. I of Pt. II of Act 84 of 1921, Am. 1929, p. 654, Act 267, Eff. Aug. 28, being CL 1929, 9990.

450.35 Election of directors; list of shareholders; inspection, evidence.

Sec. 35. It shall be the duty of the officer or agent who shall have charge of the stock ledger of a corporation formed or existing under this act to prepare and make or cause to be prepared and made, at least 10 days before every election of directors, a complete list of the shareholders entitled to vote at said election, arranged in alphabetical order. Such list shall be open at the place where said election is to be held or at the registered office of the corporation in this state for at least 10 days before such election, for examination by any registered shareholder entitled to vote at such election and holding in the aggregate at least 2% of the outstanding capital stock of the corporation, and shall be produced and kept at the time and place of election during the whole time thereof, and shall be subject to the inspection of any registered shareholder or his proxy who may be present. Upon the wilful neglect or refusal of the directors then in office to produce or cause to be produced such a list at any election they shall be ineligible to any office at such election. The original or duplicate stock ledger or a list shall be the only evidence as to who are shareholders entitled to examine such list or the books of the corporation, or to vote in person or by proxy at such election. The original or duplicate stock ledger or a list containing the names and addresses of the shareholders, and the number of shares held by them, respectively, shall, at all times, be kept at the registered office of the corporation in this state or at the office of its transfer agent or registrar in this state, and said original or duplicate stock ledger or list shall be evidence in all courts of this state.

HISTORY: CL 1948, 450.35;—Am. 1949, p. 270, Act 229, Eff. Sep. 23;—Am. 1962, p. 189, Act 169, Eff. Mar. 28, 1963.

This section supersedes with additions Sec. 11 of Ch. I of Pt. II of Act 84 of 1921, being CL 1929, 9995.

450.36 Security holders; rights conferred.

Sec. 36. Security holders; rights conferred. Every corporation formed or existing under this act, may make suitable provision in its articles and thereby, to the extent, in the manner and subject to the conditions provided in the articles, confer upon the holders of any bonds or debentures issued or to be issued by any such corporation.

whether secured by mortgage or otherwise, the power to vote in respect to the corporate affairs and management of the corporation to the same extent and in the same manner as shareholders of the said corporation, as may be provided in the articles and, in case of a default in the payment of the principal or interest on such bonds or debentures, or otherwise, or in any other case, confer upon such bondholders or debenture holders the same right of inspection of the corporate books and accounts and records of any such corporation, and also any other rights, which the shareholders of the corporation have or may have by reason of the provisions of the statutes of this state or pursuant to the provisions of the articles.

HISTORY: CL 1948, 450.36.

450.37 Preferred shares; redemption.

Sec. 37. Whenever any corporation formed or existing under this act shall have issued any preferred or special shares it may, subject to the provisions of its articles, redeem such shares, if subject to redemption, at such time or times, at such price or prices, and otherwise as shall be stated or expressed in the articles. Such corporation may at any time or from time to time purchase such shares, in the case of shares subject to redemption, at not exceeding the price or prices at which the same may be redeemed but only from surplus. Such corporation may apply to such redemption an amount out of its capital which shall not be greater than the sum of (1) that part of the consideration received for such shares which shall be capital pursuant to the provisions of section 20 and (2) any amounts by which the capital of the corporation shall have been increased by other transfers from surplus in accordance with the provisions of said section 20; but no such redemption shall be made out of capital unless the assets of the corporation remaining after such redemption shall be sufficient to pay any debts of the corporation, the payment of which shall not have been otherwise provided for.

Whenever any such corporation shall redeem or purchase any of its shares pursuant to the provisions of this section 37, or shall have shares surrendered to it on conversion or exchange, if the corporation desires to reduce its authorized capital stock by the amount of the redeemed or purchased shares it shall file with the administrator as provided in section 5 a certificate executed in its name and under its corporate seal by its president or a vice-president and attested by its secretary or an assistant secretary and acknowledged by its officer signing the certificate. The certificate shall state the number, par value, or that the shares are without par value, of each class of the corporation's shares and the number and class of such redeemed or purchased shares by which the corporation desires to reduce its authorized capital stock. Upon the filing of such certificate with the administrator, the authorized capital stock of the corporation shall be reduced as provided in the certificate. If the articles prohibit the reissue of any such shares, the corporation shall so reduce its authorized capital stock, and failure to file every such certificate within 13 months from such redemption or purchase shall subject such corporation to a penalty of \$1,000.00 to be collected in an action brought by the attorney general of this state unless the administrator shall for good cause shown extend the time for the filing of such certificate.

Nothing contained in this section 37 shall in any way affect the rights of any corporation to redeem or purchase any of its shares from surplus and to hold such shares or to resell them for such consideration as shall be fixed from time to time by the board of directors.

HISTORY: Am. 1935, p. 316, Act 194, Imd. Eff. June 6;—Am. 1943, p. 219, Act 180, Imd. Eff. April 17;—CL 1948, 450.35;—Am. 1967, p. 265, Act 194, Eff. Nov. 2.

This section as originally enacted superseded part of Sec. 1 of Ch. II of Pt. II of Act 84 of 1921, Am. 1927, p. 807, Act 335, Eff. Sept. 5;—Am. 1929, p. 657, Act 267, Eff. Aug. 28, being CL 1929, 10000.

450.38 Meetings of shareholders; registered office and agent; quorum; date; adjournment.

Sec. 38. In all cases after the first meeting of the incorporators, where it is not otherwise provided by the bylaws, the meetings of the shareholders of every corporation shall be held at its registered office in this state unless otherwise provided in the act under which a particular corporation is or shall have been formed. The shareholders and directors may, however, hold their meetings and have an office or offices outside of this state. A majority of the shares entitled to vote on a particular subject matter at any meeting of the shareholders shall constitute a quorum for such vote unless otherwise provided by law or in the articles or in any bylaw adopted by the shareholders. Whether or not a quorum is present, the meeting may be adjourned to another date by majority vote of the shares represented. At all meetings of shareholders a shareholder may vote by proxy. The date of the annual meeting of the shareholders shall in no event be changed within the 30 days next preceding the date on which the annual meeting is to be held unless consented to in writing, or by resolution adopted at a meeting, by all the shareholders entitled to vote at the annual meeting. Such duly called annual meeting may be adjourned to a later date by majority vote of the shares represented there whether or not a quorum is present. Every corporation shall maintain a registered office or place of business in this state and shall have a resident agent who may be either an individual or corporation, resident of or located in this state, in charge thereof.

HISTORY: Am. 1935, p. 317, Act 194, Imd. Eff. June 6;—CL 1948, 450.38;—Am. 1951, p. 351, Act 239, Eff. Sep. 28;—Am. 1962, p. 189, Act 169, Eff. Mar. 28, 1963.

This section as originally enacted superseded with additions Sec. 5 of Ch. II of Pt. I of Act 84 of 1921, Am. 1929, p. 649, Act 267, Eff. Aug. 28, being CL 1929, 9958.

450.39 Meetings of shareholders and directors; notice, contents; waiver.

Sec. 39. Meetings of shareholders and directors; notice, waiver. Shareholders' and directors' meetings shall be called in the manner provided in the by-laws. Written notice of the time, and place and, in the case of special meetings, the purpose or purposes of every such meeting shall be given to all persons entitled to vote at such meeting at such time and in such manner as shall be provided in the by-laws: Provided, That no notice of regular meetings of the board or of any adjourned meetings thereof or of adjourned meetings of shareholders need be given unless specified in the by-laws. Notice of the time, place and purpose of any such meeting may be waived by telegram, radiogram, cablegram or other writing by those not present and entitled to vote thereat either before or after the holding thereof. The provisions of this section shall apply to all corporations unless prohibited by the act under which a particular corporation is or shall have been formed.

HISTORY: Am. 1935, p. 317, Act 194, Imd. Eff. June 6;—CL 1948, 450.39. This section as originally enacted superseded and merged Sec. 12 of Ch. I of Pt. II of Act 84 of 1921, Am. 1927, p. 807, Act 335, Eff. Sept. 5, being CL 1929, 9997; and Sec. 13 of Ch. I of Pt. II of Act 84 of 1921; Add. 1929, p. 657, Act 267, Eff. Aug. 28, being CL 1929, 9998.

450.39a Action without meeting of shareholders; shareholders' written consent.

Sec. 39a. Any action required by this act to be taken at a meeting of the shareholders of a corporation, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the shareholders entitled to vote with respect to the subject matter thereof. Such consent shall have the same effect as a unanimous vote of shareholders and may be stated as such in any articles or document filed with the department of treasury under this act.

HISTORY: Add. 1967, p. 274, Act 201, Eff. Nov. 2.

450.40 Meetings of shareholders; voting shares held in another corporation.

Sec. 40. A corporation owning shares in another corporation may vote them by its president or by proxy appointed by him, or in the absence of the president and his proxy, by its treasurer or by proxy appointed by him, or in the absence of the aforementioned persons, by its secretary or by proxy appointed by him. The board of directors by resolution may appoint some other person to vote such shares. No corporation shall directly or indirectly vote upon any shares issued by it.

HISTORY: CL 1948, 450.40;—Am. 1962, p. 189, Act 109, Eff. Mar. 28, 1963;—Am. 1967, p. 86, Act 67, Eff. Nov. 2.

450.41 Meetings of shareholders; election inspector, duties.

Sec. 41. Inspectors of election. Whenever any shareholder present at a meeting of shareholders of a corporation shall request the appointment of inspectors the chairman of the meeting shall appoint inspectors who need not be shareholders. If the right of any person to vote at such meeting shall be challenged, the inspectors of election shall determine such right. The inspectors shall receive and count the votes either upon an election or for the decision of any question and shall determine the result. Their certificate of any vote shall be prima facie evidence thereof.

HISTORY: Am. 1935, p. 317, Act 194, Imd. Eff. June 6;—CL 1948, 450.41.

450.42 Amendment of articles before payment for shares.

Sec. 42. Amendments to articles; before payment for shares. It shall be lawful for all the incorporators of any corporation formed or existing under this act, before the payment of any part of the consideration for the shares of its capital stock, to amend its articles to increase or to decrease its authorized capital stock and otherwise to amend its articles without limitation so long as the articles as amended would have been authorized by this act as original articles, which amended articles shall be executed, acknowledged and filed as provided for the original articles: Provided, That any amendments which affect the rights of the subscribers to stock shall be approved by such subscribers. Said amended articles shall take the place of the original articles, and shall be deemed to have been filed on the date of the filing of the original articles.

HISTORY: Am. 1935, p. 317, Act 194, Imd. Eff. June 6;—CL 1948, 450.42.

450.43 Amendment of articles; decrease of capital stock, notice to creditors; nonprofit corporation.

Sec. 43. Any corporation formed or existing under this act, at a meeting of the shareholders duly called and held may amend its articles to increase or to decrease its authorized capital stock and otherwise to amend its articles without limitation so long as the articles as amended would have been authorized by this act as original articles, by the vote of the holders of the majority of its shares entitled to vote. If an amendment shall change the rights, privileges or preferences of the holders of shares of a class, the amendment shall be approved by the vote of the holders of a majority of the shares of each class of shares entitled to vote and a majority of shares of each class whose rights, privileges or preferences are changed. An amendment which impairs the preemptive right of the holders of shares of a class of capital stock entitled to the right shall be approved by the vote of the holders of $\frac{2}{3}$ of the shares of the class. The amendment shall be operative when a certificate containing the resolution and amendment signed by and in the name of the corporation by the president or a vice-president and the secretary or an assistant secretary of the corporation and acknowledged by the president or vice-president signing the same, has been filed as provided in section 5 for the filing of the original articles.

A corporation which shall decrease its issued and outstanding capital stock or reduce the par value of its shares pursuant to this section may: (a) credit its surplus with the amount of capital represented by the decrease or such reduction of par value, to

the extent that the capital represented by its shares, which shall be issued and outstanding after such decrease or the reduction, shall not be impaired, or (b) charge off to such extent any losses which it may have had from operations, revaluation of its properties or otherwise. Its next annual report to the state and its next annual report to its shareholders shall contain a clear statement of the decrease or reduction, the credit or the charging off of losses. If it shall so decrease its issued and outstanding capital stock by more than 50% or so reduce the par value of its capital stock by more than 50%, before the action shall become effective the corporation by its treasurer or assistant treasurer shall notify by mail each of its known unsecured creditors at his last known address of the action taken. The affidavit of the officer of the corporation preparing and mailing the notice that such notice has been mailed to the known unsecured creditors shall be conclusive evidence of giving notice as provided by this section.

Nothing in this act contained shall prevent a corporation which shall change its par value shares to shares without par value or which shall reorganize, from continuing any surplus which the corporation may have at the time of the change.

A nonprofit corporation formed or existing pursuant to this act and organized upon a nonstock basis, at a meeting of the members duly called and held, may amend its articles without limitation as long as the articles as amended would have been authorized by this act as original articles, by the affirmative vote of a majority of the members entitled to vote thereon, or by the affirmative vote of a majority of the members present at such meeting if due notice of the time, place and object of such meeting shall be given by mail, at last known address, to each member entitled to vote at least 20 days prior to the date of such meeting. An amendment shall be effective when a certificate containing the amendment signed by and in the name of the corporation by the president or a vice-president and the secretary or assistant secretary of the corporation and acknowledged by the president or vice-president signing it, has been filed as provided in section 5 for the filing of the original articles.

HISTORY: Am. 1935, p. 318, Act 194, Imd. Eff. June 6;—CL 1948, 450.43;—Am. 1953, p. 184, Act 155, Eff. Oct. 2;—Am. 1970, p. 495, Act 154, Imd. Eff. Aug. 1.

This section as originally enacted superseded and merged part of Sec. 8-a of Ch. I of Pt. II of Act 84 of 1921, Add. 1929, p. 655, Act 267, Eff. Aug. 28, being CL 1929, 9991; and Sec. 9 of Ch. I of Pt. II of Act 84 of 1921, Am. 1923, p. 376, Act 234, Eff. Aug. 30, being CL 1929, 9993, and Sec. 5 of Ch. II of Pt. II of Act 84 of 1921, Am. 1925, p. 692, Act 363, Eff. Aug. 27;—Am. 1927, p. 808, Act 335, Eff. Sept. 5;—Am. 1929, p. 656, Act 267, Eff. Aug. 28, being CL 1929, 10004.

450.43a Reorganized corporations; powers, filing of documents, fees.

Sec. 43a. (1) Any corporation formed or existing under this act, a plan of reorganization of which, pursuant to the provisions of any applicable statute of the United States, as now existing or hereafter enacted, relating to reorganizations of corporations, has been or shall be confirmed by the decree or order of a court of competent jurisdiction, shall have full power and authority to put into effect and carry out the plan and the decrees and orders of the court or judge relative thereto and may take any proceeding and do any act provided in the plan or directed by such decrees and orders, without action by its directors or shareholders. Such power and authority may be exercised, and such proceedings and acts may be taken, as may be directed by such decrees or orders, by the trustee or trustees (or a majority thereof) of such corporation appointed in the reorganization proceedings, or if none be appointed and acting, by any other person or persons designated by the court or judge, with like effect as if exercised and taken by unanimous action of the directors and shareholders of the corporation.

(2) Such corporation may, in the manner provided in paragraph (1) but without limiting the generality or effect of paragraph (1), alter, amend or repeal its bylaws; constitute or reconstitute and classify or reclassify its board of directors, and name, constitute or appoint directors and officers in place of, or in addition to all or some of the directors or officers then in office; amend its articles of incorporation, and make any

change in its capital or capital stock, or any other amendment, change, or alteration, or provision, authorized by this act; be dissolved, transfer all or part of its assets, merge or consolidate as permitted by this act, in any of which cases, however, no shareholder shall have any statutory right of appraisal of his shares; change the location of its registered office and remove or appoint a resident agent; authorize and fix the terms, manner and conditions of the issuance of bonds, debentures or other obligations, whether or not convertible into shares of its capital stock of any class, or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of its capital stock of any class; or lease its property and franchises.

(3) Any certificate or other document required or permitted by law to be filed or recorded to accomplish any corporate purpose, sought to be accomplished pursuant to the plan of reorganization, shall be made, executed and acknowledged, as may be directed by such decrees or orders by the persons designated in paragraph (1) of this section, and shall certify that provision for the making of such certificate, or other document, is contained in the plan of reorganization or in a decree or order of a court or judge having jurisdiction of the proceeding, under such applicable statute of the United States for the reorganization of such corporation, and that the plan has been confirmed, as provided by such applicable statute, with the title and venue of the proceeding and the date when the decree or order confirming the plan was made. Such certificate or other document shall be filed as provided in section 5 and upon such filing shall thereupon become effective in accordance with the terms thereof and the provisions of this section.

(4) If after the filing of any certificate or other document as provided in this section the order of confirmation of the plan of reorganization is reversed or vacated or such plan is modified, such other or further certificates or documents shall be filed as may be required to conform to the plan of reorganization as finally confirmed or to the decree or order of the court or judge as finally made.

(5) Irrespective of any other provisions of this act, such corporation may issue its shares of capital stock, bonds, debentures or other obligations for the consideration specified in the plan of reorganization after the confirmation of such plan.

(6) Except as otherwise provided in this section, no certificate or other document filed pursuant to this section shall be deemed to confer on any corporation any powers, privileges or franchises, except those permitted to be conferred on a corporation formed or existing under this act.

(7) On the filing of any certificate or other document made or executed pursuant to this section or any other section of this act, there shall be paid to the administrator the same fees as are payable by corporations not in reorganization upon filing like certificates or other documents.

HISTORY: Add. 1947, p. 304, Act 209, Eff. Oct. 11;—CL 1948, 450.43a;—Am. 1967, p. 266, Act 194, Eff. Nov. 2.

450.43b Corporate-held stock; status, certificate, filing.

Sec. 43b. Unless the articles of incorporation shall provide otherwise, any corporation formed or existing under this act, which has acquired shares of its own capital stock after the issue thereof may give to such shares the status of authorized and unissued shares by resolution of its board of directors. A certificate containing such resolution shall be executed in the name of the corporation and under its corporate seal by its president or a vice-president and attested by its secretary or an assistant secretary and acknowledged by the officer signing the same. Such certificate shall be filed as provided in section 5 and, upon such filing, the resolution shall become effective.

HISTORY: Add. 1949, p. 271, Act 229, Eff. Sep. 23;—Am. 1956, p. 186, Act 97, Eff. Aug. 11;—Am. 1967, p. 266, Act 194, Eff. Nov. 2.

450.43c Domestic corporations; restatement of articles, contents.

Sec. 43c. A domestic corporation may restate its articles consisting of the original articles as amended to the date of the restatement. The board of directors shall adopt a resolution setting forth the restated articles. The restated articles shall set forth the date of incorporation and shall contain a statement that they supersede existing articles and amendments thereto. Restated articles shall contain all statements required by this act to be included in original articles except that:

(a) No statement shall be required relative to the book value of no par stock or the price fixed for sale or exchange thereof.

(b) Restated articles shall set forth the name of the corporation's resident agent and the address of its registered office at the time of adoption of the restated articles in lieu of the name of its original resident agent and address of its original registered office.

(c) No statement need be made as to directors constituting the original board of directors, the names or addresses of the incorporators, or the amount of stock originally subscribed for or with which the corporation commenced business. Names and addresses of the directors at the time of the adoption of the restated articles shall be set forth.

HISTORY: Add. 1962, p. 156, Act 156, Eff. Mar. 28, 1963;—Am. 1967, p. 86, Act 67, Eff. Nov. 2.

450.43d Restatement of articles; effective date, certificate, filing fee.

Sec. 43d. The restated articles shall be effective when a certificate signed in the name of the corporation and under its corporate seal by the president or vice-president and the secretary or assistant secretary of the corporation, and acknowledged by the president or vice-president signing the same, has been filed as provided in section 5 for the filing of the original articles. The fee for filing restated articles shall be \$10.00. All references in this act to articles, consistent with this section, shall be deemed to refer to restated articles of those corporations which have filed restated articles under this section. Upon the filing of the certificate relating to the restated articles, the original articles and all amendments thereto shall be superseded and the restated articles shall be the articles of incorporation of the corporation.

HISTORY: Add. 1962, p. 156, Act 156, Eff. Mar. 28, 1963;—Am. 1967, p. 86, Act 67, Eff. Nov. 2.

450.43e-450.43f Repealed. 1967, p. 87, Act 67, Eff. Nov. 2.

Sections related to domestic corporations; concurrent amendment and restatement of articles; filing fee, effect.

450.44 Rights of shareholders not assenting to corporate action; payment for shares, procedure; appraisers.

Sec. 44. Rights of shareholders not assenting to certain corporate action. 1. If a corporation has authorized the sale, lease or exchange of all or substantially all of its assets a shareholder who was a shareholder at the time such action was authorized and who voted against such action may, within 20 days after the date upon which such action was authorized but not thereafter, object thereto in writing and demand from the corporation the payment of the fair cash value of his shares as of the day preceding the day such action was authorized by the shareholders, excluding from such fair cash value any appreciation or depreciation in consequence of the action authorized, and surrender at such time to the corporation the certificate or certificates for his shares as to which he is demanding payment. If any such person is a holder of more than 1 class of shares he shall be entitled to relief only in respect of the class of shares affected by such change. If, within 30 days after receipt of such a demand by a shareholder, the corporation and the shareholder cannot agree upon the fair cash value of the shares as of the day preceding the day such corporate action was authorized, such value shall be ascertained by 3 disinterested persons, who shall be appointed by any circuit judge of the county where the corporation has its registered office upon petition and order to

show cause either by such shareholder or by the corporation. Once such appraisers have been so appointed all demands for such payment, which have not been determined by agreement, shall be determined by such appraisers. The appraisers shall promptly submit their determination to the circuit court for the county where the corporation shall have its registered office for confirmation and upon the entry of an order confirming said report their determination shall be final and conclusive and from such order there shall be no appeal. If such fair cash value shall be determined by agreement, such agreed fair cash value shall be final and conclusive. If the award or the agreed fair cash value, as the case may be, is not paid by the corporation within 60 days after the entry of such order or after such agreement, such fair cash value may be collected as other debts are by law collectible. Upon payment by the corporation of such awarded or agreed fair cash value, such shareholder shall forthwith transfer and assign the shares at, and in accordance with, the request of the corporation.

2. A shareholder shall be entitled to payment for his shares under the provisions of this section only in the event that the value of the corporate assets which would remain after such payment would exceed 110 per cent. of the aggregate amount of its debts and liabilities exclusive of outstanding capital stock, and if such excess shall be at least equal to the awarded and/or agreed fair cash value of the shares of shareholders demanding payment. Objection by any such shareholder to any action of the corporation provided in this section and his rights thereafter under this section shall be his exclusive remedy.

3. The right of any dissenting shareholder to be paid the fair cash value of his shares shall cease if and when the corporation shall, within 6 months after such demand for payment, abandon such action or the shareholders shall revoke such action taken, entitling such dissenting shareholder to payment as in this act provided: Provided, That if any such shareholder shall have been paid fair cash value for his shares, he shall not be required to refund any such payment to the corporation because of such abandonment or revocation.

4. No demand for payment of such fair cash value may be withdrawn by the shareholder making the same unless a majority of the board of directors of the corporation shall consent thereto.

5. Any shareholder who so demands payment for his shares shall not be entitled to vote such shares or to receive any dividends or distributions thereon, or to exercise any rights respecting such shares, unless and until such action entitling such shareholder to payment shall be abandoned or a majority of the board of directors of the corporation shall consent to the withdrawal of such demand. If such action shall be abandoned or such consent to withdrawal shall be given, such dissenting shareholder shall be entitled to any rights which he would otherwise have had during the time when his demand for payment was in effect if he had not demanded payment for his shares.

HISTORY: CL 1948, 450.44.

450.45 Corporate books; statement of operation and properties; noncompliance, penalty; inspection.

Sec. 45. Books; inspection. Every corporation shall keep and maintain adequate and correct accounts of its business transactions. If any person or persons holding of record, in the aggregate, 2 per cent of the outstanding capital stock of any corporation of this state (or 2 per cent of any class of such stock, if 2 or more classes have been issued) and who shall have been a shareholder or shareholders, as the case may be, of record for at least 3 months prior thereto, shall present to any officer, director or resident agent of the corporation a written request for a statement of its operations and properties, together with a fee of 10 dollars to cover the cost thereof, it shall be the duty of such officer, director or resident agent to make or secure such a statement

sworn to by the president or a vice-president or by the treasurer or an assistant treasurer embracing a particular account of its operations and properties in reasonable detail, which shall have been prepared within the preceding 4 months, and to have the same ready and on file at the registered office of the corporation within 20 days after the presentation of such request and such statement shall at all times during business hours be open to the inspection of any such shareholder or shareholders and each such shareholder shall be entitled to a copy of the same: Provided, That no corporation shall be required to furnish more than 1 such statement in any 1 year. If the officers, directors or agents of any such corporation shall fail to furnish such statement as and within the time in this section provided, the corporation shall pay to this state 10 dollars a day for every day of delay in so doing, said penalty to be collected in an action to be brought by the attorney general of this state.

The directors of every corporation in this state shall at least once in each year cause a true statement of the operations and properties of such corporation for the preceding fiscal year to be made and to be communicated or distributed to each shareholder thereof within 4 months after the end of the preceding fiscal year.

The books of account and stock books of a corporation shall be open to the inspection of every shareholder holding of record, in the aggregate, 2 per cent of the outstanding capital stock of the corporation (or 2 per cent of any class of such stock, if 2 or more classes have been issued) and who shall have been a shareholder of record for at least 3 months prior thereto, at all reasonable times for any proper purpose.

HISTORY: Am. 1935, p. 318, Act 194, Imd. Eff. June 6;—CL 1948, 450.45. This section as originally enacted superseded with additions Sec. 11 of Ch. I of Pt. II of Act 84 of 1921, being CL 1929, 9995.

450.46 Loans to officers, directors and shareholders; statement of loans, violation, liability.

Sec. 46. Loans to officers, directors and shareholders. No officer or director of a corporation, other than a corporation an integral part of whose business permits it to make loans, shall either directly or indirectly authorize, consent to, make or allow any loan or advance to or overdraft or withdrawal by an officer, director or shareholder of such corporation out of its funds otherwise than in the ordinary and usual course of the business of the corporation and on the ordinary and usual terms of payment and security unless each such loan, advance, overdraft or withdrawal is approved by the vote of at least 2/3 of all the members of the board of directors of the corporation excluding any director obtaining such loan or advance or making such withdrawal or overdraft. A full and detailed statement of all such loans, advances, overdrafts and withdrawals and repayments thereof shall be submitted at the next annual meeting of shareholders and the aggregate amount of such loans, advances, overdrafts and withdrawals and repayments thereof shall be stated on the next annual report to shareholders. Any officer or director of a corporation who shall knowingly violate the provisions of this section shall be liable to the corporation for the amount of the loan, advance, overdraft or withdrawal together with interest at 6 per cent per annum until the same shall have been paid. Any officer or director against whom a claim shall be asserted under or pursuant to this section or to sections 47 or 48 of this act or who shall be held liable under any of said sections, shall be entitled to contribution from any other officer or director who shall have been liable hereunder or thereunder for such claim: Provided, That no officer or director, to whom such loan or advance is made or who shall himself make such overdraft or withdrawal, shall have any such right of contribution.

HISTORY: CL 1948, 450.46.

450.47 Directors as fiduciaries and trustees; liability.

Sec. 47. Directors; as fiduciaries and trustees. The directors of every corporation, and each of them, in the management of the business, affairs, and property of the corporation, and in the selection, supervision and control of its committees and of the officers and agents of the corporation, shall give the attention and exercise the vigilance, diligence, care and skill, that prudent men use in like or similar circumstances.

Action may be brought by the corporation, through or by a director, officer, or shareholder, or a creditor, or receiver or trustee in bankruptcy, or by the attorney general of the state, on behalf of the corporation against 1 or more of the delinquent directors, officers, or agents for the violation of, or failure to perform, the duties above prescribed or any duties prescribed by this act, whereby the corporation has been or will be injured or damaged, or its property lost, or wasted, or transferred to 1 or more of them, or to enjoin a proposed, or set aside a completed, unlawful transfer of the corporate property to one knowing the purpose thereof. The foregoing shall in no way preclude or affect any action any individual shareholder or creditor or other person may have against any director, officer, or agent for any violation of any duty owed by them or any of them to such shareholder, creditor, or other person. No director or directors shall be held liable for any delinquency under this section after 6 years from the date of such delinquency, or after 2 years from the time when such delinquency is discovered by one complaining thereof, whichever shall sooner occur.

HISTORY: Am. 1943, p. 220, Act 160, Imd. Eff. April 17;—CL 1948, 450.47. This section as originally enacted superseded with additions part of Sec. 3 of Ch. III of Pt. II of Act 84 of 1921, being CL 1929, 10020.

CONTRIBUTION: See Compilers' § 450.519.

450.48 Illegal dividends and distributions; liability of shareholders and directors, absent director.

Sec. 48. Liability for illegal dividends and distributions. The directors of a corporation shall not declare or pay dividends or authorize the withdrawal or distribution of any part of its assets except as authorized in this act unless specifically otherwise provided in the act under which a particular corporation is or shall have been formed. Any shareholder who shall accept or receive any dividend or distribution not authorized by this act to be made shall be liable to the corporation in the amount accepted or received by him. In case of any wilful or negligent violation of the provisions of section 22 or 23 of this act or of this section, the directors under whose administration the same may happen shall be jointly and severally liable, at any time within 3 years after paying such dividend or such withdrawal or distribution, to the corporation for the full amount of any of such dividend, withdrawal or distribution so unlawfully paid, with interest at the rate of 6 per cent per annum until the same shall be paid and such directors, who shall repay to the corporation any such dividend, withdrawal or distribution, shall be subrogated to the rights of the corporation against any person who shall have received any such dividend, withdrawal or distribution: Provided, That any director who may have been absent when the same was done, or who may have dissented from the act or resolution by which the same was done, may exonerate himself from such liability by causing his dissent to be entered at large on the books containing the minutes of the proceedings of the directors at the time the same was done or within 30 days after he shall have knowledge that the same was done and it shall be the duty of the secretary of the corporation to so enter such dissent.

HISTORY: CL 1948, 450.48. This section supersedes with additions Sec. 1 of Ch. III of Pt. II of Act 84 of 1921, being CL 1929, 10018.

STOCKHOLDERS: Proceedings to enforce individual liability other than for labor debts, see Compilers' § 600.2909 and GCR 775.

450.49 False reports, certificates and other statements; penalty.

Sec. 49. False reports, certificates and other statements; penalty. Any person who knowingly makes or files or any person who knowingly assists in the preparation or filing of any false or fraudulent report, certificate or other statement required by this act

to be filed by a corporation, domestic or foreign, with any public officer of this state, or any person knowing the same to be false or fraudulent, who procures, counsels, or advises the preparation or filing of such report, certificate or statement, shall be fined 1,000 dollars or imprisoned for not to exceed 1 year for each such offense.

HISTORY: CL 1948, 450.49.

450.50 False reports, certificates and other statements; notice; liability.

Sec. 50. Same; notices; liability. If any report, certificate or other statement made or public notice given by the officers or directors of a corporation shall be false in any material representation, or if any of the books, records or accounts of the corporation shall be knowingly or wrongfully altered, the officers, directors and/or agents knowingly or wrongfully authorizing, signing and/or making such false report, certificate, other statement or notice or authorizing or making such wrongful alteration shall jointly and severally be personally liable to any person who has become a creditor or shareholder of the corporation upon the faith of any such false material representation or alteration therein to the amount of the debt contracted upon the faith thereof if not paid when due, or the damage sustained by any purchaser of, or subscriber to, its stock upon the faith thereof. The liability imposed by this section shall exist in all cases where the contents of any such report, certificate, other statement or notice or any material representation therein shall have been communicated either directly or indirectly to the person so becoming a creditor or shareholder and he shall have become such creditor or shareholder upon the faith thereof. No action can be maintained for a cause of action created by this section unless brought within 2 years from the time of the discovery of such false representation or alteration and within 6 years from the time the certificate, report, public notice or other statement or such alteration shall have been made or given, as the case may be, by the officers, directors and/or agents of such corporation.

HISTORY: CL 1948, 450.50.

450.51 Falsification or alteration of books, records or accounts; penalty.

Sec. 51. Falsification or alteration of books, records or accounts; penalty. Every officer or agent of a corporation who shall knowingly falsify or wrongfully alter the books, records or accounts of a corporation shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not to exceed 1,000 dollars or imprisoned for not to exceed 6 months for each such falsification or alteration.

HISTORY: CL 1948, 450.51.

450.52 Corporations consolidated or merged; procedure.

Sec. 52. (1) Any 2 or more corporations unless otherwise provided in the act under which a particular corporation is or shall have been formed, or any 1 or more corporations unless otherwise provided in the act under which a particular corporation is or shall have been formed, and any 1 or more foreign corporations may consolidate or merge into a single corporation which may be any 1 of the constituent corporations or a new corporation to be formed by means of such consolidation or merger as shall be specified in the agreement hereinafter required. The directors, or a majority of them, of such corporations of this state as desire to consolidate or merge may enter into an agreement signed by them and under the corporate seals of the respective corporations, prescribing the terms and conditions of consolidation or merger, the mode of carrying the same into effect, and stating such other facts required or permitted by the provisions of this act to be set out in articles, as can be stated in the case of a new corporation formed by means of such consolidation or merger, or stating any amendments to the articles of the consolidated or merged corporation to be effected by such consolidation or merger, stated in such altered form as the circumstances of the case require.

Agreement, contents.

(2) The agreement shall also set forth:

(a) The manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation.

(b) If any shares of any of the constituent corporations are not to be converted solely into shares or other securities of the surviving or resulting corporation, the amount of cash or securities of any other corporation which the holders of such shares are to receive in exchange for such shares or upon their conversion and the surrender of the certificates evidencing such shares, which cash or securities of any other corporation may be in addition to or in lieu of the shares or other securities of the surviving or resulting corporation.

(c) Other provisions deemed desirable, including without limitation a provision for the payment of cash in lieu of the issuance of fractional shares of the surviving or resulting corporation or of any other corporation the securities of which are to be received in the merger or consolidation.

Agreement, adoption.

(3) The agreement shall be submitted to the shareholders of each constituent corporation of this state at a meeting thereof, called separately for the purpose of taking the same into consideration. Due notice of the time, place and object of such meeting shall be given by publication at least once a week for 3 successive weeks next preceding the date of such meeting in a newspaper published in the county wherein each such corporation has its registered office, and a copy of such notice shall be mailed to the last known post office address of each shareholder of each such corporation, at least 20 days prior to the date of such meeting. If all the shareholders of any such constituent corporation execute a written waiver of notice of such meeting, then no notice by publication or otherwise shall be required of such corporation. At such meeting the agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of the same, each share entitling the holder thereof to 1 vote; and if the votes of shareholders of each such corporation representing 2/3 of the total number of shares of each class of its outstanding capital stock shall be for the adoption of the agreement, then that fact shall be certified on the agreement by the president or a vice-president and the secretary or an assistant secretary of each such corporation under the corporate seals thereof and acknowledged by them, before any officer authorized by the laws of this state to take acknowledgments of deeds, to be the respective act, deed and agreement of each of said corporations.

Filing; effective date.

(4) The agreement so signed by the directors, certified and acknowledged shall be filed in the office of the administrator, and shall be taken and deemed to be the agreement and act of consolidation or merger of the corporations. A true copy of the agreement and act of consolidation or merger, duly prepared by the administrator, shall also be forwarded by the administrator by mail or express to the county clerks of the counties of this state in which the respective corporations of this state so consolidating or merging shall have their registered offices, or if any of the corporations shall have been specially created by a public act of the legislature, then said agreement shall be so filed in the county where such corporation shall have had its principal place of business. The agreement and act, or a copy thereof certified by the administrator, shall be evidence of the agreement and act of consolidation or merger of the corporations, and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation or merger. The agreement

shall be effective on the date of filing with the administrator, or such subsequent date not later than 31 days after the date of filing as may be fixed in the agreement.

HISTORY: CL 1948, 450.52;—Am. 1962, p. 153, Act 155, Eff. Mar. 28, 1963;—Am. 1967, p. 267, Act 194, Eff. Nov. 2;—Am. 1969, p. 9, Act 4, Imd. Eff. Apr. 10.

This section supersedes with additions and merges part of Sec. 2 of Ch. III of Pt. I of Act 84 of 1921, Am. 1927, p. 804, Act 335, Eff. Sept. 5;—Am. 1929, p. 651, Act 267, Eff. Aug. 28, being CL 1929, 9962; and Sec. 4 of Ch. III of Pt. I of Act 84 of 1921, Am. 1929, p. 651, Act 267, Eff. Aug. 28, being CL 1929, 9964.

450.53 Corporations consolidated or merged; old and new, status.

Sec. 53. When said agreement shall have become effective, the separate existence of all of the constituent corporations, or all of such constituent corporations except the resulting corporation, shall cease, and the constituent corporations shall become a new corporation, or be consolidated or merged into 1 of such corporations in accordance with said agreement. It shall possess all the rights, privileges, powers and franchises, both of a public and a private nature, and be subject to all the restrictions, disabilities and duties of each of such corporations so consolidated or merged. The rights, privileges, powers and franchises of each of said corporations in this state, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, including stock subscriptions, and all other things in action or belonging to each of such corporations shall be vested in said resulting corporation. All property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of said resulting corporation as they were of the several and respective constituent corporations, and the title to any real estate, whether by deed or otherwise, under the laws of this state, vested in any of such constituent corporations, shall not revert or be in any way impaired by reason of this act. All rights of creditors and all liens upon the property of any of said constituent corporations of this state shall be preserved unimpaired, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said resulting corporation, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Any surplus which the constituent corporations may have at the time of such consolidation or merger may be carried as surplus by the resulting corporation.

HISTORY: CL 1948, 450.53;—Am. 1962, p. 154, Act 155, Eff. Mar. 28, 1963.

This section supersedes with additions and merges part of Sec. 3 of Ch. III of Pt. I of Act 84 of 1921, being CL 1929, 9963; and Sec. 4 of Ch. III of Pt. I of Act 84 of 1921, Am. 1929, p. 651, Act 267, Eff. Aug. 28, being CL 1929, 9964; and Sec. 5 of Ch. III of Pt. I of Act 84 of 1921, being CL 1929, 9965.

450.54 Corporations consolidated or merged; payment for shares of dissenting shareholders, procedure.

Sec. 54. 1. Any shareholder in any corporation of this state consolidating or merging as aforesaid, who was such shareholder at the time such consolidation or merger was authorized by the shareholders of such corporation and who voted against such consolidation or merger, may within 20 days after such consolidation or merger was so authorized object thereto in writing and demand from either the constituent corporation of which he was a shareholder or the resulting corporation payment of the fair cash value of his shares in the constituent corporation as of the day preceding the day such consolidation or merger was authorized by the shareholders of such constituent corporation, excluding from such fair cash value any appreciation or depreciation in consequence of the action authorized, and surrender at such time to the constituent corporation or the resulting corporation the certificate or certificates for his shares as to which he is demanding payment. If the effective date of such consolidation or merger shall occur within such 20 days, the constituent corporation shall remain a body corporate for the purpose only of receiving such demand. A demand served on the constituent corporation after the effective date shall be deemed to constitute a demand on the resulting corporation. If within 30 days after receipt by said constituent corporation or resulting corporation of such written demand said corporation and such shareholder

cannot agree upon such fair cash value of the shares, such shareholder or said corporation may secure an appraisal of such shareholder's shares in the same manner and with the same effect as is provided in paragraph 1 of section 44. If such fair cash value shall be determined by agreement, such agreed fair cash value shall be final and conclusive. If such awarded or such agreed fair cash value of such shares is not paid by said corporation within 60 days after the entry of such order or after such agreement, such fair cash value may be collected as other debts are by law collectible. If the effective date of such consolidation or merger shall occur before the expiration of such 30-day or 60-day periods, the resulting corporation shall be substituted for the constituent corporation which may have received the demand or may have proceeded to any stage in compliance with such fair cash value payment provisions. Upon payment by said corporation of such awarded or agreed fair cash value, such shareholder shall forthwith transfer and assign such shares at, and in accordance with, the request of said corporation. Objection by any such shareholder to any action of the constituent corporation, of which he is a shareholder, or of the resulting corporation provided in this section and his rights thereafter under this section shall be his exclusive remedy.

Cessation of right to cash value by dissenting shareholder.

2. The right of any dissenting shareholder to be paid the fair cash value of his shares shall cease if and when the constituent corporation, of which he is a shareholder, within 6 months after such demand for payment, shall abandon such action or the shareholders of such corporation shall revoke such action taken, entitling such dissenting shareholder to payment as in this act provided.

Withdrawal of demand by dissenting shareholder, consent.

3. No demand for payment of such fair cash value may be withdrawn by the shareholder making the same unless a majority of the board of directors of the constituent corporation shall consent thereto. If the consolidation or merger has become effective, no such demand may be withdrawn by the shareholder making the same unless a majority of the board of directors of the resulting corporation shall consent.

Dissenting shareholder's right to vote.

4. Any shareholder who so demands payment for his shares may not vote such shares or receive any dividends or distributions thereon, or exercise any rights respecting such shares, nor any similar rights against the constituent corporation or resulting corporation, unless and until such action entitling such shareholder to payment shall be abandoned, or a majority of the board of directors of the constituent corporation or resulting corporation shall consent to the withdrawal of such demand. If such action shall be abandoned or such consent to withdrawal shall be given, such dissenting shareholder shall be entitled to any rights which he would otherwise have had during the time when his demand for payment was in effect if he had not demanded payment for his shares, except the right to vote at meetings of shareholders.

HISTORY: CL 1948, 450.54;—Am. 1951, p. 351, Act 239, Eff. Sep. 28;—Am. 1962, p. 155, Act 155, Eff. Mar. 28, 1963.

450.55 Corporations consolidated or merged; pending actions saved.

Sec. 55. Same; pending actions saved. Any action or proceeding pending by or against any of the corporations of this state which shall be consolidated or merged may be prosecuted to judgment, as if such consolidation or merger had not taken place or said resulting corporation may be substituted in the place of any such constituent corporation.

HISTORY: CL 1948, 450.55. This section supersedes part of Sec. 5 of Ch. III of Pt. I of Act 84 of 1921, being CL 1929, 9965.

450.56 Corporations consolidated or merged; powers of resulting corporation.

Sec. 56. Same; powers of resulting corporation. When 2 or more corporations are consolidated or merged, as in this act provided, said resulting corporation shall have

power and authority to issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make, or obligations it will be required to assume, in order to effect such consolidation or merger; to secure the payment of which bonds and obligations it shall be lawful to mortgage its corporate franchise, rights, privileges and property, real, personal and mixed, or any of them; and may issue capital stock to such an amount as may be necessary, to the shareholders of the constituent corporations in exchange or payment for the shares in such constituent corporations held by such holders, in the manner and on the terms specified in the agreement of consolidation or merger.

HISTORY: CL 1948, 450.56. This section supersedes with additions part of Sec. 7 of Ch. III of Pt. I of Act 84 of 1921, being CL 1929, 9987.

450.57 Corporation assets and franchises; sale, lease or exchange; notice of consent, mailing; period of objection and demand.

Sec. 57. Every corporation formed or existing under this act may sell, lease or exchange all or substantially all of its property and assets, including its good will and its corporate franchises, upon such terms and conditions and for such consideration, which may be in whole or in part shares of stock in, and/or other securities of, any other corporation or corporations, domestic or foreign, as its board of directors shall deem expedient and for the best interests of the corporation, when and as authorized by the affirmative vote of the holders of a majority of the shares of each class of stock issued and outstanding given at a shareholders' meeting duly called for that purpose, or when authorized by the written consent of the holders of a majority of the shares of each class of stock issued and outstanding: Provided, That the articles may require the vote or written consent of the holders of a larger proportion of the shares of each class of stock issued and outstanding. When any action by a corporation permitted by this section is approved by the authorized written consent of shareholders, it shall be the duty of the board of directors of the corporation to mail notice of such consent to all shareholders of the corporation addressed to the addresses of the shareholders as they appear on the books of the corporation. The 20-day period of objection and demand referred to in section 44 of this act shall begin on the day following the date of mailing such notice.

HISTORY: CL 1948, 450.57;—Am. 1951, p. 352, Act 239, Eff. Sep. 28.

This section supersedes Sec. 1 of Ch. III of Pt. I of Act 84 of 1921, Am. 1929, p. 650, Act 267, Eff. Aug. 28, being CL 1929, 9961.

450.57a Corporation assets and franchises; pledge or mortgage without stockholder's consent.

Sec. 57a. Unless otherwise provided in the articles or bylaws, the board of directors may authorize the mortgage or pledge of all or any part of the assets of the corporation without the vote or consent of the stockholders.

HISTORY: Add. 1968, p. 493, Act 267, Imd. Eff. Jul. 1.

450.58 Corporation assets and franchises; sale; organized corporation, continuance; name, rights; liabilities, restriction; articles, filing.

Sec. 58. Same; organization of corporation to continue. If the franchises, primary or secondary, and property of any corporation formed or existing under this act, are sold, the persons, natural or corporate, who may become the purchasers, at private sale or under the judgment of the court, may organize a corporation for the continuation, operation and management of the same and such corporation, when organized may have the same name, rights, privileges and franchises as have been granted to or acquired by the corporation whose franchises and properties are so purchased; and shall be subject to all the limitations and restrictions imposed upon it and liabilities assumed by it by the contract of purchase and, in addition thereto, shall be subject to all the provisions of this act. Such corporation shall be formed by articles signed by the purchaser

and all or any of his associates, if any, and acknowledged by at least 1 of them, which articles shall, in addition to the requirements of the provisions of this act, set forth the description of the property sold and the decree under which the sale was made, if it was sold under judgment, or if not, the deed or other document conveying the property; the amount paid or to be paid, and to whom and by whom, and such other statements as may be deemed necessary. The articles shall be filed in the same manner as provided in section 5 of this act for original articles. Upon filing the articles in the office of the secretary of state the corporation shall be deemed to be organized, and shall have all the rights, powers and privileges, and be subject to all restrictions, limitations and liabilities of other similar corporations organized under this act.

HISTORY: CL 1948, 450.58. This section supersedes with additions part of Sec. 26 of Ch. 55 of the Revised Statutes of 1846, Add. 1872, Ex. Ses., p. 83, Act 53, Imd. Eff. March 29, being How. 4885;—CL 1897, 8552;—CL 1915, 11343;—CL 1929, 10168.

450.59 Corporation assets; sale; liability; corporation, shareholders, officers; rights, creditors; capital stock, decrease, increase; consolidation, merger.

Sec. 59. Liability of corporations and rights of others unimpaired by sale, increase or decrease of capital stock, or by consolidation or merger. The liability of any corporation or of the shareholders or officers thereof, or the rights or remedies of the creditors thereof, or of persons doing or transacting business with such corporation, shall not in any way be lessened or impaired by the sale of any of the assets thereof, or by the increase or decrease in the capital stock of any such corporation, or by the consolidation or merger of 2 or more corporations or by any change or amendment in the articles of any such corporations.

HISTORY: CL 1948, 450.59. This section supersedes with additions and merges part of Sec. 5 of Ch. III of Pt. I of Act 84 of 1921, being CL 1929, 9985; and Sec. 26 of Ch. 55 of the Revised Statutes of 1846, Add. 1872, Ex. Ses., p. 83, Act 53, Imd. Eff. March 29, being How. 4885;—CL 1897, 8552;—CL 1915, 11343;—CL 1929, 10168.

450.60 Corporate term; extension; certificate, contents, filing.

Sec. 60. Any stock corporation whose term is about to expire by limitation, may, at any time within 2 years next preceding the expiration of such term, by the consent of the holders of at least 2/3 of its capital stock at any annual meeting or at any special meeting of its shareholders called for that purpose, direct the continuance of its corporate existence for such further term as permitted by law, as may be expressed in a resolution for that purpose. Upon the adoption of such resolution it shall be the duty of the president or a vice-president and the secretary or an assistant secretary to make and sign in the corporation name a certificate stating that the corporate term has been extended, the period of extension, and that the action was taken in accordance with the provisions of this section, which certificate shall be filed in the same manner as the original articles of incorporation.

HISTORY: Am. 1943, p. 220, Act 160, Imd. Eff. April 17;—CL 1948, 450.60;—Am. 1951, p. 352, Act 239, Eff. Sep. 28;—Am. 1953, p. 185, Act 155, Eff. Oct. 2;—Am. 1967, p. 268, Act 194, Eff. Nov. 2.

This section as originally enacted superseded Sec. 1 of Ch. IV of Pt. I of Act 84 of 1921, being CL 1929, 9970.

450.61 Corporate term; expiration, extension, procedure.

Sec. 61. Any stock corporation whose term has expired, but which has not been wound up or dissolved and which has nevertheless inadvertently continued its active business beyond such term, may by the consent of the holders of at least 4/5 of its capital stock at any annual meeting or at any special meeting of its shareholders called for that purpose, renew its corporate existence in the same manner as is provided in section 60 of this act in relation to a corporation whose term is about to expire, and it shall be the duty of the officers and directors de facto to call a meeting of the shareholders for the purpose of submitting the question to them of renewing the corporate existence and to do and perform all things required of such officers and directors de jure as provided in said section 60. But no such corporation de facto shall be permitted to renew its corporate life unless such action is taken within 3 years next after its term

has expired, and such renewal shall in nowise relieve such corporation from any penalties that may have accrued against it under any law of this state but such renewal shall entitle the corporation to all the rights, privileges, immunities and powers conferred upon corporations renewing their corporate existence before or at the expiration of their term. Any stock corporation organized under any laws of this state heretofore in force, whose term has expired but which has not been wound up or dissolved and which has nevertheless continued its active business beyond such term, whose corporate term has, prior to the passage of this act, been directed to be continued by a vote of the holders of at least 4/5 of its capital stock expressed at any annual meeting or a special meeting of the shareholders called for that purpose, shall continue to be the same corporation for the renewed term thereof, with all its property, franchises, rights, privileges and powers.

HISTORY: CL 1948, 450.61;—Am. 1951, p. 352, Act 239, Eff. Sep. 28;—Am. 1953, p. 185, Act 155, Eff. Oct. 2.

This section supersedes Sec. 2 of Ch. IV of Pt. I of Act 84 of 1921, Am. 1925, p. 692, Act 363, Eff. Aug. 27, being CL 1929, 9971.

450.62 Corporate term; corporation without capital stock; extension, certificate, filing.

Sec. 62. Any corporation without capital stock, whose term of existence has expired or is about to expire, may renew such corporate existence at any meeting of the members of such corporation duly called and held. In case the corporate existence has not yet expired, such meeting may be held at any time within 2 years next preceding such date of expiration, and in case such existence has expired, such meeting shall be held within 2 years next following such date of expiration. No such corporate life shall be extended or renewed, as the case may be, excepting by the affirmative vote of such number of the members of such corporation as expressed in sections 60 and 61 respectively of this act. The articles shall thereupon be extended or renewed, as the case may be, and a certificate of extension or renewal, as the case may be, shall be filed as provided in said sections 60 and 61 respectively.

HISTORY: CL 1948, 450.62;—Am. 1951, p. 353, Act 239, Eff. Sep. 28.

This section supersedes Sec. 3 of Ch. IV of Pt. I of Act 84 of 1921, being CL 1929, 9972.

450.63 Corporate term; renewal; rights, franchises, property, liability.

Sec. 63. Same; rights and liabilities on renewal. Any corporation whose term has been renewed as in this act provided shall be the same corporation, shall hold and own all the rights, franchises and property held and owned by the corporation before renewal, be subject to all its liabilities, and have the same shareholders, members and officers.

HISTORY: CL 1948, 450.63. This section supersedes Sec. 5 of Ch. IV of Pt. I of Act 84 of 1921, being CL 1929, 9974.

450.64 Corporate existence; corporations without capital stock, in perpetuity.

Sec. 64. Corporate existence of certain corporations to be in perpetuity. The corporate existence of all corporations, heretofore incorporated or incorporating under this act without capital stock, for religious, benevolent, social or fraternal purposes, shall be deemed to be in perpetuity, notwithstanding any limitation or term fixed in the articles or in the law under which such corporation originally incorporated, and it shall not hereafter be necessary for any such corporation to renew formally its corporate existence, but every such corporation shall be deemed to have perpetual succession unless it shall, in any particular case, after the passage of this act, affirmatively waive the right to perpetual existence by fixing a definite term by amendment to its articles.

HISTORY: CL 1948, 450.64. This section supersedes Sec. 4 of Ch. IV of Pt. I of Act 84 of 1921, being CL 1929, 9973.

450.65 Corporate dissolution; voluntary or involuntary; proceedings.

Sec. 65. Dissolution; voluntary or involuntary. A corporation may be wound up or dissolved either voluntarily or involuntarily. If the proceedings are voluntary they may

be conducted either out of court or subject to the supervision of the court. If the proceedings are involuntary they must be subject to the supervision of the court. If the corporation shall be wound up or dissolved subject to the supervision of the court the proceedings shall be under the judicature act of 1915; except that any corporation, whose assets had been wholly disposed of under court order in receivership or bankruptcy proceedings may be summarily dissolved by order of the court having jurisdiction of such proceedings; a copy of such order shall be filed by the clerk of such court with the secretary of state.

HISTORY: CL 1948, 450.65. This section supersedes with additions part of Sec. 8 of Ch. IV of Pt. I of Act 84 of 1921, being CL 1929, 9977.

JUDICATURE ACT: Quo warranto, see Compilers' § 600.4515 et seq. and GCR 715.

Dissolution and winding up of corporations, voluntary, see Compilers' §§ 640.1 to 640.15; involuntary, see Compilers' §§ 600.3601 to 600.3640.

450.66 Corporate dissolution; surrender of rights and franchises prior to business.

Sec. 66. Same; surrender of corporate rights before beginning business. Before beginning the business for which any corporation was created, the incorporators may surrender all their corporate rights and franchises, by filing in the manner provided for original articles a certificate, verified by the oath of a majority of the incorporators that such part of the capital as has been paid in, less any proper disbursements actually made in connection with such organization, if any, has been refunded to the subscribers contributing the same and that such business has not been begun, and surrendering all rights and franchises and thereupon such corporation shall be dissolved.

HISTORY: CL 1948, 450.66. This section supersedes part of Sec. 7 of Ch. IV of Pt. I of Act 84 of 1921, Am. 1929, p. 652, Act 267, Eff. Aug. 28, being CL 1929, 9976.

450.67 Corporate dissolution; surrender of franchise, procedure.

Sec. 67. Same; surrender of franchise, procedure. Any solvent corporation which shall desire to cease doing business, surrender its franchise and wind up its corporate affairs, may do so by the following procedure with the consent of the holders of at least 2/3 of each class of the outstanding capital stock of the corporation given at a meeting duly called and held. The shareholders may then appoint 3 or more of the directors or trustees to make an audit of the books, accounts and papers, and to make an inventory and appraisal of the property of such corporation, which audit and inventory shall be filed with the board. Upon receiving such audit and inventory, the directors shall proceed to liquidate all of the debts and obligations of the corporation, and to sell the property, rights, and franchises, to collect all claims due the corporation, and reduce all of such assets to possession.

HISTORY: CL 1948, 450.67. This section supersedes part of Sec. 8 of Ch. IV of Pt. I of Act 84 of 1921, being CL 1929, 9977.

450.68 Corporate dissolution; notice, publication.

Sec. 68. Same; publication of notice. It shall be the duty of the directors to cause a public notice of such approaching dissolution to be inserted once each week for 3 successive weeks next preceding the date fixed in such notice in some newspaper published in the city or village where such corporation has its registered office, calling the attention of all creditors to the same, and requesting such creditors to present their claims at the office of such corporation on or before a date to be fixed in such notice. It shall also be the duty of the directors to notify each known creditor by registered mail of such intention to dissolve.

HISTORY: CL 1948, 450.68. This section supersedes Sec. 9 of Ch. IV of Pt. I of Act 84 of 1921, being CL 1929, 9978.

450.69 Corporate dissolution; claims, settlement; director.

Sec. 69. Same; settlement of claims. The directors shall have full power and authority to settle, compromise and pay all claims against the corporation, and to receive, receipt and give acquittance for all debts due the corporation, and to authorize the offic-

ers thereof to execute and deliver such deeds or instruments as may be necessary in the sale or conveyance of any of the real or personal property of such corporation.

HISTORY: CL 1948, 450.69. This section supersedes Sec. 10 of Ch. IV of Pt. I of Act 84 of 1921, being CL 1929, 9979.

450.70 Corporate dissolution; distribution of surplus, statement, audit.

Sec. 70. Same; distribution of surplus. As soon as may be convenient after the property has been sold, all assets reduced to cash and all debts paid, the directors shall call a final meeting of the shareholders and shall present at such meeting a detailed financial statement showing the exact surplus to be distributed among the shareholders. Such statement shall be subject to such audit as the holders of a majority of the outstanding capital stock of the corporation may direct, and the directors may then proceed to order the distribution of such surplus in such manner as they shall determine as the respective interests may appear.

HISTORY: CL 1948, 450.70. This section supersedes and merges part of Sec. 11 of Ch. IV of Pt. I of Act 84 of 1921, being CL 1929, 9990, and Sec. 4 of Ch. II of Pt. II of Act 84 of 1921, being CL 1929, 10003.

450.71 Corporate dissolution; certificate and affidavit of treasurer, filing.

Sec. 71. Same; duty of president; access to records. It shall be the duty of the president and secretary of such corporation to execute and file with the secretary of state a certificate reciting the resolution to dissolve, a copy of the final statement, and the affidavit of the treasurer or an assistant treasurer of such corporation that all of the debts of such corporation have been paid and the surplus distributed to the shareholders and giving the name and address of the custodian of the records of such corporation.

HISTORY: CL 1948, 450.71. This section supersedes part of Sec. 12 of Ch. IV of Pt. I of Act 84 of 1921, being CL 1929, 9981.

450.72 Corporate dissolution; time effective.

Sec. 72. Same; time effective. Upon filing such final certificate, or the certificate required in section 73 of this act the said corporation shall be deemed to be dissolved, its franchise surrendered, and all of its powers, rights and privileges extinguished: Provided, That nothing in this act contained shall be construed as taking away or prejudicing any right of creditors to pursue any remedy at law or in chancery given by any law of this state with respect to such corporation or its shareholders within such period as may be prescribed in the statutes of limitations.

HISTORY: CL 1948, 450.72. This section supersedes Sec. 13 of Ch. IV of Pt. I of Act 84 of 1921, being CL 1929, 9962.

SERVICE OF PROCESS: On defunct corporation, see Compilers' § 600.1920, 600.6737 and GCR 105.

450.73 Corporate dissolution; distribution in kind; filing certificate.

Sec. 73. Any solvent corporation may also be dissolved by the vote or written consent of the holders of at least 3/4 of each class of its outstanding stock in the following manner: By the sale of a part or the whole of its assets, the payment of all its debts and liabilities, or making provision for the payment thereof, and the distribution of the residue pro rata among its shareholders, or, after payment of all its debts and liabilities, or making provision for the payment thereof, the remaining assets may be distributed in kind pro rata among its shareholders. If there is more than 1 class of shares, any such distribution shall be in accordance with the preferences thereof, if any. Within 30 days after any such dissolution a certificate signed by the president or a vice-president and the secretary or assistant secretary and acknowledged by the president or vice-president signing the same shall be filed with the administrator in the manner provided in section 5 for original articles, showing that all the debts and liabilities have been paid or provision for the payment thereof made and the assets have been distributed pro rata among the shareholders or provision for such distribution made, and giving the name and address of the custodian of the records of such corporation. The administrator shall not accept for filing any certificate required by this section or section 71 until the privilege fees required by Act No. 85 of the Public Acts of 1921, as

amended, being sections 450.301 to 450.309 of the Compiled Laws of 1948, have been fully paid.

HISTORY: Am. 1935, p. 319, Act 194, Imd. Eff. Jun. 6;—Am. 1947, p. 305, Act 209, Eff. Oct. 11;—CL 1948, 450.73;—Am. 1949, p. 271, Act 229, Eff. Sep. 23;—Am. 1967, p. 268, Act 194, Eff. Nov. 2.

450.74 Corporate dissolution; term expired; certificate; creditors, notice; failure to file certificate, penalty.

Sec. 74. In any case where the term of existence of any corporation shall terminate by limitation and not be renewed, as provided by this act, it shall be the duty of the last board of directors thereof, within 60 days thereafter, to file a certificate to such effect with the Michigan department of treasury signed by a majority of the remaining members of such board and accompanied with the fee prescribed, which certificate shall be filed in the same manner as the original articles along with the original articles. The Michigan department of treasury shall not accept for filing any certificate required by this section to be filed from any such corporation until the privilege fees required by Act No. 85 of the Public Acts of 1921, as amended, being sections 450.301 to 450.310 of the Compiled Laws of 1948, have been fully paid. In addition, in each such case the corporation by its treasurer or other qualified officer shall notify in writing, by mail or personal delivery, each of its known creditors, and in each case within 60 days after expiration of its corporate term shall publish notice of the termination of its existence once each week for 3 successive weeks next preceding the date fixed in such notice, in some newspaper published in the city or village where such corporation has its registered office or if there shall be no such newspaper published then in a newspaper published in the county in which such corporation has its registered office, or if there be no newspaper published in such county then in a newspaper published in a contiguous county, calling the attention of all creditors to the same, and requesting such creditors to present their claims at the office of such corporation on or before a date to be fixed in such notice for the filing of claims; and such officer shall file, with the certificate, an affidavit to the effect that the requirements of this section have been complied with, setting forth therein the name and place of publication of the newspaper wherein the notice was published, and a true copy of the notice published. Such affidavit, in absence of fraud, shall be presumptive evidence that the notice has been given. In case of neglect or refusal to file such certificate and affidavit, each of the directors shall be subject to a penalty of \$5.00 for each day during the continuance of such neglect or refusal, to be collected in an action brought therefor by the attorney general.

HISTORY: Am. 1943, p. 220, Act 180, Imd. Eff. April 17;—Am. 1947, p. 305, Act 209, Eff. Oct. 11;—CL 1948, 450.74;—Am. 1953, p. 185, Act 155, Eff. Oct. 2;—Am. 1969, p. 215, Act 120, Imd. Eff. Jul. 29.

This section as originally enacted superseded part of Sec. 7 of Ch. IV of Pt. I of Act 84 of 1921, Am. 1929, p. 652, Act 267, Eff. Aug. 28, being CL 1929, 9976.

NOTE: Act 85, 1921, above referred to, is Compilers' § 450.301 et seq.

450.74a Corporate dissolution; directors as trustees.

Sec. 74a. Same; directors as trustees. Upon the sale of all or substantially all of the assets of any corporation, or the expiration of the term of any corporation by limitation or annulment by forfeiture, or the voluntary dissolution of any corporation, the directors then in office and the survivors of them shall be trustees of the properties of such corporation for the benefit and in behalf of the creditors and shareholders as their respective interests may appear, for the purpose of distributing the same as permitted by law to the creditors and shareholders of such corporation, and for this purpose a majority of such directors acting as trustees shall have full authority and capacity to collect and administer such properties, to compromise and compound, adjust and settle any claims or demands by or against the corporation or said properties, to sell, transfer and assign said properties in whole or in part for cash or on credit, or part cash and part credit, and on such terms and conditions as to them, in exercise of their discre-

tion, may seem best, and to do such other acts and things permitted by law which may be necessary or proper in order to permit them to execute their trust: Provided, however, That whenever the number of directors of such a corporation, so selling its assets or whose term shall so expire or which shall so voluntarily dissolve, shall at or during such trusteeship, by death, resignation or otherwise, be less than the full number of directors required or authorized by statute or the bylaws of such corporation, then and in that event a majority of the remaining, surviving directors or the sole surviving director, shall from time to time, during such trusteeship, have all the powers to act under this section: And, provided further, That such trusteeship shall not be operative as to any assets of the corporation under the control of a court of competent jurisdiction.

HISTORY: Add. 1943, p. 221, Act 180, Imd. Eff. April 17;—CL 1948, 450.74a.

450.75 Dissolved corporation; continuation for special purposes.

Sec. 75. Same: Continuation of corporation for certain purposes. All corporations whose charters shall have expired by limitation or dissolution or shall be annulled by forfeiture or in any other way or manner have become void shall nevertheless continue to be bodies corporate for the further term of 3 years from such expiration, dissolution or forfeiture for the purpose of prosecuting and defending suits for or against them and of enabling them gradually to settle and close their affairs and to dispose of and convey their property and to divide their assets; but not for the purpose of continuing the business for which such corporations were organized: Provided, That with respect to any action, suit or proceeding begun or commenced by or against the corporation prior to such expiration, dissolution or forfeiture and with respect to any action, suit or proceedings begun or commenced by the corporation within 3 years after the date of such expiration, dissolution or forfeiture, such corporation shall only for the purpose of such actions, suits or proceedings so begun or commenced be continued a body corporate beyond said 3 year period and until any judgments, orders or decrees therein shall be fully executed: And provided further, That whenever the number of directors of such a corporation whose charter has so expired or shall have been forfeited or which is otherwise dissolved shall at or before the beginning of or during said term of 3 years by death, resignation or otherwise, be less than the full number of directors required or authorized by statute or the by-laws of such corporation, then and in that event a majority of the remaining, surviving directors or the sole surviving director, shall from time to time, during said period of 3 years, have all the powers to act for such corporation under this section which are conferred upon or which exist in the board of directors of such corporation before the expiration of its charter or during said term of 3 years.

HISTORY: Am. 1933, p. 131, Act 96, Imd. Eff. May 31;—CL 1948, 450.75. This section as originally enacted superseded Sec. 6 of Ch. IV of Pt. I of Act 84 of 1921, Am. 1927, p. 805, Act 335, Eff. Sept. 5; Am. 1929, p. 652, Act 267, Eff. Aug. 28, being CL 1929, 9975.

450.75a Dissolved corporation; title to assets, distribution; notice, publication; affidavit, failure to file, penalty.

Sec. 75a. After expiration of the 3 year period provided for in section 75, title to any assets of the corporation, which, through inadvertence or otherwise, shall not have been fully liquidated or administered, shall be vested in the last board of directors, and the survivors or survivor of them, as trustees or trustee of such assets for the benefit of creditors and shareholders as their respective interests may appear.

Such trustees or trustee, as the case may be, shall have all the powers conferred on directors under section 74a and may distribute any such assets among the creditors and shareholders as their respective interest may appear, except that such trustees or trustee shall first notify in writing, by mail or personal delivery, each of the corporation's known creditors of the intention to distribute the corporation's assets at least 60 days before the first distribution shall be made and shall publish such notice thereof once each week for 3 successive weeks next preceding the date fixed for such distribu-

tion in some newspaper published in the city or village where such corporation had its registered office, or if there shall be no such newspaper published then in a newspaper published in the county in which such corporation had its registered office, or if there be no newspaper published in such county then in a newspaper published in a contiguous county, requesting all creditors to present their claims at a place designated in such notice on or before the date fixed for such distribution. An affidavit made by such trustees or trustee in the manner provided in section 74 of this act shall be filed by such trustees or trustee with the Michigan corporation and securities commission within 60 days after such distribution. Such affidavit, in the absence of fraud, shall be presumptive evidence that the notice required herein has been given. In case of neglect or refusal to file such affidavit as herein required, each of such trustees or the trustee shall be subject to a penalty of \$5.00 for each and every day during the continuance of such neglect or refusal, to be collected in an action brought therefor by the attorney general.

Should any such trustees neglect or fail to execute their trust, or should there be no remaining director or directors available to act as trustee, any creditor, shareholder, director or other party in interest, may apply to the circuit court in chancery of the county in which the registered office of the corporation was last located to remove any directors or trustees and to appoint a trustee or trustees who shall likewise be vested with title to and shall administer the assets in such manner as the court may direct.

This section shall apply though such 3 year period shall have expired and there shall have been assets not so fully liquidated or administered before the enactment of this section.

HISTORY: Add. 1943, p. 221, Act 160, Imd. Eff. April 17;—Am. 1947, p. 306, Act 209, Eff. Oct. 11;—CL 1948, 450.75a;—Am. 1949, p. 271, Act 229, Eff. Sep. 23.

450.76 Decree of dissolution or forfeiture; filing.

Sec. 76. Decree of dissolution or forfeiture of charter to be filed with secretary of state. Whenever any corporation is dissolved or its charter forfeited by decree or judgment of a court of competent jurisdiction, the said decree or judgment shall be forthwith filed by the county clerk of the county in which such decree or judgment shall be entered, in the office of the secretary of state.

HISTORY: CL 1948, 450.76. This section supersedes part of Sec. 7 of Ch. IV of Pt. I of Act 84 of 1921, Am. 1929, p. 652, Act 267, Eff. Aug. 28, being CL 1929, 9976.

450.77 Dissolved corporation; books and records, preservation, access; failure to preserve, penalty.

Sec. 77. Preservation of books and records. Whenever the charter of any corporation shall expire or the corporation is otherwise dissolved the directors of such corporation shall provide for the safekeeping of its books and records, which they may do by deposit of the same with any bank or trust company of this state. The directors shall immediately upon such deposit send, or cause to be sent, a notice of the place of such deposit to the secretary of state. Payment for such safekeeping shall be provided for before the assets of the corporation are distributed. Such books and records shall not be destroyed within 10 years from such charter expiration or dissolution. The secretary of state shall have access to all such corporate books and records at any time within such 10 year period and any holder or custodian thereof who refuses to produce the same on demand of the secretary of state shall be fined not more than 500 dollars or imprisoned for not exceeding 6 months.

If the directors shall fail to cause such books and records to be so preserved each such director shall be subjected to a fine of not more than 500 dollars or imprisonment for not exceeding 6 months.

HISTORY: CL 1948, 450.77. This section supersedes with additions and merges part of Sec. 11 of Ch. IV of Pt. I of Act 84 of 1921, being CL 1929, 9980; and Sec. 12 of Ch. IV of Pt. I of Act 84 of 1921, being CL 1929, 9981.

450.78 Written agreement to pay interest; usury as defense.

Sec. 78. Corporations domestic or foreign may by agreement in writing, and not otherwise, agree to pay any rate of interest in excess of the legal rate and in such instances where the rate is above the legal rate the defense of usury is prohibited: Provided, That nothing contained herein shall prevent any charitable, religious, or other non-profit corporation from waiving the defense of usury when the amount borrowed exceeds the principal sum of \$250,000.00.

HISTORY: CL 1948, 450.78;—Am. 1957, p. 133, Act 116, Imd. Eff. May 24;—Am. 1968, p. 493, Act 287, Imd. Eff. Jul. 1.

This section supersedes part of Sec. 1 of Ch. I of Pt. II of Act 84 of 1921, Am. 1927, p. 805, Act 335, Eff. Sept. 5, being CL 1929, 9963.

USURY: See Compilers' § 438.32.

CITED IN OTHER SECTIONS: The above section is cited in § 438.31.

450.79 Resident agent; certificate of appointment, filing, fee.

Sec. 79. Every corporation shall, upon the appointment of a resident agent to have charge of its registered office in this state, immediately file a certificate of such appointment with the administrator. The administrator shall cause a true copy of such certificate to be filed in the office of the county clerk where such corporation has its registered office. The fee for filing such certificate shall be \$5.00. The board of directors of any corporation may change the location of the registered office of such corporation within this state or the resident agent in charge of such office by resolution adopted at a regular or special meeting of such board which change shall become effective on the filing of a certified copy of such resolution in the office of the administrator and upon the administrator causing true copies thereof, prepared by the administrator, to be filed in the respective offices of the clerks of the counties from which and to which said office shall be removed, or in the office of the county clerk where such corporation has its registered office. The fee for filing such certificate shall be \$5.00.

HISTORY: CL 1948, 450.79;—Am. 1967, p. 268, Act 194, Eff. Nov. 2.

This section supersedes and merges part of Sec. 5 of Ch. II of Pt. I of Act 84 of 1921, Am. 1929, p. 649, Act 267, Eff. Aug. 28, being CL 1929, 9958; and Sec. 10 of Ch. I of Pt. II of Act 84 of 1921, being CL 1929, 9994.

450.80 Acknowledgment of instruments.

Sec. 80. Acknowledgment of instruments. A corporation may acknowledge any instrument, required by law to be acknowledged, by any 1 of its officers, or by its attorney appointed by instrument in writing.

HISTORY: Am. 1943, p. 222, Act 160, Imd. Eff. April 17;—CL 1948, 450.80. This section as originally enacted re-enacted Sec. 14 of Ch. I of Pt. II of Act 84 of 1921, Add. 1929, p. 657, Act 267, Eff. Aug. 28, being CL 1929, 9999.

ACKNOWLEDGMENT: See Compilers' § 565.261 et seq.

450.81 Nonprofit corporations; annual report, contents, fee, date.

Sec. 81. An annual report accompanied by a filing fee of \$10.00 shall be filed with the Michigan treasury department by all nonprofit corporations, domestic or foreign, except medical care corporations and hospital service corporations. The fee shall be in lieu of all other annual fees to be paid by such corporations, anything in any other statute to the contrary notwithstanding. The report shall be filed on or before October 1 every year. It shall contain the following:

- (a) The name of the corporation.
- (b) The location of its registered office in this state.
- (c) The date of incorporation, term of corporate existence, and, if a foreign corporation, date when admitted to do business in this state.
- (d) The act under which incorporated or reincorporated.
- (e) The names and residences of officers and trustees or directors.
- (f) The purposes of the corporation.
- (g) The authorized capital stock, if any.

- (h) The value of property owned at time of filing report.
- (i) The nature and kind of business in which such corporation has engaged during the year covered by the report.
- (j) What, if any, distribution of funds has been made to any members during the year covered by the report.
- (k) A statement of the aggregate amount of any loans, advances, overdrafts or withdrawals and repayments thereof made to or by officers, directors or shareholders of the corporation otherwise than in the ordinary and usual course of business of the corporation and on the ordinary and usual terms of payment and security.
- (l) Such other information and facts as the Michigan corporation and securities commission may demand.

HISTORY: Am. 1935, p. 319, Act 194, Imd. Eff. June 6;—CL 1948, 450.81;—Am. 1952, p. 323, Act 210, Eff. Sep. 18;—Am. 1952, p. 464, Act 270, Imd. Eff. Jun. 12;—Am. 1953, p. 5, Act 6, Imd. Eff. Mar. 12;—Am. 1961, p. 53, Act 55, Eff. Sep. 8;—Am. 1968, p. 75, Act 40, Eff. Jan. 1, 1969.

This section as originally enacted superseded with additions and merged part of Sec. 2 of Ch. II of Pt. V of Act 84 of 1921;—Am. 1925, p. 762, Act 388, Eff. Aug. 27;—Am. 1929, p. 665, Act 267, Eff. Aug. 28, being CL 1929, 10124, and Sec. 4 of Ch. II of Pt. V of Act 84 of 1921, being CL 1929, 10126.

PRIVILEGE FEES: See Compilers' § 450.302.

CITED IN OTHER SECTIONS: The above section is cited in §§ 450.304 and 450.304b.

450.82 Profit corporations; exceptions; annual report; contents, fee, date.

Sec. 82. A report accompanied by a filing fee of \$10.00 and the amount of the annual privilege fee as provided by law shall be filed with the department of treasury by all profit corporations, domestic or foreign, excepting only domestic and foreign insurance companies, domestic and foreign building and loan associations and savings and loan associations, state and national banking corporations and trust companies, and such corporations now in existence or hereinafter incorporated formed with the consent of the state banking commissioner for the purpose of taking over all or a part of the assets of closed banks or trust companies with the intent and purpose of liquidating such assets when and as conditions warrant such action by said corporation. The report shall be filed on or before May 15 of each year. It shall contain the following:

- (a) The name of the corporation.
- (b) The place or places of doing business either within or without this state, and registered office.
- (c) The date of incorporation, term of corporate existence, and, if a foreign corporation, date when admitted to do business in this state.
- (d) The act under which incorporated or reincorporated.
- (e) The names and residences of its officers and trustees or directors and resident agent.
- (f) The nature and kind of business in which such corporation is engaged.
- (g) The amount of authorized capital stock and number and par value of shares of each class authorized, and the number of shares of stock without par value authorized.
- (h) The amount of capital stock subscribed.
- (i) The amount of capital stock paid in.
- (j) The book value of and price fixed by the corporation for the sale or exchange of its shares without par value, if any.
- (k) The nature, location and value of the property owned and used by the corporation both within and without this state, given separately.
- (l) The number and kind of shares issued for property during the period covered by the report, a description of such property and a statement of the value at which such property was taken.
- (m) A complete and detailed statement of the assets and outstanding liabilities of the corporation as shown by the books of such corporation, at the close of business on December 31 or upon the date of the close of its first fiscal year, next preceding,

which shall be the same balance sheet statement as furnished to shareholders, as provided by law. Every corporation organized on or after January 1 and prior to May 15 of any one year, and every foreign corporation admitted to do business subsequent to January 1 and prior to May 15 of any one year, except corporations incorporated and organized under section 187a and continuing domestic and foreign corporations resulting from mergers or consolidations shall file a report showing the condition of its business on the date of its incorporation or admittance, with a filing fee of \$5.00 and a privilege fee of \$10.00. The report of a continuing corporation resulting from a merger or consolidation shall contain a complete and detailed statement of its assets and outstanding liabilities as shown on the books of the corporation on the effective date of merger or consolidation if that date is subsequent to the preceding December 31 or the close of its first fiscal year, next preceding.

(n) A statement of the aggregate amount of any loans, advances, overdrafts or withdrawals and repayments thereof made to or by officers, directors or shareholders of the corporation otherwise than in the ordinary and usual course of business of the corporation and on the ordinary and usual terms of payment and security.

(o) The name and address of every subsidiary and affiliated corporation, foreign or domestic, owning stock in such corporation, together with the number of shares owned.

(p) Such other information and facts as the department of treasury may demand and need for the purpose of computing the annual privilege fee provided by law.

HISTORY: Am. 1933, Ex. Ses., p. 13, Act 6, Imd. Eff. Dec. 8;—Am. 1935, p. 320, Act 194, Imd. Eff. June 6;—Am. 1937, p. 870, Act 350, Eff. Oct. 29;—Am. 1939, p. 99, Act 58, Imd. Eff. May 2;—CL 1948, 450.82;—Am. 1952, p. 324, Act 210, Eff. Sep. 18;—Am. 1952, p. 464, Act 270, Imd. Eff. Jun. 12;—Am. 1953, p. 6, Act 6, Imd. Eff. Mar. 12;—Am. 1954, p. 594, Act 216, Imd. Eff. May 18;—Am. 1965, p. 254, Act 161, Imd. Eff. Jul. 15;—Am. 1967, p. 154, Act 124, Imd. Eff. Jun. 27;—Am. 1968, p. 76, Act 40, Eff. Jan. 1, 1969;—Am. 1969, p. 213, Act 119, Imd. Eff. Jul. 29.

This section as originally enacted superseded with additions part of Sec. 5 of Ch. II of Pt. V of Act 84 of 1921, Am. 1927, p. 93, Act 72, Imd. Eff. April 25, being CL 1929, 10127.

CITED IN OTHER SECTIONS: The above section is cited in §§ 450.304 and 450.304b.

450.83 Profit corporations; annual report, signing.

Sec. 83. The reports mentioned in section 82 shall be signed by the president or vice-president and the treasurer or assistant treasurer or the secretary or assistant secretary of the corporation.

HISTORY: Am. 1947, p. 307, Act 209, Eff. Oct. 11;—CL 1948, 450.83;—Am. 1968, p. 77, Act 40, Eff. Jan. 1, 1969.

This section supersedes part of Sec. 5 of Ch. II of Pt. V of Act 84 of 1921;—Am. 1927, p. 93, Act 72, Imd. Eff. April 25, being CL 1929, 10127.

450.83a Nonprofit corporations; annual report, signing.

Sec. 83a. The reports mentioned in section 81 shall be signed by 2 officers of the corporation. No officer shall sign a report in more than 1 capacity.

HISTORY: Add. 1947, p. 307, Act 209, Eff. Oct. 11;—CL 1948, 450.83a;—Am. 1968, p. 77, Act 40, Eff. Jan. 1, 1969.

450.84 Annual reports; examination, filing.

Sec. 84. The department of treasury shall carefully examine all reports filed in accordance with sections 81 and 82, and, if upon such examination they shall be found to comply with all the requirements of this act, it shall file the report in its office, and shall forward a true copy by mail or express to the county clerk of the county where the corporation has its registered office in this state. The county clerk, upon receipt of the report, shall cause it to be filed in his office immediately.

HISTORY: CL 1948, 450.84;—Am. 1968, p. 77, Act 40, Eff. Jan. 1, 1969.

This section supersedes part of Sec. 6 of Ch. II of Pt. V of Act 84 of 1921, being CL 1929, 10128.

450.85 Corporation records of county clerk; filing, manner; public inspection.

Sec. 85. Records of county clerk; inspection of certain records. The county clerks shall keep their corporation records and files in such manner as to show readily the proper classification to which each corporation belongs, alphabetically arranged as to

names and other indexing. The records and files of the secretary of state, county clerk and/or register of deeds relating to corporations shall be open to reasonable inspection by the public.

HISTORY: CL 1948, 450.85. This section supersedes part of Sec. 4 of Ch. II of Pt. V of Act 84 of 1921, being CL 1929, 10126.
FILING OF ARTICLES: See Compilers' § 450.5.

450.86 County clerk and register of deeds; duties.

Sec. 86. Duty of county clerk and register of deeds. The secretary of state may call upon the several county clerks and/or registers of deeds for any information respecting the corporations whose papers are on file with them, and such officers shall furnish such information as may be so requested.

HISTORY: CL 1948, 450.86. This section supersedes part of Sec. 3 of Ch. II of Pt. V of Act 84 of 1921, being CL 1929, 10125.

450.87 Default in filing reports or payment of fees; powers affected; officers, liability.

Sec. 87. Failure to file report; suspension of powers, liability of director or trustee. (1) If any corporation neglects or refuses to make and file the reports and/or pay any fees required by this act within the time herein specified, and shall continue in default for 10 days thereafter, unless the secretary of state shall for good cause shown extend the time for the filing of such report or the payment of such fee, as the case may be, as provided in section 91 of this act, and (2) if such corporation shall continue in default for 10 days after the expiration of such extension, its corporate powers shall be suspended thereafter, until it shall file such report, and it shall not maintain any action or suit in any court of this state upon any contract entered into during the time of such default; but nothing herein contained shall prevent the enforcement of such contract against the corporation by the other party thereto, and during the period of such suspension such corporation may exercise the power of disposing of and conveying its property and may settle and close its business. Any officer or officers of such corporation so in default who has neglected or refused to join in making of such report and/or pay such fee shall be liable for all debts of such corporation contracted during the period of such neglect or refusal.

HISTORY: Am. 1933, p. 131, Act 96, Imd. Eff. May 31;—CL 1948, 450.87. This section as originally enacted superseded part of Sec. 6 of Ch. II of Pt. V of Act 84 of 1921, being CL 1929, 10128.

EXTENSION OF TIME: See Compilers' §§ 450.91 and 450.431.

450.88 Reports; failure to file; penalty.

Sec. 88. If any corporation required to file the report or pay the fees as provided by this act shall fail or neglect to file the report or pay the fees within the period required by law, the corporation, in addition to its liability for the privilege fee and interest at the rate of $\frac{1}{2}$ of 1% per month on amounts paid after the statutory due date of the report, in addition to the penalties provided by sections 87, 91 and 92 may be subject to a penalty of \$100.00, and an additional penalty of \$5.00 for each day's continuance of such failure or neglect.

HISTORY: CL 1948, 450.88;—Am. 1953, p. 7, Act 6, Imd. Eff. Mar. 12;—Am. 1970, p. 151, Act 63, Imd. Eff. Jul. 10.

This section supersedes part of Sec. 6-a of Ch. II of Pt. V of Act 84 of 1921, Add. 1927, p. 93, Act 72, Imd. Eff. April 25, being CL 1929, 10129.

450.89 False statements as to filing reports or payment of fees; penalties.

Sec. 89. False statements; penalties. In case any corporation, which is required to file the report and/or pay the fees as provided in this act, shall wilfully make any false statement in such report, such corporation shall be subject to an additional penalty in the sum of 50 per cent of the amount of franchise or privilege fee required to be paid. Such penalty shall in no case be less than 50 dollars nor more than 10,000 dollars.

HISTORY: CL 1948, 450.89. This section supersedes part of Sec. 6-a of Ch. II of Pt. V of Act 84 of 1921, Add. 1927, p. 93, Act 72, Imd. Eff. April 25, being CL 1929, 10129.

450.90 Default in filing reports or payment of fees; penalties, collection; delinquent filing, notice.

Sec. 90. The state treasurer shall report promptly to the attorney general every case of failure or neglect under sections 88 and 89, and the penalty therefor shall be collected in an action to be instituted by the attorney general of this state as prescribed by law. Whenever any corporation has neglected or refused to make and file its report within the required time, or authorized extensions thereof, the state treasurer shall send notice of that fact not later than 90 days after the report is due, by mail to the corporation directed to its registered office. The certificate of the state treasurer or his deputy of the mailing of the notice, is prima facie evidence in all courts and places of that fact, and that the notices were duly received by the corporation. All actions based on the neglect or refusal of the officers of the corporation to make and file the reports required by this act shall be commenced within 2 years after the neglect or refusal has occurred and not afterwards.

HISTORY: CL 1948, 450.90;—Am. 1970, p. 150, Act 62, Imd. Eff. Jul. 10.

PENALTY: Suit for, see (Jud. Act) Compilers' § 600.4805 et seq.

450.91 Default in filing reports or payment of fees; profit corporation charter, void.

Sec. 91. Failure to file report and/or pay fee; charter void; profit corporation; extension of time. If any profit corporation which has heretofore been, is now or may hereafter be required to file its annual report with and pay a privilege fee to the secretary of state, shall for 2 consecutive years neglect or refuse to file such report and/or to pay such fee, the charter of such corporation shall be absolutely void, without any judicial proceedings whatsoever, and such corporation shall be wound up in any manner provided by this act unless the secretary of state shall for good cause shown extend the time for the filing of such report or the payment of such fee as the case may be. In case of extension of time as provided in this section the secretary of state shall file in his office a certificate showing the length of time granted by such extension: Provided, That in no case shall the total extension of time granted be more than 1 year: And provided further, That such extension of time shall be granted prior to the expiration of the time fixed in section 82 of this act. The provisions of this act are hereby declared to be self-executing.

HISTORY: Am. 1933, p. 132, Act 96, Imd. Eff. May 31;—CL 1948, 450.91. This section as originally enacted superseded part of Sec. 7 of Ch. II of Pt. V of Act 84 of 1921, Add. 1923, p. 272, Act 172, Eff. Aug. 30; Am. 1929, p. 665, Act 267, Eff. Aug. 28, being CL 1929, 10130.

EXTENSION OF TIME: See Acts 10 and 11, 1933, Ex. Ses.; Act 67, 1935; Act 53, 1937; Act 1, 1939, as amended by Act 40, 1941, and Act 11, 1943.

CITED IN OTHER SECTIONS: The above section is cited in § 450.431.

450.91a Retroactive operation of act.

Sec. 91a. Any corporation existing at the time Act 327 of the Public Acts of 1931 became effective and by operation of said act whose charter has become void is hereby granted the same power it would have had if said sections 75, 87 and 91 in said Act No. 327 had always been as hereby amended.

HISTORY: Add. 1933, p. 132, Act 96, Imd. Eff. May 31;—CL 1948, 450.91a.

NOTE: Act 327, 1931, is this act and became effective September 18, 1931.

450.92 Default in filing reports or payment of fees; nonprofit corporation, extension of time.

Sec. 92. Same; nonprofit corporation; extension of time. If any nonprofit corporation, which has heretofore been, is now or may hereafter be required to file its annual report with and pay the filing fee to the Michigan corporation and securities commission, shall for 1 year neglect or refuse to file such report and/or pay such fee, the charter of such corporation shall be absolutely void, without any judicial proceeding whatsoever, unless the Michigan corporation and securities commission shall for good cause shown extend the time for the filing of such report or the payment of such fee or tax as

the case may be. In case of extension of time as provided in this section the Michigan corporation and securities commission shall file in its office a certificate showing the length of time granted by such extension: Provided, That in no case shall the total extension of time granted be more than 1 year. The provisions of this section are hereby declared to be self-executing.

HISTORY: Am. 1943, p. 222, Act 180, Imd. Eff. April 17;—CL 1948, 450.92. This section as originally enacted superseded with additions Sec. 7-a of Ch. II of Pt. V of Act 84 of 1921, Add. 1929, p. 685, Act 267, Eff. Aug. 28, being CL 1929, 10131.

EXTENSION OF TIME: See Compilers' § 450.401.

WAIVER OF FORFEITURE: Certain non-profit corporations and cemetery associations, see Act 22 of 1932, 1st Ex. Ses.

450.93 Foreign corporations; certificate of authority, procedure; sworn statement, franchise fee determination.

Sec. 93. It shall be unlawful for any foreign corporation to carry on its business in this state, until it shall have procured from the Michigan corporation and securities commission a certificate of authority for that purpose. To procure such certificate of authority every such foreign corporation shall comply with the following provisions: It shall file in the office of the Michigan corporation and securities commission a copy of its charter or articles certified by the proper officer of the state where such corporation shall have been incorporated, and file evidence of appointment of an agent who may be a natural person or a corporation in this state to accept service of process, and notices from the state of Michigan or any agency thereof, on behalf of such corporation, and shall pay to the Michigan corporation and securities commission the filing and franchise fees prescribed by law. Such corporation, by its president, secretary, treasurer and assistant secretary, or any 2 of them, shall make and file with the Michigan corporation and securities commission a statement duly sworn to by at least 2 of such officers, in such form as the Michigan corporation and securities commission may prescribe, containing the following facts:

- (1) The location of its principal office and its principal place or places of business, and the names and addresses of its principal officers;
- (2) The location of its principal office and the principal place of business in this state, and the names and addresses of the officers or agent of the company in charge of its business in this state;
- (3) The total value of the property owned and used by such corporation in its business, giving its location and general character and stating separately the value of its tangible property, of its cash and credits, its franchises, patents, trade marks, formulas and good will;
- (4) The value of the property owned and used in this state and where situated;
- (5) The total amount of business transacted during the preceding year and the amount of business, if any, transacted in this state;
- (6) A certificate certified by the secretary of state or other proper officer of the state where such corporation shall have been incorporated, stating that such corporation has complied with all the requirements of the laws of that state and is in good standing;
- (7) Such other facts bearing on the matter as the Michigan corporation and securities commission may require, including a statement of the particular purpose, or the particular kind of business for which such corporation desires admission to this state. From the papers so filed and the facts so reported and any other facts coming to its knowledge bearing upon the question, the Michigan corporation and securities commission shall compute and determine the amount of the franchise fee to be paid by such corporation before its admission to this state, as prescribed by law. Any such corporation shall have the right, on application, to be heard by the Michigan corporation and securities commission touching the matter of the determination of such franchise fee. Any such corporation aggrieved by the decision of the Michigan corporation and

securities commission, may, within 10 days, appeal to a board of appeal, consisting of the auditor general, state treasurer and attorney general, whose decision in the matter shall be final.

HISTORY: CL 1948, 450.93;—Am. 1956, p. 186, Act 97, Eff. Aug. 11;—Am. 1962, p. 189, Act 169, Eff. Mar. 28, 1963.

This section supersedes Sec. 1 of Ch. I of Pt. V of Act 84 of 1921, being CL 1929, 10118.

FRANCHISE FEES: See Compilers' §§ 450.302 and 450.303.

450.93a Foreign corporation code; violation, penalty.

Sec. 93a. Any corporation which violates any of the provisions of either section 93 or 94 of this act and every officer, trustee, director, agent or employee of such corporation who directly or indirectly engages in any of the acts prohibited in sections 93 or 94 or assists such corporation or any officer, trustee, director, agent or employee thereof in doing the prohibited acts, is guilty of a misdemeanor, and shall be fined not more than \$1,000.00, or imprisoned not more than 6 months, or both.

HISTORY: Add. 1961, p. 151, Act 122, Eff. Sep. 8.

450.94 Foreign corporations; certificate of authority; issuance, revocation, notice; internal affairs; withdrawal; amendment of articles.

Sec. 94. When such corporation has fully complied with the provisions of this act, the Michigan corporation and securities commission may issue to such corporation a certificate of authority to carry on such business in this state for 1 year, and from year to year thereafter during the period of its corporate existence so long as such corporation continues to pay its privilege fee and to otherwise comply with the laws of this state: Provided, That no such foreign corporation shall be permitted to transact business in this state, unless it be incorporated in whole or in part for the purpose or object for which a corporation may be formed under the laws of this state, and then only for such purpose or object. The Michigan corporation and securities commission shall in the certificate which it issues state the act containing such purposes, and such corporation shall have all the powers, rights, and privileges and be subject to all the restrictions, requirements and duties granted to or imposed upon corporations organized under such act or section; and the officers and directors of every such corporation shall be subject to all such requirements and duties as are imposed upon officers and directors of domestic corporations organized under such act, and shall be subject to the same penalties and liabilities for failure to perform any duties imposed by such act as are the officers and directors of domestic corporations organized thereunder: Provided, That the carrying on in this state by such corporation of business for which it has not been so admitted, or failure to comply in any way with the requirements of the laws of this state shall be sufficient cause for revoking the certificate of authority to do business in this state, and the Michigan corporation and securities commission may revoke such certificate and shall promptly notify such corporation of such revocation and the reasons therefor by notice sent by mail to the agent appointed to accept service of process and notices, at the last address of such agent filed with the Michigan corporation and securities commission and such mailing shall constitute sufficient notice under the statute. All foreign corporations, including also common carriers, heretofore or hereafter admitted to this state shall be deemed to be admitted under and be subject to the provisions of this act: Provided, That nothing in this act contained shall be construed as exempting any foreign corporation from complying with any law bringing it under the jurisdiction of the Michigan public service commission or other public body or officer of this state for any purpose. Nothing in this act shall be construed to authorize the regulation of the organization or internal affairs of any foreign corporation heretofore or hereafter admitted to this state. In the event of the withdrawal from the state of a foreign corporation a notice shall be filed with the Michigan corporation and securities commission, signed by a majority of its last board of directors within 60 days after the date of such withdrawal certifying that the said corpora-

tion has withdrawn from this state and asking that it be relieved from filing further reports or paying any further privilege fees, and upon the filing of such notice and the payment of the fee of \$5.00 in connection therewith, the said corporation shall be deemed to have withdrawn from this state: Provided, That the Michigan corporation and securities commission shall not accept for filing any notice of withdrawal from any such corporation until the privilege fees required by Act No. 85 of the Public Acts of 1921, as amended, being sections 450.301 to 450.310 of the Compiled Laws of 1948, have been fully paid. Every foreign corporation admitted to do business in this state which shall amend its articles shall file with the Michigan corporation and securities commission a copy of such amendment, certified by the proper officer of the state where such corporation shall have been incorporated, within 60 days after the time such amendment becomes effective, and failure to file such certified copy shall subject such corporation to the penalties provided in section 95 of this act.

Records of foreign corporation; destruction by commission.

The Michigan corporation and securities commission may in its discretion after 15 years from the withdrawal from this state of a foreign corporation or from the revocation of the certificate of authority to do business in this state issued to a foreign corporation destroy the records, papers filed and other documents kept in its office as a part of the authority of such foreign corporation to do business in this state.

HISTORY: Am. 1943, p. 222, Act 160, Imd. Eff. April 17;—CL 1948, 450.94;—Am. 1951, p. 353, Act 239, Eff. Sep. 28;—Am. 1956, p. 187, Act 97, Eff. Aug. 11;—Am. 1961, p. 17, Act 15, Eff. Sep. 8.

This section as originally enacted superseded with additions Sec. 2 of Ch. I of Pt. V of Act 84 of 1921, Am. 1929, p. 664, Act 267, Eff. Aug. 28, being CL 1929, 10119.

450.95 Foreign corporations; increasing capital stock, additional statements, filing, contents; agent, service of process.

Sec. 95. Every foreign corporation which has paid a franchise fee and been admitted to do business in this state, which shall thereafter increase its authorized capital stock, shall within 60 days after such increase file an additional statement in respect thereto with the Michigan corporation and securities commission, giving such information as may be required by such commission, and pay such additional franchise fee on account thereof as may be prescribed by law. Whenever any such corporation which has heretofore or hereafter been admitted to do business in this state, shall increase the proportion of its authorized capital stock, represented by property owned and/or used and business transacted in this state, it shall file a supplemental statement, under oath of at least 2 of its officers, on or before May first of the following year, giving a detailed account of the property of such corporation, both tangible and intangible, owned and/or used, and the amount of business transacted, both within and without Michigan, as shown by the books of such corporation on December thirty-first or at the close of its fiscal year next preceding May first, and such other information relative thereto as required by such commission, and shall pay such additional franchise fee on account thereof as may be prescribed by law. For good cause shown, an extension of time in which to file such statement may be granted by such commission: Provided, That no extension of time shall be granted for more than 1 year. Any such corporation shall at any time, when required by such commission, file a supplemental statement under oath of at least 2 of its officers, giving the information required and paying such additional franchise fee as may be prescribed by law. Every such corporation which shall neglect or fail to comply with such requirements, shall be subject to a penalty of not less than \$100.00 nor more than \$1,000.00 for every month that it continues to transact business in this state, without complying with the requirements of this act, to be recovered by action in the name of the people of this state in any court of competent jurisdiction. No foreign corporation shall be capable of making a valid contract in this state until it shall have fully complied with the requirements of the laws of this

state with respect thereto, and at the time holds an unrevoked certificate to that effect from the Michigan corporation and securities commission. No such corporation having appointed an agent to accept service of process shall have power to revoke or annul such appointment until it shall have filed notice of appointment of some other person in this state as such agent.

HISTORY: Am. 1945, p. 323, Act 229, Imd. Eff. May 24;—CL 1948, 450.95. This section as originally enacted superseded Sec. 3 of Ch. I of Pt. V of Act 84 of 1921, being CL 1929, 10120.

PENALTY: Suit for, see (Jud. Act) Compilers' § 600.4805 et seq.

450.96 Acting as agent for unauthorized foreign corporation; penalty.

Sec. 96. Same; acting as agent for unauthorized corporation, penalty. It shall be unlawful for any person to act as agent for any foreign corporation not authorized to do business in this state or in any manner to aid in the transaction of the business of such unauthorized foreign corporation in this state. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than 50 dollars nor more than 500 dollars for each offense, and in default of payment of such fine, shall be imprisoned in the county jail for a period of not less than 30 days nor more than 1 year, or he may be punished by both such fine and imprisonment at the discretion of the court.

HISTORY: CL 1948, 450.96. This section re-enacts Sec. 4 of Ch. I of Pt. V of Act 84 of 1921, being CL 1929, 10121.

450.97 Foreign corporations; applicability of act; loans, federal government guarantee.

Sec. 97. The provisions of this act shall not be applicable to such foreign corporations as are permitted to do business in this state by license issued by the commissioner of insurance, according to the provisions of law. The term "corporations" as used in sections 81 to 97 shall be construed to include all associations, partnership associations limited, joint stock companies and common law trust or trusts created by statute, having any of the powers or privileges of corporations, not possessed by individuals or partnerships, under whatever term or designation they may be defined and known in the state where organized. Foreign corporations organized not for pecuniary profit may be admitted to carry on their lawful business within this state upon the same terms and under the same restrictions as apply to similar nonprofit corporations organized under the laws of this state, and upon paying the same filing, privilege and other fees as are prescribed by law for similar domestic corporations.

Any foreign corporation may acquire or, through any other person, firm or corporation legally entitled to engage in business in this state, may make loans, or participations or interests therein, insured or guaranteed in whole or in part by the federal housing administration or the veterans' administration or any successor or similar agency of the federal government, which are secured in whole or in part by mortgages of real property located in this state, and any foreign corporation may purchase any loan, or participation or interest therein, secured in whole or in part by a mortgage of real property located in this state, without qualifying or maintaining authority to carry on, do or transact business within this state under this act or any other law of this state relating to such qualification or authority and without paying fees with respect thereto. Neither the failure, heretofore or hereafter, of any such foreign corporation to qualify or maintain authority to carry on, do or transact business within this state under this act or any such other law of this state nor its failure, heretofore or hereafter, to pay fees with respect thereto shall in any manner affect or impair its ownership of such loans, or participations or interests therein, whether heretofore or hereafter made or acquired, or its right to collect and service the same through any other person, firm or corporation legally entitled to engage in business in this state, or its right to enforce the same or to acquire, hold, protect, convey, lease and otherwise contract and deal with respect to the property mortgaged as security therefor. The provisions hereof

shall not affect the liability of any such foreign corporation for any such fees which have accrued in the year 1952 or any year prior thereto.

HISTORY: CL 1948, 450.97;—Am. 1953, p. 233, Act 180, Imd. Eff. Jun. 8;—Am. 1967, p. 71, Act 53, Eff. Nov. 2.

This section supersedes Sec. 5 of Ch. I of Pt. V of Act 84 of 1921, being CL 1929, 10122.

NOTE: Partnerships not covered by act, as inclusion held unconstitutional in *Attorney General v. Hill-Davis Co.*, 261 Mich. 89, 245 N.W. 579.

450.98 Cooperative corporations; applicability of act.

Sec. 98. Cooperative corporations; applicability of act. Corporations organized to conduct any lawful business which limits the dividends payable upon stock investment in the case of corporations with capital stock and membership investment in the case of membership corporations without capital stock to not in excess of 7 per cent per annum and/or which limits the voting rights of stockholders and/or members to 1 vote regardless of the number of shares of stock and/or membership held, and in any case do not conduct more than 50 per cent of their business or services with nonstockholders and/or nonmembers, shall be governed by the provisions of this act, except as specifically otherwise provided, as to the mode of corporate management, manner of distribution of earnings and profits, their powers and optional principles of doing business.

Classification; profit; nonprofit.

Classification of cooperative corporations. Corporations organized under and operated in accordance with the provisions of sections 98 to 110, inclusive, of this act, which pay limited dividends upon the stock and/or membership investment or which do not make distribution of earnings to nonstockholders or nonmembers upon the same basis as to stockholders and/or members shall, for purposes of making reports and payment of privilege fees or other taxes to the state, be classified as profit corporations. Corporations which do not pay dividends or interest upon stock and/or membership investment and which distribute all earnings to stockholders and/or members and other persons doing business with the corporation or provide for the allocation of such earnings to stockholders and/or members and other persons doing business with the corporation for future distribution shall, for the purposes of making reports and payments of privilege fees or other taxes to the state of Michigan, be classified as nonprofit corporations.

HISTORY: Am. 1941, p. 566, Act 327, Eff. Jan. 10, 1942;—CL 1948, 450.98. This section as originally enacted superseded part of Sec. 1 of Ch. IV of Pt. II of Act 84 of 1921, being CL 1929, 10027.

450.99 Cooperative corporations; cooperative plan; definition; earning, basis of distribution.

Sec. 99. Same; cooperative plan. Corporations may engage in any lawful business within this state upon any cooperative plan adopted by the incorporators, or by the shareholders at any annual or special meeting. For the purpose of this act, the term "cooperative plan" shall be deemed to mean a mode of operation whereby the earnings of the corporation are distributed on the basis of, or in proportion to, the value of property bought from or sold to shareholders and/or members or other persons, or labor performed for, or services rendered to, or by the corporation: Provided, That the foregoing definition shall not be construed as prohibiting any such corporation from paying limited dividends to stockholders and/or members upon stock and/or membership investment, or from reserving a certain proportion of earnings for future operations or for future distribution. Earnings so reserved shall be allocated on the books of the corporation or a means provided for such allocation to the stockholders and/or members or other persons entitled to such earnings, before general distribution of earnings shall have been authorized and made. Corporations organized under a cooperative plan and governed by sections 98 to 109, inclusive, of this act are hereinafter in

this act called cooperative corporations and they only shall use the term "cooperative" in their name.

HISTORY: Am. 1941, p. 567, Act 327, Eff. Jan. 10, 1942;—CL 1948, 450.99. This section as originally enacted superseded Sec. 2 of Ch. IV of Pt. II of Act 84 of 1921, being CL 1929, 10028.

450.100 Cooperative corporations; shares of stock, contents.

Sec. 100. Same; contents of certificates of stock. There shall be printed upon each share of stock issued by co-operative corporations a condensed statement of every article or by-law which in anywise limits the shareholders' right to assign or transfer such shares or to vote the total number of shares held at meetings of the corporation, or which forbids voting by proxy.

The provisions of the uniform stock transfer law of this state shall not be held to apply to the shares of stock of such co-operative corporations in any manner or to any extent inconsistent with the provisions of sections 98 to 116, both inclusive, of this act.

HISTORY: CL 1948, 450.100. This section supersedes Sec. 3 of Ch. IV of Pt. II of Act 84 of 1921, Am. 1929, p. 661, Act 267, Eff. Aug. 26, being CL 1929, 10029.

UNIFORM STOCK TRANSFER ACT: See Compilers' § 440.8309 et seq.

450.101 Cooperative corporations; shareholders' powers; directors, election, term, number; voting.

Sec. 101. The shareholders of any cooperative corporation shall have power: to adopt bylaws for the government and regulation of its business management, and to amend such bylaws; to determine the manner of distributing the earnings of the corporation upon a cooperative plan; to limit and define the powers and duties and the number of directors and officers; to delegate to the directors any particular power or authority which the shareholders themselves possess, excepting the right to elect or dismiss directors and to amend the articles; to fix the time for holding the elections of its directors, which, shall be annual unless a longer term is prescribed in the articles or bylaws: Provided, That in the event directors are elected for a term of more than 1 year, the bylaws shall prescribe the length of term and the number of directors to be elected each year, to determine whether or not voting by proxy shall be allowed, and if so allowed, when and how, to provide the manner in which directors and officers may be removed and their successors elected at any time by vote of the shareholders; to determine whether or not shareholders shall be limited to 1 vote each, regardless of the number of shares held; to determine the number of shareholders attending any meeting, or the number of shares represented at any meeting of shareholders which shall constitute a quorum, which may be less than a majority; to determine the manner in which shareholders may vote by mail, if the articles or bylaws provide for such voting; and to provide a limitation upon the amount of capital stock which may be owned by any 1 shareholder therein; all of which shall be included in the bylaws or in the articles.

HISTORY: Am. 1941, p. 567, Act 327, Eff. Jan. 10, 1942;—CL 1948, 450.101;—Am. 1949, p. 283, Act 232, Eff. Sep. 23.

This section as originally enacted superseded Sec. 4 of Ch. IV of Pt. II of Act 84 of 1921, being CL 1929, 10030.

450.102 Cooperative corporations; membership, regulations.

Sec. 102. Same; membership. The shareholders of every co-operative corporation may also provide in their articles or by-laws, the necessary qualifications of shareholders or members, together with provisions limiting, prescribing or regulating the transfer of such membership, and the terms and conditions under which, if at all, membership or certificates of stock may be transferred. No sale, transfer or assignment of membership rights or of any stock in any co-operative corporation shall be valid unless made in accordance with its articles or by-laws; nor shall any purchase and sale of any such shareholder's stock or privileges in such corporation made under execution, or in the course of bankruptcy proceedings, or by any legal process or by operation of law,

give any person any shareholder's or membership right, title or interest in and to such corporation, unless in accordance with its articles or by-laws.

HISTORY: CL 1948, 450.102. This section supersedes Sec. 5 of Ch. IV of Pt. II of Act 84 of 1921, being CL 1929, 10031.

450.103 Cooperative corporations; amendments to articles.

Sec. 103. Same; amendment to articles. One-tenth of the entire number of shareholders of any cooperative corporation may propose any desired amendment to the articles or to the bylaws of such corporation, and any amendment so proposed shall be voted upon at the next annual meeting by the shareholders.

HISTORY: Am. 1941, p. 568, Act 327, Eff. Jan. 10, 1942;—CL 1948, 450.103. This section as originally enacted supersedes Sec. 6 of Ch. IV of Pt. II of Act 84 of 1921, being CL 1929, 10032.

450.104 Cooperative corporations; reserve funds, investment; shareholders, vote.

Sec. 104. Same; investment of reserve fund. At any regular meeting, or any duly called special meeting, at which the quorum fixed by the bylaws shall be present, the shareholders of any cooperative corporation may by a majority vote of such shareholders present in person, subscribe for shares and invest a portion of the reserve fund of such corporation, not to exceed at any time 20 per cent in the aggregate of its capital, in the capital stock or membership capital of any other cooperative corporation or corporations with which it desires to cooperate or affiliate: Provided, however, That this provision shall not be construed to prevent such corporation from accepting patronage dividends in the form of stock or otherwise from such other corporation in any amount.

HISTORY: Am. 1941, p. 568, Act 327, Eff. Jan. 10, 1942;—CL 1948, 450.104. This section as originally enacted supersedes Sec. 7 of Ch. IV of Pt. II of Act 84 of 1921, being CL 1929, 10033.

450.105 Cooperative corporations; purchase of business; payment, methods.

Sec. 105. Same; purchase of business of another corporation. Whenever any cooperative corporation shall purchase the business of another corporation, firm or person or persons, it may pay for the same in whole or in part by issuing to the selling corporation, firm, person or persons, shares of its capital stock to an amount which, at par value, would equal the fair market value of the business so purchased, and in such case the transfer to the purchasing corporation of such business at such valuation shall be equivalent to payment in cash for the shares of stock so issued.

HISTORY: Am. 1941, p. 568, Act 327, Eff. Jan. 10, 1942;—CL 1948, 450.105. This section as originally enacted supersedes Sec. 8 of Ch. IV of Pt. II of Act 84 of 1921, being CL 1929, 10034.

450.106 Cooperative corporations; distribution of earnings; reserve; cooperative dividend.

Sec. 106. Same; distribution of earnings. The shareholders of every cooperative corporation shall provide in the bylaws what per cent upon the paid-up capital stock of such corporation, not exceeding 7 per cent per annum, shall be first paid and distributed to the holders of such paid-up capital stock as dividends before dividing the surplus earnings or profits, as herein provided, and whether or not such dividends shall be cumulative. Said bylaws shall further provide what amount or percentage of the annual profit and earnings of the business, over and above such dividends to shareholders, shall be retained and kept in the treasury of such corporation as a reserve, and in what manner, method and proportion the surplus annual earnings and profits of the business of such corporation, in excess of such dividends and reserves, shall be divided up and distributed as a cooperative dividend, under the cooperative plan or principle adopted by such corporation among shareholders or members doing business with the corporation; and may also provide for cooperative dividends to nonstockholders or nonmembers: Provided, That for the purposes of determining the amount owing by such cooperative corporation as annual privilege *for, the balance of such reserve in

excess of 30 per cent of the paid-up capital of such corporation shall be considered as surplus.

HISTORY: Am. 1941, p. 568, Act 327, Eff. Jan. 10, 1942;—CL 1948, 450.106. This section as originally enacted superseded Sec. 9 of Ch. IV of Pt. II of Act 84 of 1921, being CL 1929, 10035.

*COMPILERS' NOTE: While this word "for" obviously should be "fee," it appears in both the original bill and enrolled act on file in the office of the secretary of state as "for" in Act 327, 1941, which added this proviso.

450.107 Cooperative corporations; surplus earnings, distribution; failure, penalty.

Sec. 107. Same; surplus earnings. The surplus earnings and profits of every co-operative corporation shall be distributed to those entitled thereto at such times as the by-laws may provide, which shall be as often as once in each year. If any such corporation shall fail for 5 consecutive years to pay the dividend upon its paid-up capital stock in accordance with the provisions of its by-laws, a majority of the shareholders may petition the circuit court in chancery, in the county in which the registered office of such corporation is located, for the dissolution of such corporation. If, upon the hearing the court finds the allegations of the petition are substantially true, such corporation may be dissolved, its business wound up and its property distributed as the court may order and decree.

HISTORY: CL 1948, 450.107. This section supersedes Sec. 10 of Ch. IV of Pt. II of Act 84 of 1921, being CL 1929, 10036.

450.108 Cooperative corporations; dealing in commodities; contracts, agreements.

Sec. 108. Same; contracts and agreements. Every cooperative corporation engaged in buying, handling, selling or dealing in farm produce or other agricultural products, canned goods, or byproducts of any such goods, wares, merchandise or commodities, may enter into any and all necessary contracts with stockholders, members or other persons respecting the terms of such transaction, and may deal in such commodities upon commission or brokerage basis, by agency agreements, or upon a warehouse storage plan.

HISTORY: Am. 1941, p. 568, Act 327, Eff. Jan. 10, 1942;—CL 1948, 450.108. This section as originally enacted re-enacted, except changed "such" to "co-operative", Sec. 11 of Ch. IV of Pt. II of Act 84 of 1921, being CL 1929, 10037.

450.109 Cooperative corporations; breach of contract; encouragement prohibited; penalty.

Sec. 109. Same; persons liable for damage for encouraging breach of contracts and agreements. Any person, firm, or corporation who solicits or persuades or permits or aids or abets, any stockholder and/or member or other person to breach a contract with a cooperative corporation, by accepting or receiving from such stockholder and/or member or other person, products for sale, marketing, manufacturing, or processing for sale, contrary to the terms of any marketing agreement of which said person or any member of said firm or any officer or manager of said corporation has knowledge or notice, shall be liable to the cooperative corporation aggrieved in a civil suit in the penal sum of \$500.00 for each such contract; and such cooperative corporation shall be entitled to an injunction against such person, firm, or corporation to prevent further breaches and a multiplicity of actions thereon. In addition, said person, firm, or corporation shall pay to the cooperative a reasonable attorney's fee and all costs involved in any litigation or proceedings at law or chancery.

HISTORY: Am. 1941, p. 569, Act 327, Eff. Jan. 1942;—CL 1948, 450.109. This section as originally enacted superseded Sec. 12 of Ch. IV of Pt. II of Act 84 of 1921, being CL 1929, 10038.

Secs. 110-116.

HISTORY: Rep. 1941, p. 569, Act 327, Eff. Jan. 10, 1942. These sections as originally enacted superseded sections 13-19 of Ch. IV, Pt. II of Act 84 of 1921, being CL 1929, 10039-10045.

These sections covered co-operative corporations.

450.117 Non-profit corporations; incorporation; articles, signing, acknowledgement; stock-share or non-stock-share basis.

Sec. 117. Any number of persons, not less than 3, may incorporate for the purpose of carrying out any lawful purpose or object not involving pecuniary gain or profit for its members or associates. Such corporations shall be known as "non-profit corporations". Such corporations shall be governed by the provisions of this act relating to corporations generally except as specifically otherwise provided. Non-profit corporations without capital stock, having more than 3 incorporators, may by suitable resolution adopted by the incorporating members at the organization meeting, designate any 3 among themselves to sign and acknowledge the articles of incorporation for themselves and for the remainder of such incorporators, in which case a copy of the resolution duly certified by the person acting as secretary at such meeting, shall be presented and made a part of the articles of incorporation. Any non-profit corporation may be organized upon either a stock-share basis or upon a nonstock basis and the membership therein may be limited either as to number or qualifications as fixed in the articles or bylaws. If any non-profit corporation shall be formed upon a nonstock basis the articles shall, in lieu of the statement of capital stock specified in section 4, contain a statement of (a) the amount of assets classified as to real and personal property which such corporation possesses, and (b) the terms of any general scheme of financing such corporation.

HISTORY: Am. 1941, p. 569, Act 327, Eff. Jan. 10, 1942;—Am. 1943, p. 342, Act 211, Eff. July 30;—Am. 1947, p. 64, Act 58, Imd. Eff. April 25;—CL 1948, 450.117;—Am. 1967, p. 268, Act 194, Eff. Nov. 2.

This section as originally enacted superseded and merged Sec. 2 of Ch. I of Pt. I of Act 84 of 1921, being CL 1929, 9944; and Sec. 1 of Ch. I of Pt. III of Act 84 of 1921, being CL 1929, 10046; and Sec. 1 of Ch. II of Pt. I of Act 84 of 1921, Am. 1929, p. 646, Act 267, Eff. Aug. 28, being CL 1929, 9953.

CITED IN OTHER SECTIONS: Sections 450.117 to 450.132 are cited in §§ 550.302 and 550.351.

450.118 Non-profit corporations; capital stock, limitation.

Sec. 118. Same; limit of capital stock. No non-profit corporation shall be capitalized for an amount in excess of the sum of money necessary to carry out its purposes, including the purchase or leasing of such property as may be required for its offices or in its lawful business affairs, the payment of salaries and expenses of its officers for a period not exceeding 5 years from the time of incorporation, and the estimated expense of conducting and consummating its purposes aside from annual or other periodical contributions from sources other than the revenue derived from annual membership fees: Provided, That the limitation of capital prescribed herein shall in no case apply to corporations organized to carry out the provisions of any trust deed, or instrument, or of any will or other testamentary disposition of property wherein property of a definite value is committed or disposed of in trust, or wherein such property may be used in connection with property or means derived from sources outside of that so placed, in trust, to carry out the intention of the maker of such instrument.

HISTORY: CL 1948, 450.118. This section supersedes Sec. 6 of Ch. I of Pt. III of Act 84 of 1921, Am. 1929, p. 662, Act 267, Eff. Aug. 28, being CL 1929, 10051.

450.119 Non-profit corporations; stock-share; denomination, dividends, transfer; dissolution.

Sec. 119. If organized upon a stock share plan the shares of nonprofit corporations shall be of such denominations not exceeding \$100.00 as the articles shall provide. No dividends shall be directly paid on any such shares nor shall the shareholders be entitled to any portion of the earnings of such corporation derived through increment of value upon its property or otherwise incidentally made. Unless otherwise provided in the articles of incorporation, upon dissolution of any nonprofit corporation, the shareholders shall be entitled to no more than the original subscription price of the stock after the payment of all debts and the liquidation of all liabilities of such corporation, based upon their several holdings therein as represented by the shares of stock stand-

ing in the name of such shareholders at the time of dissolution. Such shares of stock shall not be transferable by assignment or sale, nor be transferred to legal heirs or devisees, upon the death of the owner thereof, unless the bylaws of such corporation make express provision therefor. Such nonprofit corporations shall have power to exclude from further membership any shareholder who fails to comply with the reasonable and lawful requirements of the laws, rules and regulations duly made by such corporation for the government of its members, and may cancel the stock of any such offending member without liability for an accounting, excepting as may be provided for in the articles or bylaws. The provisions of the uniform stock transfer law of this state shall not be held to apply to the shares of stock of nonprofit corporations in any manner or to any extent inconsistent with the provisions of sections 117 to 132 of this act. Nothing in this section shall be construed to authorize diversion of assets upon the dissolution of a nonprofit corporation holding property for charitable purposes to any member, trustee or officer thereof.

HISTORY: CL 1948, 450.119;—Am. 1961, p. 54, Act 55, Eff. Sep. 8;—Am. 1965, p. 443, Act 265, Imd. Eff. Jul. 21.

This section supersedes with additions Sec. 2 of Ch. I of Pt. III of Act 84 of 1921, being CL 1929, 10047.

450.119a Nonprofit corporation; dissolution; assets, escheat.

Sec. 119a. Upon dissolution or expiration of charter by limitation or annulment by forfeiture, or any other way or manner of avoidance of charter of a nonprofit corporation, where there is no other provision of law for the distribution of assets, the assets remaining after the payment of all debts of the corporation shall escheat to the state.

HISTORY: Add. 1970, p. 362, Act 110, Imd. Eff. Jul. 23.

450.120 Non-profit corporations; membership, by-laws.

Sec. 120. Same; membership. Membership in all non-profit corporations shall be governed by such rules of admission, retention and dismissal, as the articles or by-laws shall prescribe: Provided, That all such rules shall be reasonable, germane to the purposes of the corporation, and equally enforced as to all members.

HISTORY: CL 1948, 450.120. This section supersedes Sec. 3 of Ch. I of Pt. III of Act 84 of 1921, being CL 1929, 10048.

450.121 Non-profit corporations; membership, fees; rules.

Sec. 121. Same; membership fees, etc. All non-profit corporations are hereby empowered to fix the amount of the membership fees or dues which members may be required to pay initially or periodically, as a condition of admission or retention as such members, and to make rules necessary to enforce such requirement, including provisions for cancellation of membership for nonpayment of such dues or obligations and for reinstatement in such membership.

HISTORY: CL 1948, 450.121. This section re-enacts, except changes "such" to "non-profit", Sec. 7 of Ch. I of Pt. III of Act 84 of 1921, being CL 1929, 10052.

450.122 Non-profit corporations; members or shareholders, rights; by-laws, votes.

Sec. 122. Same; privileges of members. Each member or shareholder of a non-profit corporation shall be equally privileged with all other members or shareholders in his voice and vote upon any proposition presented for discussion or decision at any meeting of the members or shareholders, excepting that in non-profit stock corporations formed hereunder each shareholder may, if so provided in the articles or by-laws, be entitled to a number of votes equal to the number of shares of stock held by him and that any non-profit corporation may in its articles or by-laws provide that only certain specified classes of its members or shareholders shall have the right to vote; and otherwise there shall be no preferences as between members or shareholders based upon obligations of the corporation to the members or shareholders therein. If the by-laws of any non-profit corporation shall fail to provide a method for calling a special meeting of its members or shareholders the same may be called by the president, any vice-

president, the secretary, treasurer or by any 2 or more directors thereof by appropriate notice published in the manner provided in section 68 of this act.

HISTORY: Am. 1935, p. 321, Act 194, Imd. Eff. June 6;—CL 1948, 450.122. This section as originally enacted superseded with additions Sec. 8 of Ch. I of Pt. III of Act 84 of 1921, being CL 1929, 10053.

450.123 Non-profit corporations; membership, by-laws; qualification, dismissal.

Sec. 123. Same; dismissal, etc., of members. If the membership in any such corporation be limited to persons who are members in good standing in other incorporated associations, lodges, churches, clubs, or societies, the articles shall in each case define such limitations, and in such case it may be further provided that failure on the part of any such member to keep himself or herself in such good standing in such other corporation shall be sufficient cause for expelling or dismissing such member from the corporation requiring such eligibility, subject to such regulations as may be enacted in the by-laws as to the nature and formalities of evidence that shall be prima facie sufficient to justify such dismissal or expulsion.

HISTORY: CL 1948, 450.123. This section supersedes Sec. 5 of Ch. I of Pt. III of Act 84 of 1921, being CL 1929, 10050.

450.124 Non-profit corporations; board of trustees or directors, terms, vacancies; meetings; place, quorum.

Sec. 124. Same; board of trustees or directors. (1) The property and lawful business of a non-profit corporation shall be held and managed by a board of not less than 3 trustees or directors, each of whom shall hold office for the term for which he was named or elected and/or until his successor is elected and qualified, which board shall possess such powers and authority, in addition to the powers and authority herein specifically prescribed, as may be necessary to the complete execution of the purposes of each such corporation, as limited by the articles, or by-laws duly made.

(2) Each trustee or director named in the articles shall hold office until the first annual meeting of the members or shareholders, and/or until his successor is elected and qualified.

(3) The number, qualifications, classifications, terms of office, manner of election or removal, time and place of meeting, and the powers and duties of the trustees or directors may, subject to the provisions of this act, be prescribed by the articles or by-laws. As to non-profit corporations heretofore formed or existing under this act, except as otherwise prescribed in the articles or by-laws:

(a) A trustee or director shall be elected for a term of 1 year: Provided, That, if a term of more than 1 year shall be so prescribed, at least 1/3 of the members of the board shall be elected each year;

(b) Vacancies in the board of trustees or directors shall be filled by the remaining members of the board, and each person so elected shall be a trustee or director until his successor is elected by the members or shareholders, or as otherwise provided in the by-laws, who may make such election at the next annual meeting of the members or shareholders, or at any special meeting thereof duly called for that purpose and held prior thereto, or as otherwise provided in the by-laws;

(c) The meetings of the board of trustees or directors may be held at such place, whether in this state or elsewhere, as a majority of the board may from time to time determine;

(d) A majority of the board of trustees or directors shall be necessary to constitute a quorum for the transaction of business, and the acts of a majority of the trustees or directors present at a meeting at which a quorum is present shall be the acts of such board: Provided, That, if the trustees or directors shall severally and/or collectively consent in writing to any action to be taken by the corporation, such action shall be as valid a corporate action as though it had been authorized at a meeting of the board:

And provided further, That in any such corporation where the number of trustees or directors shall be more than 7 members, the articles or by-laws may provide that less than a majority, but in no event less than 1/3 of the members, shall constitute a quorum of such board;

(e) The board of trustees or directors may, by resolution passed by a majority of the whole board, designate 2 or more of their number to constitute an executive and/or any other committee, who to the extent provided in such resolution, shall possess and exercise the authority of the board in the management of the business of the corporation between the meetings of the board.

HISTORY: Am. 1939, p. 557, Act 287, Eff. Sept. 29;—CL 1948, 450.124. This section as originally enacted superseded Sec. 4 of Ch. I of Pt. III of Act 84 of 1921, Am. 1929, p. 661, Act. 267, Eff. Aug. 28, being CL 1929, 10049.

450.124a Educational non-profit corporations; board of trustees, number.

Sec. 124a. Notwithstanding the provisions of any law limiting the number of members of the board of trustees of any non-profit educational corporation incorporated under the territorial laws of Michigan territory, as amended, and which has been in continuous operation since its incorporation, the board of trustees may, by resolution adopted by 2/3 of the members thereof, increase the number of members eligible for service thereon by not more than 50%, but may not alter the qualifications for membership thereon.

HISTORY: Add. 1954, p. 306, Act 124, Eff. Aug. 13.

450.125 Non-profit corporations; rights, powers; power corporations, regulations.

Sec. 125. Any non-profit corporation the objects of which require the transaction of business, the receipt and payment of money, the care and custody of property, and other incidental business matters, shall have the right and power to transact such business, and to receive, collect and disburse such moneys, and to acquire, hold, protect and convey such properties as are naturally or properly within the scope of its articles.

Any non-profit power corporation which is authorized to furnish electric service shall have the right and power to construct, maintain and operate its lines along, over, across or under any public places, streets and highways, and across or under any of the waters in this state, with all necessary erections and fixtures therefor, and to exercise the power of eminent domain, in the manner provided by laws of this state for the exercise of such powers by other power corporations constructing or operating electric facilities: Provided, That as a condition to the exercise of any of the powers herein granted, such non-profit corporations shall be subject to the same rules, regulations and requirements issued by the Michigan public service commission as shall be applicable to other corporations engaged in furnishing and distributing electric power and energy.

HISTORY: CL 1948, 450.125;—Am. 1951, p. 167, Act 137, Eff. Sep. 28.

This section re-enacts, except changes "such" to "non-profit", Sec. 9 of Ch. I of Pt. III of Act 84 of 1921, being CL 1929, 10054.

450.126 Non-profit corporations; property, funds, powers; misuse, liability.

Sec. 126. Same; powers in relation to property, liability for misuse. The funds and property of all non-profit corporations shall be acquired, held and disposed of only for their lawful purposes, and the trustees or directors shall be individually liable for the misapplication or misuse of any such money or property caused through the neglect of such trustee or trustees or director or directors to exercise reasonable care and prudence in the administration of the affairs of such corporation or through wilful violation of the laws governing the same.

HISTORY: CL 1948, 450.126. This section supersedes Sec. 11 of Ch. I of Pt. III of Act 84 of 1921, being CL 1929, 10056.

450.127 Non-profit corporations; borrowing power, promissory notes, mortgages; authorization.

Sec. 127. Same; borrowing power, notes and mortgages. Any non-profit corporation may, whenever its general interests require the same, borrow money and issue its promissory note or bond for the repayment thereof with interest, and may in like case mortgage its property as security for its debts or other lawful engagements: Provided, That the by-laws expressly authorize such action to be taken, or that the same is authorized by resolution of the shareholders at any duly called meeting at which a quorum is present. No such promissory note or mortgage shall be valid unless so authorized, but no such note or mortgage shall be deemed to be invalid for failure of the shareholders to include in their authorities the particular sums, rates of interest, or times of maturity of the loan or engagement, which items may be agreed upon and authorized by the directors.

HISTORY: CL 1948, 450.127. This section supersedes Sec. 12 of Ch. I of Pt. III of Act 84 of 1921, being CL 1929, 10057.

450.128 Non-profit corporations; membership; local units, grouping.

Sec. 128. Same; members of non-profit corporations grouped in local units. Any non-profit corporation heretofore incorporated under Act 84, Public Acts 1921, of this state or which shall be incorporated under this act, and which is a non-stock corporation, and which has more than 500 members occupying a territory or district not less than a geographical county in extent, may, by by-law proposed by the board of directors of such corporation, enact that the members of the corporation and those who thereafter become members shall be grouped in local units formed upon the basis of territorial area or such other basis as may be determined in said by-law proposed by the board of directors as hereinafter provided, for the purpose of election of delegates or representatives, to represent said members of such local units at any annual or special meeting of such corporation.

HISTORY: CL 1948, 450.128. This section supersedes Sec. 13 of Ch. I of Pt. III of Act 84 of 1921, Add. 1923, p. 245, Act 154, Eff. Aug. 30, being CL 1929, 10058.

NOTE: Act 84, 1921, above referred to, is Compilers' § 450.301 et seq.

450.129 Non-profit corporations; by-laws, territorial limits.

Sec. 129. Same; by-laws may provide territorial limits. The board of directors of any such corporation shall have the power in said by-law to provide the territorial limits or other basis from or upon which each local unit and membership therein is drawn or formed; to do all things necessary to insure the representation of said local unit or units at meetings of such corporation; and to provide the basis of representation and number of delegates to which said local unit or units are entitled: Provided, That each local unit shall be entitled to at least 1 delegate and that no delegate or delegates representing such local unit shall have a greater number of votes than the total membership of said local unit.

HISTORY: CL 1948, 450.129. This section supersedes Sec. 14 of Ch. I of Pt. III of Act 84 of 1921, Add. 1923, p. 245, Act 154, Eff. Aug. 30, being CL 1929, 10059.

450.130 Non-profit corporations; incorporation.

Sec. 130. Same; incorporation. The local units designated by by-laws of any such corporation may or may not be incorporated under the laws of this state by the members thereof and shall have power to do all things necessary to give effect to the preceding sections and the rules and by-laws adopted hereunder.

HISTORY: CL 1948, 450.130. This section supersedes Sec. 15 of Ch. I of Pt. III of Act 84 of 1921, Add. 1923, p. 245, Act 154, Eff. Aug. 30, being CL 1929, 10060.

450.131 Non-profit corporations; shareholders in another corporation.

Sec. 131. Same; when shareholder in another corporation. When any such corporation shall be a shareholder in any other non-profit corporation, its president and other officers or any of its directors shall be eligible to the office of director of such corpora-

tion the same as if they were individually shareholders therein, and the corporation being such shareholder shall possess and exercise all the rights, powers, privileges and liabilities of individual shareholders.

HISTORY: CL 1948, 450.131. This section supersedes Sec. 16 of Ch. I of Pt. III of Act 84 of 1921, Add. 1923, p. 245, Act 154, Eff. Aug. 30; Am. 1929, p. 662, Act 267, Eff. Aug. 28, being CL 1929, 10061.

450.132 Non-profit corporations; applicability of provisions; death and sickness benefits, payment.

Sec. 132. The provisions of sections 117 to 131 of this act apply to all associations, societies and corporations of the nature of clubs, boards of trade and commerce, associations of persons engaged in the same or allied professions, trades, occupations and industries, when such persons desire to associate for mutual benefit, comfort or instruction not involving direct pecuniary profit; and to societies for the advancement of particular scientific or sociological, political views or opinions, the collection and dissemination of historical or scientific facts, the advancement of literature, cultivation of art, the prevention of cruel and inhuman practices, and to any other such society, except burial associations and funeral benefit societies not otherwise provided for by statute, whether enumerated herein or not, so long as the purpose or purposes thereof are lawful, and not for direct pecuniary profit of the members. Any association or society, other than burial associations and funeral benefit societies not otherwise provided for by statute, heretofore incorporated and now existing, whose purpose is to provide for the relief of distressed members, visitation of the sick, and the payment of a voluntary sick benefit to or for members not exceeding in all the sum of \$150.00 on account of any one member, or the buying and selling of products for its members without direct pecuniary profit to the association or its members may operate as a nonprofit corporation. Notwithstanding any law of this state to the contrary, the ladies Lutheran benevolent federation of Michigan, now incorporated as a nonprofit corporation, may pay death benefits in an amount not exceeding \$500.00 to any one person. Notwithstanding any law of this state to the contrary, the metropolitan club of America, inc., (national spirit) and the ladies auxiliary of the metropolitan clubs of America national spirit, which are incorporated as nonprofit corporations, may pay death benefits in an amount not to exceed \$1,000.00 to any one person. Notwithstanding any law of this state to the contrary, the Warren firemen's benevolent association may pay death and sick benefits in an amount not to exceed \$3,000.00 to any one person. Notwithstanding any law of this state to the contrary, the Lansing firemen's benefit association may pay death and sick benefits in an amount not to exceed \$2,000.00 to any one person.

HISTORY: Am. 1937, p. 610, Act 316, Imd. Eff. Jul. 23;—Am. 1945, p. 323, Act 229, Imd. Eff. May 24;—Am. 1945, p. 577, Act 326, Eff. Sep. 6;—CL 1948, 450.132;—Am. 1952, p. 27, Act 23, Imd. Eff. Mar. 26;—Am. 1962, p. 131, Act 137, Imd. Eff. May 4;—Am. 1968, p. 184, Act 122, Eff. Nov. 15.

This section as originally enacted superseded Sec. 10 of Ch. I of Pt. III of Act 84 of 1921, being CL 1929, 10055.

450.132a Non-profit corporations; holding of stock, limitations; rights, powers.

Sec. 132a. Subject to the limitations of the laws of this state and of the United States with respect to monopolies and illegal restraints of trade, any corporation not organized for pecuniary profit shall have power in furtherance of the objects of its existence to purchase and hold shares of stock or memberships of its own or non-profit corporations whose purpose is the acquiring, constructing, owning or controlling of buildings which are used as centers or homes of regularly organized fraternal organizations.

When any such corporation shall be a stockholder in any other corporation, as in this subdivision provided, its president and other officers or any of its directors shall be

eligible to the office of director of such corporation, the same as if they were individually stockholders therein, and the corporation holding such stock shall possess and exercise in respect thereof, all the rights, powers, privileges and liabilities of individual owners or holders of such stock.

HISTORY: Add. 1943, p. 77, Act 66, Eff. July 30;—CL 1948, 450.132a.

450.133 Incorporation of fraternal or secret societies; parent lodge.

Sec. 133. Incorporation of fraternal, etc., societies. Any number of persons, not less than 3, may become incorporated for the purpose of forming a secret society or lodge for benevolent, charitable, social, educational or mutual aid purposes or for any other similar purpose or purposes not prohibited by law. Such corporations shall be governed by the provisions of this act relating to corporations generally except as specifically otherwise provided. All societies, fraternal or otherwise, having for their principal purposes the teaching, practice and extending of benevolence, charity and fraternity under the form of secret rituals with a lodge form of government as commonly understood, desiring to be incorporated to more effectually carry out such purposes, shall hereafter incorporate under the provisions of this act. No such society or lodge whose parent organization is incorporated under the laws of any other country or state shall be permitted to organize or incorporate any subordinate state or local jurisdiction or lodge within this state without first applying for and receiving permission to do business within this state as such foreign corporation.

HISTORY: CL 1948, 450.133. This section re-enacts Sec. 6 of Ch. I of Pt. I of Act 84 of 1921, being CL 1929, 9948; and supersedes and merges with additions Sec. 1 of Ch. II of Pt. III of Act 84 of 1921, being CL 1929, 10062.

NOTE: Corporation acts on individual societies, see Compilers' chapter 457.

TAX EXEMPTIONS: See Compilers' §§ 211.7 and 211.9.

450.134 Parent corporations; articles of incorporation.

Sec. 134. Parent lodge; articles of incorporation. If such society or lodge shall be intended to operate as a state jurisdiction of a lodge or society having a parent organization without this state, then such persons so incorporating shall exhibit with their articles the charter or permit from such foreign parent society or lodge permitting such incorporation with this state. The persons so incorporating shall execute and file articles in the form prescribed in section 4 of this act, with the secretary of state, as prescribed for non-profit corporations generally; and in addition to the other requirements of said section 4, the incorporators shall state in such articles:

- (1) That such society or corporation shall have a secret ritual, and a representative form of government, whose purposes are not unlawful, and
- (2) The executive offices within such society by such peculiar name as they shall be respectively known, and
- (3) The principal features of organization, the distinguishing purposes and the name of the society by which all subordinate lodges thereof shall also be known when organized.

HISTORY: CL 1948, 450.134. This section supersedes part of Sec. 2 of Ch. II of Pt. III of Act 84 of 1921, being CL 1929, 10063.

CORPORATE TERM: See Compilers' §§ 450.12 and 450.64.

450.135 Parent corporations; ritual, rules; subordinate lodges, chartering.

Sec. 135. Same; ritual, and rules; chartering of subordinate lodges. Every such parent corporation shall have the right to prescribe the ritual to be used in all the secret work of such lodge or society, the oath or other obligations to be taken by members or officers, and to enact by-laws, rules and regulations having uniform application throughout the organization. Such parent corporation shall have the right to organize and charter subordinate lodges or societies thereof, and to enact a system of discipline to which all such subordinate lodges and individual members may be compelled to conform under pain of expulsion therefrom; and to prescribe the terms and conditions under which such subordinate lodges and members may be admitted, retained in good

standing or suspended or expelled from such membership. Such parent corporation may delegate to its officers, committees and to subordinate jurisdictions, such functions and powers as the articles or by-laws of such corporation may from time to time prescribe, not inconsistent with the laws of this state.

HISTORY: CL 1948, 450.135. This section supersedes Sec. 3 of Ch. II of Pt. III of Act 84 of 1921, being CL 1929, 10064.

450.136 Parent corporations; supervision, subordinate lodge.

Sec. 136. Same; supervision of subordinate lodges. Every such parent corporation shall have the right to superintend, visit, instruct and guide its subordinate lodges and jurisdictions, through its duly appointed officers, agents and committees; may appoint its courts or judicial functionaries for the enforcement of its system of discipline within such lodge; may prescribe the initiation fees and annual or other periodic dues or contributions upon which membership may be conditioned, and may prescribe the proportion of such funds that shall belong to such parent corporation for the work of organizing, maintaining and carrying out the purposes of the society as a whole.

HISTORY: CL 1948, 450.136. This section re-enacts Sec. 4 of Ch. II of Pt. III of Act 84 of 1921, being CL 1929, 10065.

450.137 Parent corporations; management, secretary.

Sec. 137. Same; management, secretary. The fiscal and business affairs of every such parent corporation shall be managed by such executive officers, committees, directors or trustees as the articles shall prescribe, who shall severally have such powers and liabilities as may be prescribed in the articles or in by-laws made pursuant thereto. The articles shall in all cases state the name of the committee having authority to enact the original by-laws of the parent corporation, and when and how the members thereof shall be elected or appointed and for how long such committee shall hold office. Every such parent society shall designate an officer who shall be its secretary whose powers and duties shall conform to those prescribed in this act for secretaries of corporations generally.

HISTORY: CL 1948, 450.137. This section re-enacts Sec. 5 of Ch. II of Pt. III of Act 84 of 1921, being CL 1929, 10066.

450.138 Parent corporations; name, regulations.

Sec. 138. Same; name. No such parent corporation shall assume a name already in use by any other corporation, lodge, or society incorporated under the laws of this or any other state of the United States and admitted to do business in this state, nor any name which is so similar to that adopted by any other such lodge, or society as to lead to confusion or deception: Provided, That local or other subordinate jurisdictions shall in all cases use the name of the parent corporation in addition to some suitable local designation.

HISTORY: CL 1948, 450.138. This section re-enacts except word "however" after "Provided" Sec. 6 of Ch. II of Pt. III of Act 84 of 1921, being CL 1929, 10067.

NAME: See also Compilers' § 430.1.

450.139 Parent corporations; powers as to property.

Sec. 139. Same; powers in relation to property. Every such parent corporation shall have power to hold in fee or otherwise, such real estate, and to own such personal property, as may be necessary to establish its state headquarters, or any charitable home or institution established or maintained by it, and for that purpose may contract for the purchase of land, take conveyance of, purchase, lease or rent such real estate as may be so necessary; and may in connection with any land or building erected thereon let or sublet any vacant space therein or thereon not necessary to the immediate requirements of the corporation. In case it shall become necessary or advisable for the corporation to execute any contract for the purchase of such land or the lease of any such building, or to sell, mortgage or convey the same, the executive or other committee or trustees having charge of the fiscal affairs of such corporation shall designate at

least 2 officers of such corporation to execute and deliver such instruments on behalf of the corporation, as shall have been authorized by such committee or trustees.

HISTORY: CL 1948, 450.139. This section re-enacts Sec. 7 of Ch. II of Pt. III of Act 84 of 1921, being CL 1929, 10068.

GIFTS, GRANTS, DEVISES: See Compilers' § 554.351 et seq.

SALE OF LANDS: See Compilers' § 554.401 et seq.

450.140 Parent corporations; government, representative form; first annual meeting.

Sec. 140. Same; representative form of government; first annual meeting. Every such parent corporation shall adopt a representative form of government, under which form the subordinate lodges shall elect or appoint representatives to attend the annual or other convention, conclave or meeting of the parent corporation, by whatsoever name such meeting shall be known, and at which annual meeting the officers and committees of such parent or state society shall be elected by a majority vote of such representatives. The first annual meeting shall be held at a time and place to be fixed by the executive committee of the parent corporation; and thereafter such time and place shall be fixed by the convention itself.

HISTORY: CL 1948, 450.140. This section supersedes Sec. 8 of Ch. II of Pt. III of Act 84 of 1921, being CL 1929, 10069.

450.141 Parent corporations; annual meeting, powers.

Sec. 141. Same; powers at annual meeting. The annual convention, conclave or meeting of every such parent corporation when duly called to order, shall have power and authority to elect the officers and the executive committee or trustees thereof; to elect delegates to any higher jurisdiction within said lodge or society; to alter or amend the articles or by-laws of the parent corporation not inconsistent with the state charter of such lodge or society; to determine questions of discipline or policy; and to act upon such other matters as the articles or by-laws may require or permit to be presented to such convention for action.

HISTORY: CL 1948, 450.141. This section supersedes Sec. 9 of Ch. II of Pt. III of Act 84 of 1921, being CL 1929, 10070.

450.142 Local lodges; purpose.

Sec. 142. Local lodges; purpose. Any number of persons who are members in good standing in any lodge incorporated as a parent society or lodge within this state, and having a charter or permit from such parent lodge or society, may incorporate as a local lodge or branch thereof, upon complying with the provisions of this act appropriate to such corporations. The purpose of all such local lodge corporations shall be to further the interests of the parent corporation in such community, to hold the property of such local lodge or society and to become integral members of the parent lodge or society.

HISTORY: CL 1948, 450.142. This section supersedes Sec. 10 of Ch. II of Pt. III of Act 84 of 1921, being CL 1929, 10071.

CORPORATE TERM: See Compilers' §§ 450.12 and 450.64.

450.143 Local lodges; articles of incorporation.

Sec. 143. Same; of articles of incorporation. The articles of such local lodge or society shall follow the form prescribed for non-profit corporations in this act and shall contain such further statements as the incorporators may wish to insert therein as to purposes and government. Such articles shall state that such local lodge has been granted a charter by the state parent corporation, if there be one.

HISTORY: CL 1948, 450.143. This section re-enacts except word "Every" Sec. 11 of Ch. II of Pt. III of Act 84 of 1921, being CL 1929, 10072.

450.144 Local lodges; powers as to property; parent corporation, supervision.

Sec. 144. Same; powers in relation to property. Every such local lodge shall have the same right to hold, own and dispose of property, both real and personal as is granted in this act to non-profit corporations generally; and such local lodge shall be subject to

the discipline, visitation and guidance of the parent corporation, or other higher jurisdictions as the plan of higher organization may prescribe.

HISTORY: CL 1948, 450.144. This section supersedes Sec. 12 of Ch. II of Pt. III of Act 84 of 1921, being CL 1929, 10073.

450.145 Local lodges; officers, representatives.

Sec. 145. Same; officers and representatives. Every such local lodge or society shall have such officers, committees, trustees and agents as their articles may prescribe, who shall be elected or appointed and who shall have such duties, responsibilities and powers, as the articles or by-laws may prescribe.

HISTORY: CL 1948, 450.145. This section supersedes Sec. 13 of Ch. II of Pt. III of Act 84 of 1921, being CL 1929, 10074.

450.146 Parent or local lodges; powers of non-profit corporation.

Sec. 146. Same; powers. Every such corporation, whether parent or local, shall have all the rights, powers, immunities and privileges granted by this act to non-profit corporations generally.

HISTORY: CL 1948, 450.146. This section re-enacts part of Sec. 14 of Ch. II of Pt. III of Act 84 of 1921, being CL 1929, 10075.

NON-PROFIT CORPORATIONS: See Compilers' § 450.117 et seq.

450.147 Parent or local lodges; relief funds, raising, payment from treasury.

Sec. 147. Same; relief funds, etc. Every such lodge whether parent or local shall have authority to make provision for the visitation of the sick and afflicted members; to provide funds for the relief of distressed members and their families; to provide funds for the burial of indigent or other worthy members: Provided, That no such funds shall be raised or maintained in the way of dues, assessments or levies based upon an insurance rate, table or contract, express or implied: And provided further, That no such money shall be paid out of the treasury of any such lodge without the express order of the lodge itself or a committee duly authorized to consider and act upon such cases: And provided further, That nothing in this act contained shall be construed as prohibiting any such lodge from establishing and maintaining charitable homes or other institutions for its aged, afflicted or infirm members under the provisions of this act applying to trustee corporations.

HISTORY: CL 1948, 450.147. This section supersedes Sec. 15 of Ch. II of Pt. III of Act 84 of 1921, being CL 1929, 10076.

450.148 Trustee corporations; definition.

Sec. 148. Trustee corporations; definition. Corporations may be formed to carry out the terms of any written declaration, deed or testament making donations, grants, gifts or devises in trust for specific lawful purposes. Such corporations shall be known in law as "trustee corporations," which term may also embrace other corporations as hereinafter provided for in this act. A trustee corporation is hereby defined to be any corporation wherein the trustees appointed by any instrument in writing, whether testamentary or otherwise, to have the title, care, custody or disposition of property or the income therefrom, in trust for such uses and purposes as may be named in such instrument, for the benefit of religious, charitable, benevolent, educational institutions or public benefaction of whatsoever name or nature and any other persons who may be lawfully associated with them, incorporate for the express and main purpose of carrying out the provisions of such trust. The term "trustee corporation" may also embrace any case in which trustees hold in their corporate name, any separate property of the corporation of which they are trustees for specific purposes defined or limited by any written instrument donating, setting aside or devoting such separate property for charitable, religious, benevolent, educational or other beneficial purpose, or where such property is so held by the said trustees under the terms of written instructions as to the use thereof from the governing body of any ecclesiastical, fraternal or charitable society, association or corporation. Such trustees shall in no case have any personal interest in or title to any part or portion of such trust property, nor derive any personal

benefit from the principal or income thereof, excepting in the way of just compensation for their labor and skill in executing such trust or by way of reimbursement for necessary and actual expenses incurred in the management of such property or in the performance of their duties as such trustees, or except upon authority expressed in the original deed or instrument of trust. Nothing in this act contained shall be construed as preventing or prohibiting any trustees appointed or provided for under the terms of any deed, will or other written instrument to have the title or management of any property, whether real or personal, for the benefit of the donor or grantor therein or the heirs, dependents or other beneficiaries of such donor or grantor, and not for charitable, religious, educational or benevolent purposes, from incorporating under this act for the purpose of executing such trust, if such incorporation be permitted, directed or contemplated in such instrument, and the business of such corporation, when organized, is one which a corporation might otherwise carry on under this act: Provided, That declarations of trust shall not be sufficient in themselves to authorize the trustees named therein to assume corporate powers, but all such trustees referred to in this act shall be incorporated only in the manner prescribed in and by complying with the provisions of this act. Trustee corporations shall be governed by the provisions of this act relating to corporations generally except as specifically otherwise provided.

HISTORY: CL 1948, 450.148. This section re-enacts Sec. 3 of Ch. I of Pt. I of Act 84 of 1921, being CL 1929, 9945; and supersedes with additions and merges Sec. 1 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10077.

CORPORATE TERM: See Compilers' §§ 450.12 and 450.64.

SECURITIES: Issued exclusively for educational, benevolent, fraternal, charitable, religious or reformatory purposes are excepted from the provisions of the securities act, see Compilers' § 451.802.

450.149 Trustee corporations; trustees, vesting of property; trust instrument, definition.

Sec. 149. Same; vesting of property in trustees; trust instrument defined. In any case mentioned in the foregoing section where property, whether real, personal, or mixed, amounting in value to 1,000 dollars or more, has been or hereafter shall be so given, granted, devised, or bequeathed to 3 or more trustees, or in any case where the income from any property or fund has been or hereafter shall be so given, or bequeathed to such trustees for any such purpose, where the annual amount of such income is 1,000 dollars or more, and where it shall, for the more effective and perfect administration of any such trust, be deemed expedient to organize themselves as a corporation, then it shall be lawful for such trustees to become incorporated under this act. The term "trust instrument" or "instrument of trust" as used in this act shall be construed to mean and refer to any lawful deed of gift, grant, agreement, or any last will and testament by which the donor, grantor, or testator shall give, grant, devise, or bequeath any property, real, personal or mixed, in trust for general or specific uses; and any and all conditions, terms or directions contained therein, and any act, declaration or instructions of a legal nature made by any corporation or body directing or authorizing trustees thereunder to take, receive, hold, manage or dispose of any of the property of such corporation for general or specific purposes for the benefit of such persons or objects as may be therein designated. Such terms shall not include constructive or resulting trusts.

HISTORY: CL 1948, 450.149. This section re-enacts except changes "chapter" to "act" Sec. 2 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10078.

GIFTS, GRANTS, DEVISES: See Compilers' § 554.351 et seq.

SALE OF LANDS: See Compilers' § 554.401 et seq.

450.150 Trustee corporations; articles of incorporation.

Sec. 150. Same; articles of incorporation. The articles shall, in addition to other requirements made in this act, state:

(a) The nature of the business, if any, in which such trustee corporation will be engaged, and the nature and value of the trust property; and to all such articles, wher-

ever filed, there shall be attached verified copies of every trust instrument or other written directions upon which such trust is founded;

(b) The number of persons who shall constitute the permanent board of trustees of such corporation; the length of time for which the trustees are authorized to act after election or appointment as the case may be; and the mode in which their successors shall be elected or appointed;

(c) Whether or not other persons than the incorporators are, or may become, members or stockholders thereof.

HISTORY: CL 1948, 450.150. This section re-enacts except adding "trustee" Sec. 3 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10079.

FILING ARTICLES: See Compilers' § 450.5.

450.151 Trustee corporations; officers.

Sec. 151. Same; officers. Every trustee corporation shall have officers corresponding to those prescribed for corporations generally in this act, appointed or elected as such trustees may agree upon by a majority vote, or as may otherwise be provided for in the trust instrument. Such corporation shall have all the rights, powers, privileges, and immunities conferred by law upon corporations generally, excepting as limited in the trust instrument or by the provisions of this act.

HISTORY: CL 1948, 450.151. This section supersedes Sec. 4 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10080.

450.152 Trustee corporations; powers as to property.

Sec. 152. Same; powers in relation to property. Unless otherwise prohibited or not contemplated in the trust instrument, such trustee corporation may by gift, grant, devise or bequest, take, receive and hold any property, real or personal, so given, granted, devised or bequeathed from other persons than the person or persons by whose deed, will or other instrument the trust was originally founded. Any 2 or more persons may by the same instrument or by separate instruments, give, grant, devise, or bequeath property in trust, for any of the purposes mentioned in section 148 of this act, to the same trustees upon such terms and conditions as may in such instrument or instruments be agreed on, and such trustees, if authorized to incorporate, shall attach to the articles of incorporation each and every one of such agreements, and shall be governed by the conditions therein imposed upon them, if not incompatible one with the other. After incorporation to carry out the express directions or conditions of any such trust instrument, no such trustees shall thereafter accept any gift, grant, devise, or bequest upon any condition or conditions incompatible with the articles or with any instrument required to be attached thereto.

HISTORY: CL 1948, 450.152. This section re-enacts except changes word "hereof" to "one hundred forty eight of this act" Sec. 5 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10081.

NOTE: See note under Sec. 149.

450.153 Trustee corporations; property and funds, use, investments.

Sec. 153. Same; use of property and funds; investments. The property and funds of every trustee corporation shall be faithfully and exclusively used for the purposes thereof as set forth in its articles or as required by the terms of the trust instrument; and such trustees shall be held to the same degree of responsibility and accountability with respect thereto as if not incorporated, excepting where a less degree or a particular degree of responsibility and accountability is prescribed in the trust instrument, or where such trustees remain under the control of shareholders in such corporation other than themselves who retain the right to direct and do direct the action of the trustees as to the use of such trust property from time to time. Nothing herein contained shall be construed as prohibiting any such board of trustees, having more than 5 members, from appointing an executive committee or such other committees as they may desire, with such powers and division of work and responsibility as such board may agree upon, not inconsistent with the trust instrument or with the general provi-

sions of this act governing the management and powers of corporations generally. Such corporation may, unless otherwise specifically directed in the trust instrument, invest its funds in accordance with the laws of this state governing authorized investments for trustees: Provided, That no loan of such funds shall be made to any trustee, officer or servant of such corporation.

HISTORY: Am. 1937, p. 278, Act. 183, Imd. Eff. July 9;—CL 1948, 450.153. This section as originally enacted superseded Sec. 6 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10082.

INVESTMENTS: See Compilers' §§ 555.201-555.203.

450.154 Trustee corporations; trustees, vacancy, filling.

Sec. 154. Same; vacancy; among trustees, filling. In any case where the trust instrument fails to provide for the filling of vacancies among the trustees due to death, disability, resignation or other cause, and such vacancy occurs, the remaining trustees may apply to the circuit court in chancery of the county where the registered office of such corporation is located, for the appointment of some suitable and competent person to fill such vacancy, and the circuit judge thereof may, upon such ex parte or other showing as he may require, make such appointment by an appropriate order, and the person so appointed shall, upon filing his written acceptance as such trustee, be and become a trustee of such corporation with the same powers as those originally appointed. A certified copy of every such order shall be forthwith filed in the same manner as provided for original articles.

HISTORY: CL 1948, 450.154. This section supersedes Sec. 7 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10083.

VACANCY: See also Compilers' § 555.27.

450.155 Trustee corporations; circuit courts, petition; jurisdiction of court.

Sec. 155. Same; petition of trustees to circuit court; jurisdiction of court. In any case where the trustees of any such trustee corporation are in honest doubt and unable to agree as to the construction of any of the terms or conditions of any such trust instrument or their powers or duties thereunder, any or all of such trustees may file his or their petition in the circuit court in chancery for the county in which the registered office of such corporation is located, asking for the construction of the said court upon the whole or any part of such instrument, under and by the same procedure as is provided by law for the construction of wills. In case any public interest is involved, the prosecuting attorney of such county shall enter his appearance therein, and shall do so in all cases involving hospitals or charitable homes or similar institutions to which the general public may be admitted on application. If less than the entire board of trustees joins in such petition, the remaining members shall become defendants and shall be served with such notice or other process as the rules of the court may require. Such court shall have jurisdiction to determine every doubtful, or disputed question raised by such petition, and the opinion and directions of such court, when filed, shall be binding upon such corporation and the trustees thereof.

HISTORY: CL 1948, 450.155. This section supersedes Sec. 8 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10084.

450.156 Trustee corporations; act amendment of trustee agreement.

Sec. 156. Same; amendment of trust agreement. If the donor or grantor in any such trust instrument, shall desire to alter, amend, enlarge or restrict the gift or grant or any of the terms or conditions thereof, and does so, it shall be the duty of such trustees to forthwith file a verified copy of such amended trust instrument in the same manner as provided for original articles, and any amendments to such articles occasioned by such amended trust instrument shall likewise be forthwith made and so filed by such trustees, but no such amendments to the articles shall be valid that change the original purposes of the corporation in their entirety.

HISTORY: CL 1948, 450.156. This section supersedes Sec. 9 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10085.

450.157 Trustee corporations; hospitals, asylums; trustee instrument.

Sec. 157. Same; hospitals, asylums. In all cases where lands, or any other property, amounting in value to 5,000 dollars or upwards, have been or shall hereafter be given, granted, devised or bequeathed to 3 or more trustees for the purpose of founding or endowing a hospital or other charitable asylum for the care or relief of indigent or other sick or infirm or aged persons, or the care of minor orphans or crippled children or for the care and protection of unfortunate women, or any number of such purposes, such trustees may incorporate under this act as a trustee corporation. Unless restricted by the trust instrument in respect thereto such trustees may unite in such incorporation with other persons contributing to the maintenance of such hospital or asylum, and all such other persons shall become members of such corporation upon making such contribution as may be fixed and determined in the articles or by-laws of the corporation: Provided, That any 3 or more persons may incorporate for any such charitable purpose as a trustee corporation, where the hospital, home, asylum, or other institution to be founded by such corporation is to be constructed, equipped and maintained principally by donations not made under any trust deed or other instrument in writing declaring the uses and purposes to which such property shall be devoted, and every such corporation shall have authority to fix and prescribe the terms and conditions of membership therein.

Apprenticing destitute or foundling children, withdrawal.

The trustees of such trustee corporation, or a majority of them, are hereby authorized and empowered to indenture or apprentice to responsible persons, any destitute or foundling children now, or which may be hereafter, in charge or care of such corporation, until such children shall respectively become of lawful age, and to make such indenture in each case as binding and effective in all respects as if said trustees were the lawful parents or guardians of said children: Provided, That said trustees shall have power to withdraw such child from any person to whom he or she may be indentured, when in their opinion the interests of the child may require it.

HISTORY: CL 1948, 450.157. This section re-enacts in part Sec. 10 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10066; and supercedes Sec. 11 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10067.

450.158 Trustee corporations; hospital, asylum, charitable institution; gifts, acceptance.

Sec. 158. Same; hospital, asylum, or other charitable institution. Whenever there shall exist any hospital, asylum, home for the care of indigent, aged or infirm persons, or any other charitable institution in this state, the legal title to which and the land used in connection therewith has been conveyed to 1 or more persons in trust, for charitable purposes, and the care and management of which institution is entrusted to a board of control consisting of 5 or more persons, appointed from 1 or more charitable, religious or fraternal bodies, in pursuance of the provisions contained in the deed conveying the legal title of such institution and land to such trustees, such board of control may become incorporated as a trustee corporation and become subject to the provisions of this act.

Gifts. Such trustee corporation may receive gifts, bequests and devises of money and other personal property and real estate for the benefit of the hospital, asylum or home for the care of indigent, aged or infirm persons, or other charitable institution which it has in its charge, and shall have power to sell such real estate and personal property as shall be given to it, and invest the proceeds thereof in the same manner as is provided in this act for the investment of gifts and bequests of money to trustee corporations whenever, in the judgment of the proper officers or committee or committees of such corporation, it may be deemed beneficial to such institution.

HISTORY: CL 1948, 450.158. This section re-enacts in part except changes last word "chapter" to "act" Sec. 12 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10066; and supercedes Sec. 13 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10069.

450.159 Church trustee corporations; trustees, election, number; certification of election.

Sec. 159. Church trustee corporations; election of trustees. When there is organized within this state any presbytery, diocesan convention, diocese, synod, conference, district or other organization, being an association of congregations or societies, or a quarterly conference of a station, mission, class, congregation, circuit or other organization of a religious denomination, which shall desire to possess corporate powers in order to effectuate the purposes of such organization or to create a corporate board of trustees for any endowment or other property of the denomination represented by such body, such diocese, presbytery, diocesan convention, synod, conference, board of district stewards, or a quarterly conference thereof, may, at a meeting thereof held and conducted according to the rules and regulations of such organization, association or quarterly conference, elect trustees in number not more than 9 nor less than 3, and also designate the corporate name by which such trustees and their successors in office shall be known. It shall be the duty of the officer presiding over such election to give to such trustees a certificate of their election under his hand and seal, specifying the name by which such trustees and their successors shall thereafter be known. They and their successors shall hold their offices for the term specified in such certificate of election, or until the organization or association first making such election elects others to succeed them. Such trustees, upon receiving certificates of their election, shall file articles in the manner provided in section 5 of this act and shall be subject to the provisions of this act relating to trustee corporations and are hereinafter called church trustee corporations. Such corporations shall be governed by the provisions of this act relating to trustee corporations except as specifically otherwise provided.

HISTORY: CL 1948, 450.159. This section supersedes Sec. 14 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10090.

CORPORATE TERM: See Compilers' §§ 450.12 and 450.64.

TAX EXEMPTIONS: See Compilers' §§ 211.7 and 211.9.

450.159a Church trustee corporations; trustees, increase, decrease; resolutions, adoption; meetings, terms; additional trustee, election.

Sec. 159a. Notwithstanding any provision or statement contained in the articles or statement of incorporation of any corporation formed or now existing under section 159, such corporation being now designated a church trustee corporation, the number of the trustees constituting such church trustee corporation may be increased in number to not more than 9 or decreased in number to not less than 3 without amendment of its articles or statement of incorporation. The increase or decrease in the number of its trustees may be accomplished by a resolution of the organization or association first electing the trustees or by a resolution of a successor organization or association. The resolution may be adopted at a regular meeting of the organization or association or at a special meeting called for that purpose. The trustees may be divided into classes whose terms of office expire at different dates. The officer presiding over the meeting shall give to the existing trustees a copy of the resolution certified by him to be a correct copy. Any additional trustees may be elected at the meeting at which the resolution is adopted.

HISTORY: Add. 1966, p. 54, Act 29, Imd. Eff. May 3.

450.160 Church trustee corporations; trustees, vacancy, filling.

Sec. 160. Same; vacancy among trustees, filling. Elections of trustees of church trustee corporations to fill the places of those whose terms of office expire shall take place at the last regular meeting of such presbytery, synod, conference, diocesan convention or other representative body occurring prior to the expiration of the term of their predecessors. Vacancies in any such board of trustees caused by death, resignation, removal, declination to serve, or otherwise, may be filled by the appointing body

at any regular meeting thereof, or at any special meeting called for that purpose, or for that and other purposes, pursuant to the rules of such body.

HISTORY: CL 1948, 450.160. This section re-enacts except adds "of church trustee corporations" Sec. 15 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10091.

450.161 Church trustee corporations; powers as to property.

Sec. 161. Same; powers in relation to property. Trustees of church trustee corporations may, in their corporate name, take and hold all property, real and personal, devised, bequeathed, transferred or conveyed to them for the use and benefit of the religious denomination by whose representative body they are appointed. In the management and disposition of such property they shall be governed by the terms of any will, deed, or other instrument by which such property shall be given to them, and subject to such terms, by the directions of the body by whom they were elected.

HISTORY: CL 1948, 450.161. This section supersedes Sec. 16 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10092.

GIFTS, GRANTS, DEVISES: See Compilers' § 554.351 et seq.

SALE OF LANDS: See Compilers' § 554.401 et seq.

450.162 Church trustee corporations; investment, powers, certificate.

Sec. 162. Same; powers of investment. Trustees of church trustee corporations may, in their corporate name, invest and reinvest the property in their hands and under their control as such trustees, collect the rents, issues and profits thereof, and out of the same pay the taxes, repairs, insurance and other expenses incident to the care thereof: Provided, That such trustees shall neither sell, convey, mortgage, nor lease for a longer period than [than] 3 years, any real estate held by them as such trustees, unless duly authorized to do so by the presbytery, synod, conference, diocesan convention, or other representative body which appointed them. And in every case of sale, conveyance or incumbrance of real estate, such trustees shall cause to be filed in the office of the register of deeds in the county in which such real estate is situated, with the instrument, a copy of the acts of said presbytery, synod, conference, diocesan convention, or other representative body authorizing such sale, conveyance or incumbrance, duly certified by the secretary of said representative body to be a true and complete copy of said proceedings. And such certificate so made and filed shall be prima facie evidence of the facts therein recited.

HISTORY: CL 1948, 450.162. This section supersedes Sec. 17 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10093.

INVESTMENTS: See Compilers' §§ 555.201-555.203.

450.163 Foundations; incorporators; expenditure of funds, purpose.

Sec. 163. Foundations; incorporators, expenditure of funds. Any number of persons, not less than 3, may become incorporated as a foundation for the purpose of receiving and administering funds for perpetuation of the memory of persons, preservation of objects of historical or natural interest, or for educational, charitable or religious purposes, or for public welfare. Such corporations are hereinafter called foundations.

HISTORY: CL 1948, 450.163. This section supersedes part of Sec. 18 of Ch. I of Pt. IV of Act 84 of 1921, Am. 1925, p. 514, Act 342, Eff. Aug. 27, being CL 1929, 10094.

CORPORATE TERM: See Compilers' §§ 450.12 and 450.64.

TAX EXEMPTIONS: See Compilers' §§ 211.7 and 211.9.

450.164 Foundations; powers as to property, acceptance, investments, expenditure.

Sec. 164. Such foundations shall have power to take and hold by bequest, devise, gift, purchase or lease, either absolutely or in trust, for any of its objects and purposes, any property, real, personal or mixed, without limitation as to the amount of value, except such limitations, if any, as the legislature shall hereafter specifically impose; to convey such property and to invest and reinvest the principal and income thereof in accordance with the laws of this state governing authorized investments for trustees and deal with and expend the principal and income of the foundation in such manner

as in the judgment of the trustees will best promote its objects and be consistent with conditions that may be stated in any particular bequest, devise or gift.

HISTORY: Am. 1937, p. 278, Act 183, Imd. Eff. July 9;—CL 1948, 450.164;—Am. 1956, p. 147, Act 65, Eff. Aug. 11.

This section as originally enacted superseded Sec. 19 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10095.

GIFTS, GRANTS, DEVISES: See Compilers' § 554.351 et seq.

SALE OF LANDS: See Compilers' § 554.401 et seq.

450.165 Foundations; non-profit corporation, regulations.

Sec. 165. Same; to be non-profit. Every such foundation shall be a non-profit corporation and subject to the provisions of this act relating to non-profit corporations except as specifically otherwise provided. All of such property and accumulations thereof shall be held and administered to effectuate the purposes stated in the articles and to serve the general welfare of the people: Provided, That this act shall not prevent such foundations from charging an admission fee, or similar charge, to museums, forest reserves, parks and other institutions organized hereunder for the sole purpose of paying the expense of maintenance.

HISTORY: CL 1948, 450.165. This section supersedes Sec. 20 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10096.

NON-PROFIT CORPORATIONS: See Compilers' § 450.117 et seq.

450.166 Foundations; membership; trustees, number.

Sec. 166. The articles of every such foundation shall state the terms and the manner in which members may be admitted. The affairs of such foundation shall be managed by trustees to be elected by the members as provided by the bylaws, but in no case shall the number of trustees be less than 3 or more than 30. The trustees shall hold their offices for 1 year, or such other period as the bylaws shall determine and until their successors are elected and qualified.

HISTORY: CL 1948, 450.166;—Am. 1967, p. 13, Act 5, Imd. Eff. Mar. 17.

This section supersedes Sec. 21 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10097.

450.167 Foundations; dissolution.

Sec. 167. Same; dissolution. Should any such foundation cease to operate or its fund be diverted from the lawful purposes to its organization, or become unable to usefully serve such purposes, the legislature may by law provide for the winding up of its affairs and for the conservation and disposition of its property, in such way as may best promote and perpetuate the purposes for which such corporation was originally organized.

HISTORY: CL 1948, 450.167. This section supersedes Sec. 22 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10098.

450.167a Henry Ford trade school; dissolution; cancellation of franchise; assets, disposal, sale; debts, payment; retirement program; payment of dissolution charges; certificate, filing, contents.

Sec. 167a. (a) Pursuant to section 167 of this act, the Henry Ford trade school, a non-profit corporation and foundation organized and existing under the laws of this state, shall be and as of November 30, 1952 is dissolved, its franchise cancelled, and all of its powers, rights and privileges extinguished and finally terminated except as herein provided for the winding up of its affairs and activities: Provided, however, That the powers, rights and privileges hereinafter set forth shall become immediately effective.

(b) The trustees of said foundation shall, before final disposition of the assets as provided in subdivision (f) of this section, have the power to accept and retain gifts of any nature whatsoever to be devoted to any of the purposes set forth in subdivisions (d), (e) and (f) of this section. Future reference in this section to "assets" shall mean and include any such gift or gifts which may be received by the trustees.

(c) The trustees of said foundation shall liquidate by sale, or otherwise dispose of, subject to the provisions of subdivision (f) of this section, all of the assets of said foun-

dation, including land, buildings and machinery, but until such liquidation is completed, may in their discretion continue to operate on a full or partial basis.

(d) The trustees shall, from the assets of said foundation or from the proceeds of the sale thereof, as provided for in subdivision (c) of this section, pay all debts, obligations and liabilities of the foundation.

(e) The trustees may establish a retirement program and/or other provision for the employees of Henry Ford trade school employed on March 1, 1952; and the trustees may use for this purpose such portion of the assets of the foundation, after the payment of all other debts, obligations and liabilities of the foundation, as is, in their discretion, necessary to fund and carry out such plans, by purchase of annuities, establishment of pension trust funds or other appropriate means.

(f) The trustees shall, after liquidation of the assets of said foundation as provided for in subdivision (c) of this section, the payment of the debts, obligations and liabilities of said foundation, as provided for in subdivision (d) of this section, and the establishment of a retirement program and/or other provision for the employees of the foundation, as provided for in subdivision (e) of this section, dispose of the remaining assets of the foundation by grant, gift, or such other method as the trustees in their sole discretion determine will promote and perpetuate the general purposes for which Henry Ford trade school was organized, namely, instruction and training in technical, scientific and/or agricultural pursuits: Provided, however, That the trustees are hereby specifically authorized, in disposing of said assets, to make or not make in their sole discretion, and upon such terms and conditions as they shall in their sole discretion determine, gifts or grants to the board of education of the school district of the city of Dearborn, Michigan, and/or to the board or boards of education of any other school district or districts within the state of Michigan: Provided further, That in no event and under no circumstances shall either the whole or any part or portion of said assets, or the net income therefrom, be used for, accrue to, or inure to the benefit of any private individual, or be used for or devoted to carrying on propaganda, or otherwise attempting, to influence legislation, or be used for or devoted to objects or purposes which are not exclusively religious, charitable, scientific, literary or educational, within the meaning of both the laws of the state of Michigan and the internal revenue laws of the United States of America.

(g) The trustees are hereby authorized and empowered to pay all necessary and incidental costs, fees, charges and expenses incurred in connection with the winding up and dissolution of Henry Ford trade school provided for in this section, and shall have such further and additional rights and powers as are or may be necessary and proper for the complete winding up of the affairs and activities of the foundation in compliance with his act.

(h) Upon the payment of all the debts, obligations and liabilities of the foundation and the final disposition of the assets of the foundation, the trustees shall file with the Michigan corporation and securities commission a certificate in which the trustees, or 1 of them duly designated therefor, shall certify that all the debts, obligations and liabilities of the foundation have been paid and discharged and that all of the assets of the foundation have been disposed of, all in compliance with this act.

(i) Upon the filing of such certificate the trustees and the members shall be discharged of any and all further responsibility for the debts, obligations, liabilities and/or assets of the foundation and the dissolution and winding up of said foundation shall be complete.

HISTORY: Add. 1952, p. 28, Act 23, Imd. Eff. Mar. 26.

450.168 Foundations; applicability of act.

Sec. 168. Same; applicability of act. The provisions of this act relating to foundations shall apply to corporations heretofore or hereafter formed for the purpose of providing scholarships in the university of Michigan or in any of the publicly maintained schools or colleges of this state; and to corporations formed for the purpose of loaning money or giving other assistance to students at any of said schools, or colleges or said university, but no such corporation heretofore formed shall be required to change or amend its articles or by-laws by reason of anything contained in this act, nor shall the rights, powers, privileges, immunities or the mode of doing business of any such existing corporation be deemed to be affected by any provision hereof which may be inconsistent with the provisions of the act under which any such corporation shall have been organized. Every corporation heretofore formed under any law of this state for benevolent or charitable purposes, and having no capital stock, shall be deemed to be a foundation within the meaning of this act and shall be subject to the provisions hereof excepting as such provisions may conflict with the articles and by-laws of any such corporation heretofore lawfully made and enacted pursuant to the act under which incorporated. But any such corporation may amend its articles and by-laws so as to bring itself in conformity with the provisions hereof.

HISTORY: CL 1948, 450.168. This section supersedes Sec. 23 of Ch. I of Pt. IV of Act 84 of 1921, being CL 1929, 10099.

450.169 Corporations to provide student aid.

Sec. 169. Same; corporations to provide student aid. Any corporation heretofore or hereafter organized for the purpose of providing scholarships in the University of Michigan or in any of the publicly maintained schools or colleges of this state or formed for the purpose of loaning money or giving other assistance to students at any of said schools or colleges or said university may, by 2/3 vote of its board of trustees, transfer and convey all its property and assets to, and become consolidated with, any other corporation organized under the laws of this state for corporate purposes of the same character. Notice of such transfer and consolidation shall be filed with the secretary of state within 30 days thereafter, and such corporation shall thereupon be deemed to have surrendered its corporate rights and shall have no rights except as may be necessary to close its corporate affairs.

HISTORY: CL 1948, 450.169. This section re-enacts Sec. 24 of Ch. I of Pt. IV of Act 84 of 1921, Add. 1929, p. 662, Act 267, Eff. Aug. 28, being CL 1929, 10100.

450.170 Educational corporations; incorporation.

Sec. 170. Any number of persons, not less than 3, may incorporate for the purpose of conducting a school, academy, seminary, college or other institution of learning where preparatory subjects or the arts, sciences, professions, special occupations and higher learning may be taught. Such corporations are hereinafter called educational corporations. Educational corporations may be organized for profit or by trustee corporations if so provided. Educational corporations organized for profit or as trustee corporations shall also comply with the provisions of this act relating to corporations for profit or trustee corporations. Educational corporations shall be governed by the provisions of this act relating to corporations generally except as specifically otherwise provided and shall be subject to the provisions of Act No. 148 of the Public Acts of 1943, as amended, being sections 395.101 to 395.103 of the Compiled Laws of 1948.

HISTORY: CL 1948, 450.170;—Am. 1967, p. 219, Act 157, Imd. Eff. Jun. 30.

This section supersedes Sec. 4 of Ch. I of Pt. I of Act 84 of 1921, being CL 1929, 9946.

450.171 Educational corporations; capital; classification.

Sec. 171. For the purposes of this act, educational corporations shall be classified as follows:

- (w) Those having a capital of not less than \$500,000.00;
- (x) Those having a capital of not less than \$100,000.00, and less than \$500,000.00;
- (y) Those having a capital of \$1,000,000.00 or more;
- (z) Those instituted and maintained by any ecclesiastical or religious order, society, corporation or corporations, retaining control of such institution for denominational purposes.

Statement of qualifications by state board of education.

Every educational corporation, before being authorized to file its articles, shall be required to present a statement to the Michigan corporation and securities commission in writing from the state board of education that (1) the housing space and administration facilities which it possesses or proposes to provide for its declared field or fields of education are adequate, (2) its proposed educational program leading to the diplomas or degrees which it proposes to offer is adequate, (3) its laboratory, library, and other teaching facilities which it possesses or proposes to provide are adequate, (4) it has or proposes to employ an adequate staff, fully trained, for the instruction proposed, and (5) at least 50% of its capital, whether of stock or in gifts, devises, legacies, bequests or other contributions of money or property, has been paid in or reduced to possession.

Guaranteed annual income, credit to capital.

In determining whether any educational corporation satisfies conditions specified in classes (w), (x), (y) and (z) of this section, the state board of education may treat as a credit to the capital of such corporation the guaranteed annual income of that corporation to the extent that it deems such guaranteed income the equivalent of all or any part of the required endowment.

Names, college, university, junior college.

The use of the word "college" or "university" in the name of any group, organization or association hereafter formed in this state is limited to those educational corporations complying with the requirements for class (w) or class (y) educational corporations or to such educational corporations of class (z) as shall satisfy the requirements set up for class (y) corporations: Provided, however, That the words "junior college" may be used by educational corporations of class (x). Whenever this provision is violated it shall be the duty of the prosecuting attorney, in the county where the organization is located, to bring proceedings to enjoin the further use of such name in violation of this act.

Expansion of program, statement from state board of education.

No educational corporation shall be permitted to expand its program beyond that specified in its articles of incorporation until it has presented to the Michigan corporation and securities commission a statement in writing from the state board of education approving the facilities, equipment and staff or the proposed facilities, equipment and staff as adequate for the offering of the additional educational program.

HISTORY: Am. 1939, p. 318, Act 162, Eff. Sep. 29;—Am. 1943, p. 223, Act 160, Imd. Eff. April 17;—CL 1948, 450.171;—Am. 1958, p. 159, Act 147, Eff. Sep. 13.

This section as originally enacted re-enacted except changed "such" to "educational" Sec. 2 of Ch. II of Pt. IV of Act 84 of 1921, being CL 1929, 10102.

450.172 Educational foundations; colleges, establishment.

Sec. 172. (a) Educational corporations of class (w) as defined in section 171 of this act shall have authority to establish and conduct general colleges for furnishing higher learning and to confer such degrees and honors as shall be approved by the state board of education prior to the filing of articles of incorporation; and the term "college" as herein used shall be construed to include any college, university or other institution where the arts, sciences, professions and higher learning are taught and degrees and honors therein conferred. Such colleges may also include preparatory schools as commonly understood;

(b) Educational corporations of class (x), as defined in section 171, shall have authority to establish and conduct junior colleges, seminaries, academies or preparatory schools, as determined and approved by the state board of education, but not general colleges or universities as defined in subsection (a) hereof;

(c) Educational corporations of class (z) as defined in said section 171 shall embrace such schools, academies, or colleges as have been heretofore founded under Act 135, Public Acts 1899, known thereunder as "Ursuline academies"; those founded under Act 121, Public Acts 1915, and known thereunder as "ecclesiastical seminaries"; those founded under Act 28, Public Acts 1901, and known thereunder as "Evangelical Lutheran deaf mute institutions"; those founded under Act 135, Public Acts 1867, known as "industrial and charitable schools"; those organized under paragraph (c), subdivision 1, chapter 2, part 4, of Act 84, Public Acts 1921, and such other schools, colleges and institutions of like character and purpose as may be formed under any law of this state for educational purposes shall have all the rights, powers, privileges and immunities enjoyed under its act of incorporation and without regard to the classification made in this act, and upon complying with the provisions hereof shall have such additional rights, powers, privileges and immunities as are conferred hereunder according to the classifications prescribed in this act: Provided further, That any corporation heretofore formed under Act 359, Public Acts 1913, and known thereunder as "kindergarten institutions" shall hereafter be classified under class (x) of sections 171 and 172 of this act: Provided further, That any corporation of class (z) hereafter organized under this act may enjoy the privileges provided under classes (w), (x) and (y) of section 171, on condition that it satisfies the requirements set up for corporations of these respective classes.

(d) Educational corporations of class (y) as defined in section 171 shall have authority to establish and conduct colleges or universities of a graduate rank with programs of studies of 5 years or more.

HISTORY: Am. 1939, p. 318, Act 162, Eff. Sept. 29;—Am. 1943, p. 224, Act 160, Imd. Eff. April 17;—CL 1948, 450.172;—Am. 1958, p. 160, Act 147, Eff. Sep. 13.

This section as originally enacted superseded Sec. 3 of Ch. II of Pt. IV of Act 84 of 1921, Am. 1929, p. 663, Act 267, Eff. Aug. 28, being CL 1929, 10103.

NOTE: Act 135 of 1899, above referred to, is CL 1915, 10972-10976, Act 121 of 1915 is CL 1915, 10977-10984; Act 28 of 1901, is CL 1915, 10996-11002; Act 135 of 1867 is CL 1915, 10632-10639; Act 359 of 1913 is CL 1915, 10668-10673. All the above acts were repealed by CL 1929, 10134.

450.173 Educational foundations; articles of incorporation, contents, amendment.

Sec. 173. Same; articles of incorporation. The articles of every educational corporation shall clearly set forth the educational system of the institution to be founded and the character of the degrees, honors, diplomas, or certificates which it proposes to grant, and same shall be approved by the state board of education prior to the filing of the articles of incorporation. If a college or university, the articles shall state the number and name of the faculties to be established; and if a denominational religious school or college, the name of such denomination and the body supporting or controlling the same. Such articles shall be filed as provided in section 5 of this act. Any such corporation may, by increasing its capital to a higher class and amending its articles, assume the powers and privileges of such higher classification as it may thereby be entitled to as defined in this act.

HISTORY: Am. 1939, p. 319, Act 162, Eff. Sept. 29;—CL 1948, 450.173. This section as originally enacted superseded Sec. 4 of Ch. II of Pt. IV of Act 84 of 1921, being CL 1929, 10104.

450.174 Educational foundations; property, acceptance; government.

Sec. 174. Same; acceptance of property. The directors or trustees of any such educational corporation may accept gifts, devises, legacies or bequests, of personal or real property, or the principal or interest of any money or other fund, in trust for the benefit of such institution or particular faculties, departments or other special purposes

thereof; and such trustees or directors shall hold and dispose of such trust funds in accordance with the directions and wishes of any of the donors in each case; and shall account for all such funds and property in such manner and at such times as may be appointed in the instrument, deed or will accompanying the donation or as provided by law or the articles or by-laws of such corporation, made pursuant thereto. Where no other provision is made with respect thereto, the directors or trustees of every such corporation shall be governed as to their duties, powers and responsibilities, by the general provisions of this act respecting such boards; and as to their trusteeship of property they shall be governed by the provisions of this act governing trustee corporations.

HISTORY: CL 1948, 450.174. This section re-enacts except adds word "educational" Sec. 5 of Ch. II of Pt. IV of Act 84 of 1921, being CL 1929, 10105.

GIFTS, GRANTS, DEVISES: See Compilers' § 554.351 et seq.

SALE OF LANDS: See Compilers' § 554.401 et seq.

450.175 Educational foundations; board of directors, trustees; powers.

Sec. 175. Same; powers of board of directors or trustees. The control of the business and secular affairs of every such educational corporation shall be vested in a board of directors or trustees. Such board shall also have exclusive control over the educational affairs and policy of such institution, and as such may:

First, Appoint, employ and pay the salary of a president, or principal, and such professors, tutors, assistants, and employees, as the board shall determine necessary;

Second, Direct and prescribe the course or courses of study and the rules of discipline for such institution, and enforce the same; and prescribe the tuition and other fees to be paid by students attending such institution;

Third, Grant such diplomas, certificates of graduation, or honors and degrees, as the nature of the institution may warrant, or as contemplated in the articles;

Fourth, Delegate to the president or principal, and the various professors and tutors, such authority over the educational affairs of the institution as the board may deem advisable;

Fifth, Co-operate with other schools, colleges and educational institutions within this country in promoting the best interests of education.

HISTORY: CL 1948, 450.175. This section re-enacts except adds word "educational" Sec. 6 of Ch. II of Pt. IV of Act 84 of 1921, being CL 1929, 10106.

450.176 Educational foundations; holders of diplomas, certificates, privileges.

Sec. 176. Same; privileges of holders of diplomas, or certificates. Every diploma, certificate of graduation, or other evidence of attendance at such institution, shall entitle the lawful recipient thereof to all the privileges and immunities which by custom or usage are allowed to holders of similar diplomas or certificates granted by similar institutions in this country: Provided, That as to any occupation or profession regulated by statute as to the requirements and qualifications necessary to the practice thereof, no such diploma or certificate of graduation shall entitle the recipient to any such privilege or immunity where such statutory requirements or qualifications have not been complied with.

HISTORY: CL 1948, 450.176. This section re-enacts Sec. 7 of Ch. II of Pt. IV of Act 84 of 1921, being CL 1929, 10107.

450.177 Educational foundations; inspection by state board of education, time; annual report, contents.

Sec. 177. Same; inspection by state board of education; annual report. Every such educational corporation shall be visited and inspected by the state board of education, in person or through visitors or inspectors appointed by them, at least once every 3 years. Said state board of education shall at the time of visitation ascertain and publish information upon all matters pertaining to the condition, management, instruction and

practices of such corporations, and shall file a copy of their report with the Michigan corporation and securities commission. Upon evidence that the property is at any time less than is required by law, or that any such educational corporation is not otherwise complying with the provisions of this act, they shall serve notice on such corporation to remedy the defects within a reasonable time to be fixed in such notice, and in case the deficiency is not corrected within the time fixed by them, they may institute proceedings at law for the dissolution of such corporation. Such trustees shall be required, on or before the first day of December, annually, to report to the state board of education, a statement of the name of each trustee, officer, teacher and the number of students of such institution, with a statement of its property, the amount of stock subscribed, donated and bequeathed, and the amount actually paid in, and such other information as will tend to exhibit its condition and operations.

HISTORY: Am. 1939, p. 319, Act 162, Eff. Sept. 29;—CL 1948, 450.177. This section as originally enacted superseded Sec. 8 of Ch. 11 of Pt. IV of Act 84 of 1921, being CL 1929, 10108.

450.178 Ecclesiastical corporations; incorporation; purpose.

Sec. 178. Ecclesiastical corporations. Any number of persons, not less than 3, may incorporate for the purpose of establishing any church organization for the purpose of teaching and spreading their religious beliefs and principles. Every such corporation shall be a non-profit corporation and subject to the provisions of this act relating to non-profit corporations generally except as specifically otherwise provided. The term "church" and/or "church organization" used in this act shall be construed to include any church, denominational unit, or church society as the term is commonly used and understood but shall not apply to such organizations as Sunday schools, Epworth Leagues, Young People's Unions, Bible classes and similar societies organized by and affiliated with the parent churches. Whenever any number of churches or other corporations organized for religious purposes desire to unite in a central organization for the accomplishment of any common purpose they may incorporate such organization by severally adopting, at meetings specially called for the purpose, resolutions expressing their desire to become members of such corporation; and by filing duly attested copies of such resolutions together with a copy of the articles of such corporation, as provided for the filing of articles in section 5 of this act. The corporations formed under this section are hereinafter called ecclesiastical corporations.

HISTORY: CL 1948, 450.178. This section supersedes and merges Sec. 5 of Ch. 1 of Pt. I of Act 84 of 1921, being CL 1929, 9947; and Sec. 1 of Ch. 111 of Pt. IV of Act 84 of 1921, being CL 1929, 10109.

SECURITIES: Issued exclusively for educational, benevolent, fraternal, charitable, religious or reformatory purposes are excepted from the provisions of the securities act, see Compilers' § 451.802.

CORPORATE TERM: See Compilers' §§ 450.12 and 450.64.

TAX EXEMPTIONS: See Compilers' §§ 211.7 and 211.9.

450.179 Ecclesiastical corporations; articles of incorporation.

Sec. 179. Same; articles of incorporation. The articles of any such ecclesiastical corporation shall be executed by the incorporators and shall follow the form prescribed in this section, and contain such further statements as may be appropriate to each such corporation, as the law may direct or as the incorporators may deem necessary or advisable. Such form shall run as follows:

"We, the undersigned, desiring to become incorporated under the provisions of Act No. of the Public Acts of 1931 (namely, this act) do hereby make, execute and adopt the following articles of association, to-wit:

First, The name assumed by this corporation and by which it shall be known in law, is "The church" (or other name which clearly indicates a religious society or association);

Second, The location of said church or society shall be in the of county of and state of Michigan;

Third, The time for which said corporation shall be created shall be

Fourth, The members of said church or society shall worship and labor together according to the discipline, rules and usages of the church in the United States of America (or other jurisdiction as the case may be), as from time to time authorized and declared by the (here insert the name of the higher ecclesiastical body or bodies, if any, authorized to determine such question);

Fifth, And succeeding articles, if any (containing in brief and concise language, such other and further declarations or statements pertaining to such corporation, as may be deemed necessary or advisable by the incorporators, or as may be hereinafter prescribed).

In witness whereof, we, the parties hereby associating for the purpose of giving legal effect to these articles, hereunto sign our names and places of residence.

Done at the of, County of and state of Michigan, this day of, 19.....

(Residences)

(Signatures)

.....

(Acknowledgments.)

(Consent if any required.)

(Certificates, if any.)"

HISTORY: CL 1948, 450.179. This section supersedes Sec. 2 of Ch. III of Pt. IV of Act 84 of 1921, being CL 1929, 10110.

450.180 Ecclesiastical corporations; articles, execution, contents; receivership; unclaimed property, state.

Sec. 180. Same; execution and contents of articles; receivership; unclaimed property to escheat to state. Excepting as herein otherwise provided, such articles shall be executed, acknowledged, filed and disposed of in the same manner and with like effect as is prescribed in section 5 of this act. Such articles may contain, among other things, specified in section 179 of this act, any provisions the incorporators may determine upon respecting the church polity or government, and the blank spaces provided for shall be filled in by words appropriate to the particular denomination or corporation being so incorporated. Such society shall not, however, by its articles, by-laws or system of discipline, permit or encourage the teaching of immoral practices or conduct or anything that is contrary to public policy; that violates the sanctity of the marital relations; that will prohibit any member of such society from appealing to the courts of the United States or the courts of this state for the enforcement of personal or property rights; that the by-laws and rules of discipline shall not be subject to civil law or decree; that encourages violating or disregarding any law of the United States or of this state. No provision shall be made in such by-laws or articles permitting such corporation to receive, accept, acquire or endeavor to secure property through fraud, misrepresentation or undue influence under the guise of religious teaching or discipline; that will permit any individual as such and not as an official of said society to acquire and hold the property thereof in his own name, or which permits any official to dictate and construe the rules of discipline or by-laws of such society without the approval of the directing board thereof, or require that such by-laws and rules be approved by him before becoming effective. Whenever proceedings in the nature of quo warranto have been or may hereafter be brought against any association or corporation organized or doing business in this state as a religious or ecclesiastical body, and when it shall appear in the information that such association or corporation has ex-

ceeded its powers, misused its franchises and privileges, committed any fraud or deception, has been guilty of any misapplication of funds or property, has secured property or donations through fraud or misrepresentation, has acquired or used property illegally, has been guilty of propagating or teaching immoral or vicious principles or doctrines or has otherwise violated the laws of this state or the United States, the attorney general may, in such proceedings, or in separate proceedings, apply to the same or any other circuit court for a receiver for the property and effects of such association or corporation, and in all such cases the court shall appoint a receiver in like manner and with like effect and powers as in insolvency proceedings as provided for in the judicature act of 1915 and any amendments thereto. All persons having any interest in the property of such association or corporation or who have conveyed, donated or contributed substantially to the funds or property of such association or corporation, may intervene in such proceedings for the purpose of obtaining restitution of such property or their just share thereof, and shall be entitled to prove their claims thereunder according to the rules and practice of the court. Any property, goods or money of such association or corporation, or held in trust by or for it, and not claimed or distributed to the creditors or other claimants whose claims have been duly proved in the proceedings herein authorized, shall escheat to the people of this state and upon the winding up of the receivership shall be conveyed to the state board of escheats, and shall be disposed of by such board as now provided by law for other escheated property.

HISTORY: CL 1948, 450.180. This section supersedes Sec. 3 of Ch. III of Pt. IV of Act 84 of 1921, Am. 1923, p. 102, Act 77, Imd. Eff. April 25, being CL 1929, 10111.

RECEIVERS: See Compilers' § 600.3601 et seq.

ESCHEATED ESTATES: See Compilers' § 567.11 et seq.

450.181 Ecclesiastical corporations; by-laws.

Sec. 181. Same; by-laws. Every such ecclesiastical corporation shall have authority to adopt by-laws prescribing the qualifications of members; the manner in which they shall be admitted, suspended or expelled; the number and official titles of the person or persons who control the temporal affairs of such corporation; their terms of office; the manner of their selection and removal from office; their respective official duties; the time and manner of calling and holding church business meetings and the number of members constituting a quorum; how far such corporation shall be subject to the approval or control of any other corporation or higher church body which corporation or body shall be named; the manner and condition under which property, both real and personal, may be acquired, held and disposed of; and such other by-laws as may be deemed necessary for the management of the affairs of such corporation. The by-laws may also prescribe how the same may be altered, amended or repealed.

HISTORY: CL 1948, 450.181. This section supersedes Sec. 4 of Ch. III of Pt. IV of Act 84 of 1921, being CL 1929, 10112.

450.182 Ecclesiastical corporations; articles, amendment procedure.

Sec. 182. The articles of any such ecclesiastical corporation may be amended at any meeting of the members of such corporation called for that purpose pursuant to the bylaws, by the affirmative vote of a majority of the members entitled to vote thereon present at such meeting, unless a different majority is required by the rules of discipline or by the church policy in any particular case, and it shall be the duty of the person or persons controlling the temporal affairs of such corporation to make, sign and acknowledge in the same manner that the original articles were made, signed and acknowledged, a certificate, containing the name of the corporation, a copy of the call for the meeting at which the amendment was made, the number of members present at such meeting, the number of members voting in favor of the amendment and a copy of the amendment; and such certificate of amendment shall be filed in the same manner that the original articles were filed, and upon such filing the amendment shall be

effective. Where the system of discipline or polity in any particular denomination or church requires the action, consent or vote of a conference, conclave or synod, presbytery or other body, or the approval of certain officers of such conference or other body or of a bishop or other hierarchical officer, to such amendments, then all such amendments shall be made in conformity to such practice and requirements and shall in all other respects conform to the customs, usages, beliefs and discipline of the particular church body concerned.

HISTORY: CL 1948, 450.182;—Am. 1967, p. 269, Act 194, Eff. Nov. 2.

This section supersedes Sec. 5 of Ch. III of Pt. IV of Act 84 of 1921, being CL 1929, 10113.

450.183 Ecclesiastical corporations; powers as to property.

Sec. 183. Same; powers in relation to property. Where no other special provision inconsistent herewith is made in sections 178 to 185, both inclusive, of this act, every such ecclesiastical corporation shall have power to acquire, hold, sell and convey property, both real and personal for the general purposes of such corporation, and it may recover and hold the debts, demands, rights, privileges and all property, whether real or personal, of whatever sort it may be, belonging or appertaining to said church, in whatever manner the same may have been acquired, except that acquired through fraud, misrepresentation, undue influence or other unlawful means and in whose hands soever the same may be held, the same as if the right and title had originally been vested in such corporation. The board of trustees may authorize certain of the officers of said board to affix the corporate name and the seal of such corporation, and to execute and attest conveyances, notes, obligations, acquittances and all other necessary legal documents. Such corporation may sell, mortgage and dispose of its personal property; and may mortgage and incumber its real estate. It may acquire real estate by gift, purchase or devise for the purpose of having and holding land and buildings for its own use and occupancy, including a pastor's residence, a church cemetery, church and Sunday school buildings and grounds and church society buildings and grounds, and may sell or mortgage such real estate; shall have and enjoy all the rights, privileges and immunities, so far as any church cemetery owned by it is concerned, which corporations organized to establish rural cemeteries have and enjoy under the laws of this state: Provided, That the right to sell, convey or mortgage such real property shall be subject to such restrictions and conditions as may be prescribed by the rules of discipline, articles or by-laws pertaining to each such corporation: And provided further, That every such corporation insofar as it holds any property in trust for religious, charitable, benevolent, educational or social purposes, shall be deemed to be a trustee corporation within the meaning of this act and governed by the provisions relating to trustee corporations, excepting as herein otherwise provided.

HISTORY: CL 1948, 450.183. This section supersedes Sec. 7 of Ch. III of Pt. IV of Act 84 of 1921, Am. 1923, p. 103, Act 77, Imd. Eff. April 25, being CL 1929, 10115.

GIFTS, GRANTS, DEVISES: See Compilers' § 554.351 et seq.

SALE OF LANDS: See Compilers' § 554.401 et seq.

INVESTMENTS: See Compilers' §§ 555.201-555.203.

450.184 Ecclesiastical corporations; gifts, acceptance, investment.

Sec. 184. Any ecclesiastical corporation incorporated in this state may receive, hold, and use gifts or bequests of money or other property for any special religious, benevolent, charitable, educational, social or other purpose, enterprise or project connected with such corporation, or may receive such gifts or bequests to be by such corporation invested in whole or in part in the name of such corporation, the net income therefrom to be by such corporation used for any of said purposes, according to the terms of such gifts or bequests. All real estate so received and not used by such corporation for any of such purposes shall be sold within 10 years and the proceeds therefrom shall be used or invested according to the terms of such gift or bequest. All such investments made by such corporation shall be in accordance with the laws of this state governing

authorized investments for trustees. The trustees, vestrymen, consistory, or other governing body of any ecclesiastical corporation incorporated in this state, may in their corporate name receive gifts and bequests of money for investment upon bond and mortgage when the interest of such investment is to be applied in payment or part payment of the salary of the minister, priest, rector, parson or clergyman of such religious society: Provided, That sums of money, mortgages or investments so held by any such corporation shall be invested by the trustees, vestrymen, consistory, or other governing body, in their corporate name, in accordance with the laws of this state governing authorized investments for trustees.

HISTORY: Am. 1937, p. 278, Act 183, Imd. Eff. July 9;—CL 1948, 450.184. This section as originally enacted superseded Sec. 8 of Ch. III of Pt. IV of Act 84 of 1921, being CL 1929, 10116.

450.185 Ecclesiastical corporations; powers of church unrestricted.

Sec. 185. Same; powers of churches not restricted. Nothing in this act contained shall be construed as limiting or restricting the rights, powers, privileges, immunities or the practices of any church heretofore established or incorporated under any law of this state; nor as requiring any such church to alter or change any rule of discipline, custom or usage in respect of its church policy or government; nor as interfering with the lawful acquisition, use or disposition of any property now owned or held by any such church corporation. The provisions of this act relating to ecclesiastical corporations shall be liberally construed in the interests of religion and morality.

HISTORY: CL 1948, 450.185. This section supersedes Sec. 9 of Ch. III of Pt. IV of Act 84 of 1921, being CL 1929, 10117.

450.186 Ecclesiastical corporations; Sunday school, religious society; incorporation.

Sec. 186. Same; Sunday school or religious societies. Any 3 or more persons may incorporate a Sunday school society, or other special religious society or union, not being a church, but having for its object the teaching of religious principles, or the associating together for religious work. The incorporators shall subscribe articles similar to those prescribed for non-profit corporations generally, which articles shall also contain any special conditions or distinguishing principles upon which such corporation is founded, and, if connected with some organized church, the name of the church and a statement of the extent to which such church may exercise superintendence over the affairs of or discipline of the members of such Sunday school or other corporation. The corporations referred to in this section as Sunday schools or special religious societies, shall have all the rights, privileges, immunities and powers granted by this act to non-profit corporations generally in their secular affairs; and in their religious affairs they shall be governed solely by their articles and by-laws, and the system of discipline therein adopted.

HISTORY: CL 1948, 450.186. This section supersedes with additions Sec. 6 of Ch. III of Pt. IV of Act 84 of 1921, being CL 1929, 10114.

450.186a Public building corporations; incorporation; contracts with state administrative board, legislature's approval.

Sec. 186a. Any number of persons, not less than 3, may become incorporated as a public building corporation for the purpose of constructing, operating and maintaining office buildings and other facilities for the use of the state of Michigan. No contract or contracts between the state administrative board and any public building corporation shall become effective until approved by the legislature by concurrent resolution. Such corporations are hereinafter called public building corporations.

HISTORY: Add. 1947, p. 516, Act 316, Eff. Oct. 11;—CL 1948, 450.186a;—Am. 1963, 2nd Ex. Ses., p. 34, Act 28, Imd. Eff. Dec. 27.

450.186b Public building corporations; powers as to property; state contracts, leases; bonds; by-laws.

Sec. 186b. Every such public building corporation shall have power to take and hold by bequest, devise, gift, purchase or lease, either absolutely or in trust, for its object

and purpose, any property, real, personal or mixed, without limitation as to the amount of value, except such limitations, if any, as the legislature shall hereafter specifically impose; to convey such property and to invest and reinvest the principal thereof and deal with and expend the income of the corporation in such manner as in the judgment of the trustees will best promote its objects; to enter into contracts and leases with the state of Michigan; to borrow money and issue revenue bonds for the repayment thereof with interest, and may in like case mortgage its property as security for its debts: Provided, That the by-laws expressly authorize such action to be taken, or that the same is authorized by resolution of the trustees at any duly called meeting at which a quorum is present.

HISTORY: Add. 1947, p. 516, Act 316, Eff. Oct. 11;—CL 1948, 450.186b.

450.186c Public building corporations; non-profit provisions, applicability; administration of property and accumulation; rent to state; fees, purpose.

Sec. 186c. Every such corporation shall be a nonprofit corporation and subject to the provisions of this act relating to nonprofit corporations except as specifically otherwise provided. All of such property and accumulations thereof shall be held and administered to effectuate the purposes stated in the articles and to serve the general welfare of the state: Provided, That this act shall not prevent such corporation from charging rent to the state for the purpose of paying the cost of construction and maintenance of the office buildings or to charge state employees and others fees for the purpose of paying the cost of construction and maintenance of any parking structures and other facilities.

HISTORY: Add. 1947, p. 516, Act 316, Eff. Oct. 11;—CL 1948, 450.186c;—Am. 1963, 2nd Ex. Ses., p. 34, Act 28, Imd. Eff. Dec. 27.

450.186d Public building corporations; trustees, number, terms, compensation; members, term, admission.

Sec. 186d. The trustees of every such corporation shall provide in the articles the terms and the manner in which members may be admitted. The affairs of such corporation shall be managed by a board of not less than 3 nor more than 9 trustees to be elected by the members as provided by the by-laws. Such trustees shall hold offices for 6 years or for such other period as the by-laws shall determine and until their successors are elected and qualified. No such trustee shall receive any compensation for his services as such.

HISTORY: Add. 1947, p. 516, Act 316, Eff. Oct. 11;—CL 1948, 450.186d.

450.186e Public building corporations; winding up affairs by legislature; property, conservation, disposition.

Sec. 186e. Should any such corporation cease to operate or become unable to usefully serve the purpose of its organization, the legislature may by law provide for the winding up of its affairs and for the conservation and disposition of its property in such way as may best promote and perpetuate the purposes for which such corporation was originally organized.

HISTORY: Add. 1947, p. 516, Act 316, Eff. Oct. 11;—CL 1948, 450.186e.

450.187 Repealed. 1965, p. 256, Act 161, Imd. Eff. Jul. 15.

Section related to reincorporation of foreign corporations.

450.187a Repealed. 1970, p. 153, Act 66, Imd. Eff. Jul. 10.

Section related to incorporation of foreign corporations.

450.187b Corporations; consolidation or merger, prerequisites; franchise fee; issuance fee.

Sec. 187b. (1) If any corporation, which has been lawfully doing business in this state for a period of 5 years or more, and during each of its most recent 5 fiscal years has obtained at least 90% of its revenue from business in this state, and holds a certifi-

cate of authority, merges into any corporation or consolidates with any one or more corporations into a corporation by complying with the provisions of section 52 of this act, the resulting corporation shall pay franchise fees to the department of treasury as provided in subsection (2), and if any issuance of securities by the resulting corporation, in accordance with the agreement of merger or consolidation, requires the authorization of the public service commission pursuant to section 1 of Act No. 144 of the Public Acts of 1909, as amended, being section 460.301 of the Compiled Laws of 1948, the resulting corporation shall pay issuance fees into the state treasury as provided in subsection (3).

(2) The franchise fee payable, pursuant to section 3 of Act No. 85 of the Public Acts of 1921, as amended, being section 450.303 of the Compiled Laws of 1948, by the resulting corporation at the time of filing the agreement of consolidation or merger in the office of the department of treasury shall be the same as is required to be paid by any other corporation having like authorized capital stock, less such sums as the corporations so merging or consolidating have previously paid to this state under section 3 of Act No. 85 of the Public Acts of 1921, as amended, and under section 187a of this act, or predecessor laws of this state, as an organization fee and for the privilege of exercising its franchises within this state and for increases in its authorized capital stock or taxable proportion thereof.

(3) If the issuance of stocks, bonds, notes or other evidences of indebtedness by the resulting corporation, in accordance with the agreement of merger or consolidation, requires the authorization of the public service commission, the issuance fee payable into the state treasury, pursuant to section 11 of Act No. 419 of the Public Acts of 1919, as amended, being section 460.61 of the Compiled Laws of 1948, by the resulting corporation shall be the same as is required to be paid by any other corporation pursuant thereto upon the issuance, authorized by the commission, of a like amount of stocks, bonds, notes or other evidences of indebtedness, less such sums as the corporations so merging or consolidating have previously paid to this state under section 11 of Act No. 419 of the Public Acts of 1919, or predecessor laws of this state, as fees upon the issuance, authorized by the commission, of stocks, bonds, notes or other evidences of indebtedness outstanding at the time of the merger or consolidation. In no case shall the issuance fee be less than \$25.00.

HISTORY: Add. 1967, p. 155, Act 124, Imd. Eff. Jun. 27.

450.188 Incorporation under act; declaration of necessity.

Sec. 188. Incorporation under act, necessity. No corporation which may be incorporated under this act shall hereafter be incorporated except under the provisions of this act.

HISTORY: CL 1948, 450.188. This section supersedes part of Sec. 7 of Ch. I of Pt. I of Act 84 of 1921, being CL 1929, 9949.

450.189 Existing corporations; applicability of act.

Sec. 189. Existing corporations; applicability of act. Every corporation heretofore organized and incorporated under any law of this state, which if now incorporated would be required to incorporate under and subject to this act, shall hereafter be subject to the provisions of this act without formal reorganization hereunder and such corporations shall be deemed to exist under this act, and, except where otherwise provided in the act under which any such particular corporation is incorporated, if such act has not been repealed, the provisions of this act shall govern all corporations heretofore or hereafter incorporated in this state. Every foreign corporation heretofore admitted to do business in this state, which if seeking admission now would be required to comply with the provisions of this act, shall hereafter be subject to the provisions of this act. Nothing in this act shall be construed as attempting to deprive any such cor-

poration of any constitutional power, right, privilege or franchise which any such corporation now enjoys.

HISTORY: Am. 1835, p. 321, Act. 194, Imd. Eff. June 6;—CL 1948, 450.189. This section as originally enacted superseded with additions part of Sec. 2 of Ch. III of Pt. V of Act 84 of 1921, being CL 1929, 10135.

450.190 Catchline headings of sections not part of act.

Sec. 190. Catchline headings of sections not part of act. The catchline headings of sections of this act shall in no way be considered to be a part of the respective sections or of this act but are inserted herein for purposes of convenience.

HISTORY: CL 1948, 450.190. This section supersedes part of Sec. 10 of Ch. I of Pt. I of Act 84 of 1921, being CL 1929, 9952.

450.191 Repeal.

Sec. 191. Repeal. The following acts and parts of acts amendatory thereto, are hereby repealed:

Act 84, Public Acts 1921; Act 20, Public Acts 1921, First Extra Session; Act 77, Public Acts 1923; Act 153, Public Acts 1923; Act 154, Public Acts 1923; Act 172, Public Acts 1923; Act 234, Public Acts 1923; Act 275, Public Acts 1923; Act 232, Public Acts 1925; Act 342, Public Acts 1925; Act 363, Public Acts 1925; Act 388, Public Acts 1925; Act 72, Public Acts 1927; Act 335, Public Acts 1927; Act 267, Public Acts 1929; Act 191, Public Acts 1877; Act 216, Public Acts 1881; Act 21, Public Acts 1885; Act 244, Public Acts 1903; Act 63, Public Acts 1905; Act 188, Public Acts 1905; Act 45, Public Acts 1909; Act 252, Public Acts 1911; Act 105, Public Acts 1919; Act 25, Public Acts 1925; Act 59, Public Acts 1917; Act 210, Public Acts 1917; Act 27, Public Acts 1927; Act 53, Public Acts * 1872; Act 328, Public Acts 1905; sections 1, 2, 3, 5, 6 and 8 of chapter 55 Revised Statutes 1846; Act 50, Public Acts 1867; Act 31, Public Acts 1845; Act 85, Public Acts 1851; Act 31, Public Acts 1855; Act 133, Public Acts 1855; Act 43, Public Acts 1867; Act 144, Public Acts 1867; Act 411, Public Acts 1867; Act 9, Public Acts 1871; Act 17, Public Acts 1873; Act 40, Public Acts 1877; and Act 23, Public Acts 1879. Act No. 112, Public Acts of 1889, shall hereafter be inapplicable to corporations governed by this act.

The provisions of said act which are repealed by this act shall remain in force for the filing of annual reports and the payment of privilege fees during the year 1931 and for the enforcement, assessment, imposition and collection of all obligations, penalties or forfeitures which have accrued or may accrue in relation to filing such reports and to the payment of such privilege fees.

HISTORY: CL 1948, 450.191.

NOTE: The acts above underlined, covering partnerships, were held not repealed, and the repeal was held unconstitutional in that the title of Act 327, 1931, referred to corporations, and did not include partnership associations. Attorney General v. Hill-Davis Co., 261 Mich. 89, 245 N.W. 579. For position in this compilation, see Compilers' § 449.301 et seq.

*This act was an act of the first extra session of 1872.

Act 112, 1889, above referred to, is Compilers' §§ 450.631 and 450.632.

450.192 Saving clause.

Sec. 192. Saving clause. This act shall not impair or affect any act done, offense committed or right accruing, accrued, or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this act had not been passed.

HISTORY: CL 1948, 450.192.

Sec. 193. (This was a severing clause section.)

HISTORY: Rep. 1945, p. 414, Act 267, Imd. Eff. May 25. New section.

Act 192, 1962, p. 422; Eff. Mar. 28, 1963.

AN ACT authorizing the creation of professional service corporations; providing definitions; providing exceptions; providing the manner and method of creating such

corporations; providing for individual liability of officers, employees and agents of such corporations in certain instances; authorizing certain investments of corporate funds; regulating the issuance and transfer of capital stock; providing forfeiture of corporate franchise in certain instances; and requiring identification as a corporation. Am. 1963, p. 216, Act 153, Eff. Sep. 6.

The People of the State of Michigan enact:

450.221 Professional service corporation act; short title.

Sec. 1. This act shall be known and may be cited as the "professional service corporation act".

HISTORY: New 1962, p. 422, Act 192, Eff. Mar. 28, 1963.

CITED IN OTHER SECTIONS: Sections 450.221 to 450.235 are cited in § 451.802.

450.222 Professional service corporation act; definitions.

Sec. 2. As used in this act:

(a) "Professional service" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization. By way of example and without limiting generality thereof, the personal services which come within the provisions of this act are the personal services rendered by certified or other public accountants, chiropractors, dentists, optometrists, veterinarians, osteopaths, physicians and surgeons, doctors of medicine, doctors of dentistry, podiatrists, chiropodists, architects, professional engineers, land surveyors and attorneys at law.

(b) "Professional corporation" means a corporation which is organized under this act for the sole and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation, or the personal representatives or estates of such individuals as provided in section 10.

HISTORY: New 1962, p. 422, Act 192, Eff. Mar. 28, 1963;—Am. 1963, p. 216, Act 153, Eff. Sep. 6.

450.223 Application of act.

Sec. 3. This act shall not apply to any corporation organized within this state prior to the passage of this act to perform professional services to the public. Any such corporation may bring itself within the provisions of this act by amending the articles of incorporation in such a manner so as to be consistent with all the provisions of this act and by affirmatively stating in the amended articles of incorporation that the shareholders have elected to bring the corporation within the provisions of this act.

HISTORY: New 1962, p. 422, Act 192, Eff. Mar. 28, 1963.

450.224 Profit corporations; formation to render specific professional services.

Sec. 4. An individual or group of individuals duly licensed or otherwise legally authorized to render the same professional services within this state may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of this act and of Act No. 327 of the Public Acts of 1931, as amended, being sections 450.1 to 450.192 of the Compiled Laws of 1948, for the sole and specific purpose of rendering the same and specific professional service.

HISTORY: New 1962, p. 422, Act 192, Eff. Mar. 28, 1963.

450.225 Professional service corporations; services rendered, licensees.

Sec. 5. No corporation organized and incorporated under this act may render professional services except through its officers, employees and agents who are duly licensed or otherwise legally authorized to render such professional services within this state. This provision shall not be interpreted to include in the term employee, secretar-

ies, bookkeepers, technicians and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required.

HISTORY: New 1962, p. 423, Act 192, Eff. Mar. 28, 1963.

450.226 Professional service corporations; licensee; negligence, wrongful acts, misconduct; liability.

Sec. 6. Nothing contained in this act shall be interpreted to abolish, repeal, modify, restrict or limit the law now in effect in this state applicable to the professional relationship and liabilities between the person furnishing the professional services and the person receiving such professional service and to the standards for professional conduct. Any officer, shareholder, agent or employee of a corporation organized under this act shall remain personally and fully liable and accountable for any negligent or wrongful acts or misconduct committed by him, or by any person under his direct supervision and control, while rendering professional service on behalf of the corporation to the person for whom such professional services were being rendered. The corporation shall be liable up to the full value of its property for any negligent or wrongful acts or misconduct committed by any of its officers, shareholders, agents or employees while they are engaged on behalf of the corporation in the rendering of professional services.

HISTORY: New 1962, p. 423, Act 192, Eff. Mar. 28, 1963.

450.227 Professional service corporations; scope of business; funds, investment.

Sec. 7. No corporation organized under this act shall engage in any business other than the rendering of the professional services for which it was specifically incorporated. Nothing in this act or in any other provisions of existing law applicable to corporations shall be interpreted to prohibit the corporation from investing its funds in real estate, mortgages, stocks, bonds or any other type of investments, or from owning real or personal property necessary for the rendering of professional services.

HISTORY: New 1962, p. 423, Act 192, Eff. Mar. 28, 1963.

450.228 Professional service corporations; capital stock; blue sky law; voting trust.

Sec. 8. No corporation organized under the provisions of this act may issue any of its capital stock to anyone other than an individual who is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the corporation was incorporated. The provisions of Act No. 265 of the Public Acts of 1964, as amended, being sections 451.501 to 451.818 of the Compiled Laws of 1948, shall not apply to the issuance or transfer by such corporation of securities issued by it. No shareholder of a corporation organized under this act shall enter into a voting trust agreement or any other type agreement vesting another person with the authority to exercise the voting power of any or all of his stock, unless such other person is duly licensed or otherwise legally authorized to render the same specific professional services as those for which the corporation was incorporated.

HISTORY: New 1962, p. 423, Act 192, Eff. Mar. 28, 1963;—Am. 1963, p. 217, Act 153, Eff. Sep. 6;—Am. 1968, p. 50, Act 31, Eff. Nov. 15.

450.229 Professional service corporations; disqualified licensee; employment services, financial interests.

Sec. 9. If any officer, shareholder, agent or employee of a corporation organized under this act who has been rendering professional service to the public becomes legally disqualified to render such professional services within this state, or is elected to a public office or accepts employment that, pursuant to existing law, places restrictions or limitations upon his continued rendering of such professional services, he shall sever within a reasonable period all employment with, and financial interests in, such corpo-

ration. A corporation's failure to require compliance with this provision shall constitute a ground for the forfeiture of its articles of incorporation and its dissolution. When a corporation's failure to comply with this provision is brought to the attention of the corporation and securities commission, it shall certify that fact to the attorney general for appropriate action to dissolve the corporation.

HISTORY: New 1962, p. 423, Act 192, Eff. Mar. 28, 1963;—Am. 1963, p. 217, Act 153, Eff. Sep. 6.

450.230 Professional service corporations; shares of stock, transfer, redemption.

Sec. 10. No shares of a corporation organized under this act shall be sold or transferred except to an individual who is eligible to be a shareholder of such corporation or to the personal representative or estate of a deceased or legally incompetent shareholder. The personal representative or estate of such shareholder may continue to own such shares for a reasonable period but shall not be authorized to participate in any decisions concerning the rendering of professional service. The articles of incorporation or bylaws may provide specifically for additional restrictions on the transfer of shares and may provide for the redemption or purchase of such shares by the corporation or its shareholders at prices and in a manner specifically set forth. The provisions dealing with the purchase or redemption by the corporation of its shares may not be invoked at a time or in a manner that would impair the capital of the corporation.

HISTORY: New 1962, p. 424, Act 192, Eff. Mar. 28, 1963;—Am. 1963, p. 217, Act 153, Eff. Sep. 6.

450.231 Professional service corporations; names permissible.

Sec. 11. The corporate name of a corporation organized under this act shall contain the words "professional corporation" or the abbreviation "P.C.". If the corporate name contains the last name of 1 or more of its shareholders, the corporation may render professional services and exercise its authorized powers under a name which is identical to its corporate name except that the words "professional corporation" or the abbreviation "P.C." may be omitted, provided that the corporation has first registered the name to be so used in the manner required for the registration of fictitious names.

HISTORY: New 1962, p. 424, Act 192, Eff. Mar. 28, 1963;—Am. 1963, p. 217, Act 153, Eff. Sep. 6.

450.232 Professional service corporations; directors, number.

Sec. 12. The number of shareholder members of the board of directors may be less than the number of shareholders, except if a corporation has only 1 shareholder, the board may consist of such shareholder.

HISTORY: New 1962, p. 424, Act 192, Eff. Mar. 28, 1963.

450.233 Professional service corporations; applicability of general corporation act.

Sec. 13. Act No. 327 of the Public Acts of 1931, as amended, shall be applicable to a corporation organized pursuant to this act except to the extent that any of the provisions of this act are interpreted to be in conflict with the provisions of that act, and in such event the provisions and sections of this act shall take precedence with respect to a corporation organized pursuant to the provisions of this act. A professional corporation organized under this act shall consolidate or merge only with another domestic professional corporation organized under this act to render the same specific professional service and a merger or consolidation with any foreign corporation is prohibited.

HISTORY: New 1962, p. 424, Act 192, Eff. Mar. 28, 1963.

450.234 Construction of act.

Sec. 14. The provisions of this act shall not be construed as repealing, modifying or restricting the applicable provisions of law relating to corporations, sales of securities or regulating the several professions enumerated in this act except insofar as such laws conflict with the provisions of this act.

HISTORY: New 1962, p. 424, Act 192, Eff. Mar. 28, 1963;—Am. 1963, p. 218, Act 153, Eff. Sep. 6.

450.235 Professional service corporations; annual report, contents; shareholders, certification.

Sec. 15. The annual report of a professional corporation shall list the names and post office addresses of all shareholders and shall certify that all shareholders are duly licensed or otherwise legally authorized in this state to render the same professional service as the corporation.

HISTORY: New 1962, p. 424, Act 192, Eff. Mar. 28, 1963.

Act 169, 1965, p. 270; Imd. Eff. Jul. 15.

AN ACT to require court proceedings for dissolution of domestic charitable purpose corporations; and to require the filing of notice of intention to withdraw with the attorney general by foreign charitable purpose corporations attempting to withdraw from this state.

The People of the State of Michigan enact:

450.251 Charitable purpose corporations; dissolution; notice, to attorney general, time; court proceedings.

Sec. 1. No nonprofit corporation, foundation, trustee corporation or other corporation or entity organized under the laws of this state whose corporate purposes are to hold property for any charitable purpose, except when they are organized for religious purposes, shall be dissolved except by giving notice to the attorney general by registered mail at least 45 days prior to the filing of any paper or document in respect to such dissolution with any other state agency or court. The attorney general may require the dissolution to be accomplished by proceedings in the circuit court for the county in which the registered office of the corporation is located, and the making of an accounting of its assets, administration and disposition of its assets. The attorney general is a necessary party to such proceedings and shall be given due notice thereof. The attorney general may consent to dissolution without court proceedings, provided however, that any other statutory provisions requiring court proceedings shall not be affected nor eliminated by such consent. The corporation and securities commission shall not accept for filing any notice of dissolution unless it is accompanied by a copy of the order of the circuit court dissolving the corporation or a certified copy of the written consent of the attorney general to such dissolution.

HISTORY: New 1965, p. 270, Act 169, Imd. Eff. Jul. 15.

450.252 Charitable purpose corporations; notice of withdrawal; filing, conditions.

Sec. 2. The corporation and securities commission shall not accept for filing a notice of withdrawal from this state of a foreign corporation or entity whose nature and purposes are similar to those domestic corporations or entities described in section 1, unless the notice of withdrawal is accompanied by a true copy and proof of service by

registered mail, of a notice of intention to withdraw from the state served upon the attorney general at least 45 days prior to the receipt by the commission of the notice of withdrawal.

HISTORY: New 1965, p. 271, Act 169, Imd. Eff. Jul. 15.

450.253 Construction of act.

Sec. 3. Nothing in this act shall be construed to repeal the provisions of Act No. 327 of the Public Acts of 1931, as amended, being sections 450.1 to 450.192 of the Compiled Laws of 1948, and any parts of this act inconsistent therewith shall be deemed to modify that act only to that extent.

HISTORY: New 1965, p. 271, Act 169, Imd. Eff. Jul. 15.

Act 85, 1921, p. 189; Imd. Eff. Apr. 27.

AN ACT prescribing the fees, taxes and charges to be paid to the state by corporations; prescribing the method and basis of computing such fees, taxes and charges; requiring certain annual reports to be filed by corporations; authorizing refunds of fees, taxes or charges overpaid and prescribing the procedure to be followed with respect thereto; providing for the redetermination of franchise fees and appeals therefrom; providing for the disposition of the moneys received under this act and prescribing penalties for non-compliance with the provisions thereof. Am. 1952, p. 240, Act 183, Imd. Eff. Apr. 29;—Am. 1954, p. 366, Act 153, Imd. Eff. Apr. 30.

The People of the State of Michigan enact:

450.301 Corporation fees; disposition.

Sec. 1. (1) The fees to be paid to the Michigan department of treasury by or in behalf of corporations, for the purposes herein specified, shall be as follows:

- (a) Filing, examining and certifying articles of domestic corporations, \$10.00.
- (b) Filing and examining articles or certificates of incorporation, and other papers connected with the application of a foreign corporation for admission to do business in Michigan, \$10.00.
- (c) Examining, filing and certifying any amendments to the articles of a domestic corporation, \$5.00.
- (d) Examining and filing any amendments to the articles of a foreign corporation, \$10.00.
- (e) Examining and filing any supplemental statement, \$10.00.
- (f) Examining, filing and certifying any certificate of merger or consolidation agreement, \$20.00.
- (g) Filing and examining any notice of final dissolution or termination, \$5.00.
- (h) Filing and examination of any special report required by law, \$2.00.
- (i) Certifying any part of the files or records pertaining to a corporation for which no other provision is herein made, a minimum charge of \$1.00 for each certificate, and 50 cents per folio for the matter so certified to.
- (j) Certifying and forwarding the record of any determination of a franchise fee to the appeal board, \$10.00.
- (2) These fees shall be paid by the corporation at the time of filing or when the service is rendered by the Michigan department of treasury. The fees shall be in addition to the franchise fees prescribed in this act, and shall, when collected, be paid into the treasury of the state and credited to the general fund.
- (3) Fees paid by or on behalf of domestic and foreign regulated investment compa-

nies as defined in section 3b of this act shall be the same as are charged foreign and domestic corporations for the purposes hereinbefore specified.

HISTORY: CL 1929, 10136;—Am. 1954, p. 53, Act 46, Eff. Aug. 13;—Am. 1964, p. 186, Act 157, Eff. Aug. 28;—Am. 1969, p. 217, Act 122, Imd. Eff. Jul. 29.

REVISION OF CORPORATION LAWS: Act 24 of 1919, required the attorney general to submit to the Legislature of 1921 bills to revise, consolidate and simplify the laws of this state relating to corporations.

FORMER ACT: Act 182 of 1891, being CL 1915, 11352-11355, repealed by Act 309 of 1929, being CL 1929, 121.

REPORTS: The provisions of this act relating to reports were repealed by Act 140 of 1927, leaving this act merely one relating to fees, while reports are now treated in a single place, being Compilers' § 450.81 et seq.

CITED IN OTHER SECTIONS: Sections 450.301 to 450.310 are cited in §§ 450.73, 450.74, and 450.94.

450.302 Franchise and privilege fees; non-profit corporation.

Sec. 2. Every corporation organized or doing business in this state, other than those doing business for a profit, shall, upon filing its articles, or, if a foreign corporation, upon filing its application for admission, pay to the secretary of state a fee of 10 dollars for the privilege of exercising its franchises within this state, upon such organization or admission as the case may be; and at the time of filing each of its annual or other reports, as required by law, each such corporation, except ecclesiastical or church corporations or Sunday school societies, shall pay a further fee of 10 dollars to the secretary of state, for the privilege of exercising such franchise within this state, for the period from the time of such report until the filing of the next succeeding report required by law.

HISTORY: Am. 1925, p. 759, Act 385, Eff. Aug. 27;—CL 1929, 10137;—CL 1948, 450.302.

REPORTS: See Compilers' § 450.81.

450.303 Franchise fees; cooperative associations, profit corporations, regulated investment companies; amount, exceptions; capital stock, increase; corporation, definition; renewal fee.

Sec. 3. Every cooperative association, domestic corporation hereafter organized for profit and every domestic regulated investment company, except corporations organized under Act No. 50 of the Public Acts of 1887, as amended, being sections 489.1 to 489.40 of the Compiled Laws of 1948, and Act No. 14 of the Public Acts of 1901, being sections 489.201 to 489.210 of the Compiled Laws of 1948, and every foreign corporation for profit and foreign regulated investment company hereafter applying for admission to do business within this state, at the time of filing its articles or applying for admission, shall pay to the Michigan corporation and securities commission, as an organization fee and for the privilege of exercising its franchises within this state, a sum equal to 1/2 mill upon the dollar for each dollar of the authorized capital stock of such corporation. In case of a foreign corporation, such fee shall be computed upon that portion of its authorized capital stock represented by the portion of its property, both tangible and intangible, owned or used or to be used and business transacted in Michigan. In no case shall the organization fee be less than \$25.00. In case of any regulated investment company the fee shall not exceed \$40.00. Every corporation heretofore or hereafter incorporated under the laws of the state of Michigan which shall thereafter increase its authorized capital stock, and every foreign corporation heretofore or hereafter admitted to do business in this state, which shall thereafter increase its authorized capital stock, shall pay a sum equal to 1/2 mill upon each dollar for each and any increase in its authorized capital stock. In case of a foreign corporation, such fee shall be computed upon that portion of its authorized capital stock represented by the portion of its property, both tangible and intangible, owned or used or to be used and business transacted in Michigan. Whenever a foreign corporation which has heretofore or hereafter been admitted to do business in Michigan shall increase the proportion of its authorized capital stock represented by property owned or used and business transacted in this state, it shall pay a sum equal to 1/2 mill upon each dollar of the increased proportion of its authorized capital stock represented by its property, both tangible and intangible, owned or used and business transacted in Michigan. In

determining the amount or value of intangible property, including capital investments, owned or used in this state by a foreign corporation, such property shall be considered to be located, owned or used in this state for the purposes hereof, if used in or acquired from the conduct of its business in this state, irrespective of the domicile of the corporation. The Michigan corporation and securities commission shall in all such cases be authorized to require the corporation to furnish detailed and exact information touching such several matters before making a final determination of the organization fee to be paid by such corporation. The commission in determining the organization fee under this section shall work in conjunction with the state department of revenue. The term "corporation" as used in this act shall be deemed to include partnership associations, limited, cooperative associations, all joint associations having any of the powers of corporations, and such common law trusts or trusts created by statute of this or any state or country exercising common law powers in the nature of corporations, whether domestic or foreign, in addition to such other corporations as are referred to in this act. All corporations whose terms of corporate existence shall have expired prior to January 1, 1964, and who shall seek to renew such corporate existence, in accordance with law, shall be regarded as new corporations for the purpose of the payment of the fees provided by this act, and shall be required to pay such fees before the renewal of such corporate existence. All corporations whose terms of corporate existence shall expire on January 1, 1964, or thereafter, and who shall seek to extend or renew such corporate existence, in accordance with law, shall not be regarded as new corporations for the purpose of the payment of the fees provided by this act, and shall not be required to pay such fees before the extension or renewal of such corporate existence, except that a \$5.00 fee shall be paid in connection with the filing of each certificate of extension or renewal. All corporations whose terms of corporate existence would otherwise have expired on or after January 1, 1964, but who within 2 years prior to January 1, 1964, filed a certificate of extension of corporation term beyond January 1, 1964, shall be entitled to a refund of all franchise fees paid in that connection. Such refunds shall be payable only upon written request made prior to January 1, 1965.

HISTORY: Am. 1923, p. 373, Act 233, Eff. Aug. 30;—Am. 1927, p. 44, Act 33, Imd. Eff. April 12;—Am. 1929, p. 484, Act 175, Imd. Eff. May 20;—CL 1929, 10138;—Am. 1945, p. 216, Act 154, Imd. Eff. May 14;—CL 1948, 450.303;—Am. 1952, p. 240, Act 183, Imd. Eff. Apr. 29;—Am. 1954, p. 341, Act 144, Imd. Eff. Apr. 23;—Am. 1963, 2nd Ex. Ses., p. 31, Act 25, Imd. Eff. Dec. 27;—Am. 1964, p. 187, Act 157, Eff. Aug. 28.

CITED IN OTHER SECTIONS: The above section is cited in §§ 450.187a and 450.187b.

450.303a Franchise fees of profit corporations; no par stock; additional fee.

Sec. 3a. The value placed upon each share of stock of no par value by a corporation for the purpose of sale, or for exchange for property, or other stock, or the current book value per share of outstanding no par value stock as determined by the Michigan corporation and securities commission, whichever may be higher, shall be taken as the basis of the franchise fees required under this section and section 3 of this act. Such value for the franchise fee purposes under this section and section 3 of this act shall be at least \$1.00, but not more than \$100.00 per share. Where any shares of no par value stock shall within 1 year after incorporation or within 1 year after an increase in authorized capital stock be exchanged for property or for other stock at a price in excess of that stated in the articles of incorporation, there shall be filed with the Michigan corporation and securities commission a sworn statement in respect thereto and there shall be paid to the Michigan corporation and securities commission on account thereof an additional franchise fee if due, such fee to be computed at the rate of 1/2 mill on each dollar of increased value of authorized capital based upon such exchange price. No additional franchise fee shall be required where the increased value placed

upon such shares is based upon earnings of a corporation earned within the year after incorporation, or within the year after an increase in authorized capital stock.

HISTORY: Add. 1925, p. 322, Act 223, Imd. Eff. May 6;—Am. 1927, p. 488, Act 253, Eff. Sept. 5;—CL 1928, 10139;—CL 1948, 450.303a;—Am. 1961, p. 398, Act 227, Eff. Sep. 8.

450.303b Regulated investment company; definition.

Sec. 3b. A regulated investment company, for purposes of this act, means any corporation or association, common law or statutory trust, under whatever authority organized, which for any taxable year or period for purposes of federal income tax is registered and regulated under the investment company act of 1940, as amended, being sections 80a-1 to 80a-52 of title 15 of the United States code and which for such taxable year or period is classified as a regulated investment company as defined in subchapter m of chapter 1 of the internal revenue code of 1954, as amended, being sections 851 to 855 of title 26 of the United States code.

HISTORY: Add. 1964, p. 188, Act 157, Eff. Aug. 28.

450.304 Franchise fees; rates; exemptions; intent; no par value shares, evaluation.

Sec. 4. Every cooperative association and every profit corporation organized or doing business under the laws of this state, or having the privilege to do business, employing capital or persons, owning or managing property or maintaining an office, or engaging in any transaction, in this state, excepting domestic and foreign insurance companies, domestic and foreign building and loan and savings and loan associations, medical care corporations, hospital service corporations, state and national banking corporations, trust companies, such corporations now in existence or hereinafter incorporated formed with the consent of the banking commissioner for the state of Michigan for the purpose of taking over all or a part of the assets of closed banks or trust companies with the intent and purpose of liquidating such assets when and as conditions warrant such action by said corporations, small business investment companies licensed under, or organized pursuant to, the provisions of the federal small business investment act of 1958, public law 85-699, and business development corporations organized and regulated pursuant to a statute pertaining to such corporations, shall pay, at the time of filing the annual report with the Michigan corporation and securities commission, as required by sections 81 and 82 of Act No. 327 of the Public Acts of 1931, as amended, being sections 450.81 and 450.82 of the Compiled Laws of 1948, an annual fee of 5 mills upon each dollar of its paid-up capital and surplus, but such franchise fee shall in no case be less than \$10.00. Operating railroad, interurban railroad, telephone, telegraph and express companies heretofore exempt from this franchise tax shall be exempt as to the franchise tax payable in 1953 and thereafter unless the state board of assessors has certified prior thereto to the Michigan corporation and securities commission that the specific tax rate under Act No. 282 of the Public Acts of 1905, as amended, being sections 207.1 to 207.21 of the Compiled Laws of 1948, has been based upon state equalized valuation. It is the intent of this section to impose the tax herein provided for upon every corporation, foreign or domestic, having the privilege of exercising corporate franchises within this state, irrespective of whether any such corporation chooses to actually exercise such privilege during any taxable period. The Michigan corporation and securities commission shall in all such cases be authorized to require the corporation to furnish detailed and exact information touching such several matters before making a final determination of the privilege fee to be paid by such corporation. For the purpose of this act only, each share of no par value shall be deemed to have the value of at least \$1.00, or such value as shall have been fixed by the corporation for the sale of such stock, or the book value as determined by the Michigan corporation and securities commission, whichever may be the higher. In any

case where the capital of a corporation is not divided into shares, the whole property thereof shall be deemed to be the authorized capital stock for the purposes of this act.

Surplus, definition.

The term "surplus", as used in this act, shall be taken and deemed to mean the net value of the corporation's property, less its outstanding indebtedness and paid-up capital; but in no case, either as to domestic or as to foreign corporations, shall any deduction be made from the item of paid-up capital, in computing the franchise fee thereon, by reason of any impairment of the same.

HISTORY: Am. 1923, p. 374, Act 233, Eff. Aug. 30;—Am. 1927, p. 200, Act 140, Imd. Eff. May 11;—Am. 1929, p. 485, Act 175, Imd. Eff. May 20;—CL 1929, 10140;—Am. 1933, Ex. Ses., p. 39, Act 13, Imd. Eff. Jan. 2, 1934;—CL 1948, 450.304;—Am. 1951, p. 586, Act 277, Imd. Eff. Jun. 28;—Am. 1952, p. 241, Act 183, Imd. Eff. Apr. 29;—Am. 1954, p. 342, Act 144, Imd. Eff. Apr. 23;—Am. 1959, p. 472, Act 276, Imd. Eff. Dec. 22;—Am. 1961, p. 399, Act 227, Eff. Sep. 8;—Am. 1962, p. 459, Act 216, Imd. Eff. Jun. 25;—Am. 1963, p. 74, Act 63, Eff. Sep. 6.

450.304a Repealed. 1954, p. 343, Act 144, Imd. Eff. Apr. 23.

Section provided for annual franchise and fee on building and loan associations.

450.304b Franchise fees; mining corporations.

Sec. 4b. Every cooperative association and every profit corporation organized or doing business under the laws of this state, having the privilege to do business, employing capital or persons, owning or managing property or maintaining an office, or engaging in any transaction, in this state, principally engaged in the development of mines and mining of iron, copper, silver and other mineral ores within this state, shall at the time of filing its annual report with the Michigan corporation and securities commission, as required by sections 81 and 82 of Act No. 327 of the Public Acts of 1931, as amended, being sections 450.81 and 450.82 of the Compiled Laws of 1948, pay an annual fee of 5 mills upon each dollar of the fair average value of its issued capital stock for the preceding year ending June 30. In estimating the value of capital stock, the surplus and undivided profits shall be included but such fee shall in no case be less than \$10.00.

HISTORY: Am. 1923, p. 374, Act 233, Eff. Aug. 30;—Am. 1927, p. 200, Act 140, Imd. Eff. May 11;—CL 1929, 10142;—CL 1948, 450.304b;—Am. 1952, p. 242, Act 183, Imd. Eff. Apr. 29;—Am. 1959, p. 473, Act 276, Imd. Eff. Dec. 22;—Am. 1961, p. 399, Act 227, Eff. Sep. 8;—Am. 1962, p. 460, Act 216, Imd. Eff. Jun. 25.

450.304c Franchise fees; computation.

Sec. 4c. The annual franchise fee required to be paid by regulated investment companies shall be determined by taking the average net asset value of shares owned by residents of the state of Michigan to the average of the total net asset value of the shares of such company issued and outstanding, which average shall be determined by the records of the company on the first and last day of the taxable year or period covered by the company's annual report but shall not exceed \$1,000.00. The fees hereby levied and imposed on regulated investment companies shall be in lieu of all other state and local taxes except taxes imposed upon real and tangible personal property, sales, use and similar excise taxes.

HISTORY: Add. 1964, p. 188, Act 157, Eff. Aug. 28.

450.305 Franchise fees; basis for computation.

Sec. 5. In the case of computing the annual franchise fee prescribed by section 4, both as to domestic and foreign corporations, such computations shall be made by the Michigan corporation and securities commission, working in conjunction with the state department of revenue, upon the entire paid-up capital and surplus of any corporation which is not taxable in another state. A corporation is taxable in another state if in that state he is subject to a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax.

With respect to any other corporation, except corporations engaged in the transportation of oil or gas by pipeline, which are separately treated in this section and except those separately treated in sections 5a, 5b, 5c and 5d, paid-up capital and surplus shall be apportioned to this state by multiplying the paid-up capital and surplus by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is 3.

Property factor.

(1) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

(a) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at 8 times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(b) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the department may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

Payroll factor.

(2) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

(a) Compensation is paid in this state if:

(1) The individual's service is performed entirely within the state; or

(2) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(3) Some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) The term "compensation" shall mean wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

Sales factor.

(3) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(a) Sales of tangible personal property are in this state if:

(1) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(2) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

Oil and gas pipeline company.

(4) For the purpose of determining the annual franchise fee, the tax payable by an oil or gas pipeline company shall be measured as follows:

(a) In the case of an oil pipeline company, by that portion of its paid-up capital and surplus that the barrel-miles transported by it in Michigan bears to the barrel-miles transported by it everywhere. "Barrel-mile" means the transportation of the equivalent of a barrel of oil a distance of 1 mile for a consideration.

(b) In the case of a gas pipeline company, by that portion of its paid-up capital and surplus that the thousand cubic feet-miles transported by it in Michigan bears to the thousand cubic feet-miles transported by it everywhere. "Thousand cubic feet-mile" means the transportation of 1,000 cubic feet of gas, measured at 60 degrees Fahrenheit and a pressure of 30 inches of mercury, a distance of 1 mile for a consideration.

Alternative method.

(5) If the allocation and apportionment provisions of this act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- (a) Separate accounting;
- (b) The exclusion of any 1 or more of the factors;
- (c) The inclusion of 1 or more additional factors which will fairly represent the taxpayer's business activity in this state; or
- (d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

An alternative method will be effective only with prior approval of the commission.

HISTORY: Am. 1929, p. 485, Act 175, Imd. Eff. May 20;—CL 1929, 10143;—Am. 1935, p. 156, Act 102, Imd. Eff. May 28;—CL 1948, 450.305;—Am. 1952, p. 242, Act 183, Imd. Eff. Apr. 29;—Am. 1954, p. 41, Act 35, Imd. Eff. Apr. 2;—Am. 1965, p. 144, Act 112, Imd. Eff. Jun. 30.

450.305a Franchise fees; aircraft carriers, determination.

Sec. 5a. In the case of any corporation engaged in business as a carrier by aircraft, the portion of such corporation's paid-up capital and surplus, to be used as the measure of the annual franchise fee, shall be the average of the following 2 percentages:

- (a) The revenue tons handled by such air carrier at airports within this state during the period covered by the annual report divided by the total revenue tons handled by such carrier at all airports on its entire system during the same period;
- (b) The air carrier's originating revenue within this state for the period covered by the annual report divided by the total originating revenue of such carrier from its entire system for the same period.

HISTORY: Add. 1952, p. 243, Act 183, Imd. Eff. Apr. 29.

450.305b Franchise fees; railroads, determination.

Sec. 5b. For the purpose of determining the annual franchise fee, the tax payable by a railroad company shall be measured by that portion of its paid-up capital and surplus determined by the average of its passenger-mile and ton-mile fractions, separately computed and individually weighted by the ratio of gross receipts from passenger transportation to total gross receipts from all transportation, and by the ratio of gross receipts from freight transportation to total gross receipts from all transportation, respectively: Provided, That in computing the tax of a non-operating railroad there shall be excluded that portion of its paid-up capital and surplus as the ratio of the value of its property released to an operating railroad bears to the total value of its assets.

HISTORY: Add. 1952, p. 243, Act 183, Imd. Eff. Apr. 29;—Am. 1954, p. 366, Act 153, Imd. Eff. Apr. 30.

450.305c Franchise fees; motor carriers, determination.

Sec. 5c. (1) In the case of motor carriers of property, and carriers by water, the annual franchise fee shall be measured by that portion of the corporation's paid-up capital and surplus as the sum of the tonnage of revenue passengers and revenue cargo

first received or finally discharged by the carrier within this state is to the total of such tonnage so received and so discharged by such carrier within and without this state.

(2) In the case of motor carriers of passengers the annual franchise fee shall be measured by that portion of the corporation's paid-up capital and surplus as the sum of its bus-miles operated within the state of Michigan bears to the sum of its bus-miles operated in all states.

HISTORY: Add. 1952, p. 244, Act 183, Imd. Eff. Apr. 29.

450.305d Corporation deemed engaged in financial business; fees, measurement.

Sec. 5d. Any corporation at least 90 per cent of whose assets consist of intangible personal property or at least 90 per cent of whose gross income consists of interest and dividends, gross profits from trading in intangible personal property, or commissions or other compensation for financial services, shall be deemed for the purposes of this act to be engaged in financial business. The annual franchise fee of any such corporation shall be measured by that portion of its paid-up capital and surplus as its gross business in this state is to its gross business everywhere during the period covered by its report determined as the sum of:

(1) Fees, commissions or other compensation for financial services rendered within this state;

(2) Gross profits from trading in stocks, bonds or other securities managed within this state;

(3) Interest and dividends received within this state;

(4) Interest charged to customers, at places of business maintained within this state, for carrying debit balances of margin accounts, without deduction of any costs incurred in carrying such accounts; and

(5) Any other gross income resulting from the operation of financial business within this state; divided by the aggregate amount of such items of the taxpayer everywhere.

HISTORY: Add. 1952, p. 244, Act 183, Imd. Eff. Apr. 29.

450.305e Adjustments; publication of rulings.

Sec. 5e. If it shall appear on the application of the taxpayer or otherwise that an allocation factor determined pursuant to this act does not properly reflect the activity, business, receipts and capital of a taxpayer reasonably attributable to the state, the commission shall adjust it by:

(1) Excluding 1 or more of the factors or any component thereof;

(2) Including 1 or more other factors, such as expenses, purchases, contract values (minus subcontract values);

(3) Excluding proportionately 1 or more asset items in computing entire paid-up capital and surplus; or

(4) Applying any other similar method calculated to effect a fair and proper allocation according to the receipts, activity, business and capital reasonably attributable to this state.

The commission shall promptly publish its rulings with respect to any application of the provisions of this section. Such rulings shall be promulgated in conjunction with the state department of revenue.

HISTORY: Add. 1952, p. 244, Act 183, Imd. Eff. Apr. 29.

Sec. 6.

HISTORY: Rep. 1923, p. 373, Act 233, Eff. Aug. 30.

This section provided that payment of initial franchise fee was full payment of annual privilege fee for such year.

Sec. 7.

HISTORY: Am. 1923, p. 373, Act 233, Eff. Aug. 30;—Rep. 1927, p. 199, Act 140, Imd. Eff. May 11.

This section dealt with reports of corporations to the secretary of state. For provisions in general corporation act, dealing with reports, see Compilers' § 450.81 et seq.

450.308 Receipts for fees paid; fees credited to general fund.

Sec. 8. Every corporation paying any fee for any purpose to the Michigan corporation and securities commission shall be entitled to a receipt upon request, showing the amount of payment and the purpose for which paid. All fees of every nature paid to the Michigan corporation and securities commission under the provisions of this act shall be covered into the state treasury and shall there be credited to the general fund of the state, and shall be available for any purpose for which such general fund is made available by law.

HISTORY: CL 1929, 10144;—Am. 1945, p. 216, Act 154, Imd. Eff. May 14;—CL 1948, 450.308.

450.309 Franchise fees; excess remittance, notification, refund, credit; re-determination, request; appeal board; rules and regulations.

Sec. 9. Every corporation subject to the provisions of this act shall be notified as soon as practicable of the computation of its franchise fee made pursuant to sections 5, 5a, 5b, 5c and 5d of this act in the event it has remitted an amount in excess of the proper fee or has any further liability with respect thereto. If the corporation shall have remitted an amount in excess of its fee as properly computed pursuant to said sections 5, 5a, 5b, 5c and 5d any such excess shall be refunded, or, at the option of the corporation, shall be credited to the account of the corporation for application to any franchise fee liability such corporation may incur thereafter. Any such corporation may apply for a redetermination of its franchise fee by filing a written request therefor with the corporation and securities commission within 20 days after receipt of notice of the original computation above referred to. The commission shall give prompt consideration to such request and the grounds of complaint therein set out and shall promptly redetermine the liability of such corporation.

Any corporation conceiving itself to be aggrieved by any such redetermination may appeal within 20 days after notification thereof to an appeal board composed of the attorney general as its chairman, the state treasurer, and the auditor general as its secretary. The appeal board shall recompute the liability of the taxpayer and shall notify the taxpayer and the commission promptly on its decision.

The commission and/or the corporation may, within 30 days after notification of such decision, and not after, appeal from the decision of the appeal board to the supreme court of the state.

The appeal board shall prescribe reasonable rules and regulations for the conduct of its proceedings.

HISTORY: CL 1929, 10145;—CL 1948, 450.309;—Am. 1954, p. 366, Act 153, Imd. Eff. Apr. 30.

CITED IN OTHER SECTIONS: The above section is cited in § 16.189.

450.310 Franchise fees; refund, petition, denial; appeal.

Sec. 10. Any corporation subject to the provisions of this act which has paid to the corporation and securities commission an amount in excess of that which it considers to have been legally due from it for any year may, within 3 years from the date of such alleged over-payment, and not after, file with the commission a written petition to have refunded to it the amount claimed to have been overpaid. If on such petition, and the information and proof filed in support thereof, the commission shall be of the opinion that the payment of the fee, tax or charge, or any part thereof, was not required of the petitioner by the provisions of this act, it shall cause a refund thereof to be made, or, at the option of the corporation, shall credit any such excessive payment to the account of the corporation for application to any franchise fee liability such corporation may incur thereafter. If the commission be of the opinion that the payment made by the petitioner was proper it shall deny the request for refund.

If any such corporation be not satisfied with the ruling of the commission, it may, within 30 days after notification thereof, and not after, appeal to an appeal board com-

posed of the attorney general as its chairman, the state treasurer, and the auditor general as its secretary. The appeal board shall enter its order that the corporation is entitled to a refund and the amount thereof, or that the claim of the corporation is denied. The appeal board shall prescribe reasonable rules and regulations for the conduct of its proceedings.

The commission and/or the corporation may, within 30 days after notification of such decision, and not after, appeal from the decision of the appeal board to the supreme court of the state.

The remedy provided by this section shall be construed to be additional to and independent of that afforded by section 9 of this act.

HISTORY: Add. 1954, p. 366, Act 153, Imd. Eff. Apr. 30.

Original sec. 10 (Act 85, 1921, p. 199, Imd. Eff. April 27, as amended) related to penalties for false report or failure to make report. It was repealed by Act 140, 1927, p. 199, Imd. Eff. May 11.

CITED IN OTHER SECTIONS: The above section is cited in § 16.189.

Sec. 11. (This was a severing clause section.)

HISTORY: CL 1929, 10146;—Rep. 1945, p. 413, Act 267, Imd. Eff. May 25.

Sec. 12. (This was a repeal section.)

HISTORY: CL 1929, 10147;—Rep. 1945, p. 406, Act 267, Imd. Eff. May 25.

Act 226, 1885, p. 307; Eff. Sep. 19.

AN ACT to compel foreign corporations and joint stock companies organized for the purpose of smelting, refining or reducing iron, lead, copper, or other ores and minerals, doing business in the state of Michigan, to make annual reports to the auditor general.

The People of the State of Michigan enact:

450.351 Certain foreign corporations or joint stock companies; annual reports; taxation.

Sec. 1. That every foreign corporation or joint stock company engaged in the business of smelting, refining or reducing iron, lead, copper or other ores and minerals within this state, shall make annual reports to the auditor general of the state, and shall be subject to taxation as hereinafter provided.

HISTORY: How. 4064a;—CL 1897, 7105;—CL 1915, 9073;—CL 1929, 10149;—CL 1948, 450.351.

450.352 Certain foreign corporations or joint stock companies; annual reports, contents.

Sec. 2. It shall be the duty of the president, vice president, general manager, superintendent, secretary or treasurer of every such corporation or joint stock company, now or hereafter organized under the laws of any other of the states and doing business in this state as aforesaid, to furnish the auditor general, on or before the first Monday of July of the year of our Lord 1885, and each year thereafter, a statement under oath, and in such form as the auditor general may prescribe, showing the following facts:

First, The original capital stock actually paid in;

Second, The subsequent increase of capital stock by reason of the extension and construction of the works of such corporation or joint stock company, and all other permanent additions of capital thereto;

Third, The number of furnaces, buildings, and amount of real estate actually used, in carrying on the business of such corporation or joint stock company;

Fourth, The amount of real estate and other property of every kind and description,

owned by such corporation or joint stock company, not occupied or necessary to the carrying on of the business in which it is engaged;

Fifth, The amount of actual cash capital or earnings since the organization of any such corporation or joint stock company;

Sixth, The amount of assets of every kind and nature, estimated at the actual cash value thereof, over and above the cash surplus owned or earned since the organization of the same;

Seventh, The number of shareholders, their names and places of residence, together with the number of shares of stock held by each person on the thirty-first day of December of each year;

Eighth, The par value of each share of stock, and the actual amount in cash called in upon each share of the same;

Ninth, The aggregate amount of dividends paid since the organization of such corporation or joint stock company, and the amount paid each year;

Tenth, The amount of coal consumed each year, estimated in tons of 2,240 pounds, and classified as to varieties used, also the amount of all other fuel consumed;

Eleventh, The amount of limestone or other fluxing material used in smelting during the year, and its value;

Twelfth, The total amount of skilled and unskilled labor employed during the year, classifying the same so as to show the number of common laborers, the number of all officials both in and without the state, the number of "bosses," with the wages paid each class, and how paid, whether by the day, month, year or otherwise;

Thirteenth, The amount of mineral smelted and for whom smelted, whether for a company or individual, giving the name or names, the net yield in smelted or refined metal, together with the charge therefor, to be reported each item by itself;

Fourteenth, The gross amount of unenumerated costs, with such unenumerated general items as may be feasible to give in detail, or the gross sum of the same for each year's work;

Fifteenth, The detailed costs of transportation of all material consumed or used, given separately, when received, by water or railroad;

Sixteenth, The amount of capital invested out of the state and how invested, together with a statement of all other investments, other than the amount actually invested in the business conducted in this state.

HISTORY: How. 4084b;—CL 1897, 7108;—CL 1915, 9074;—CL 1929, 10150;—CL 1948, 450.352.

REPORTS: Provision in general corporation act, see Compilers' § 450.81 et seq.

450.353 Annual reports; execution; triplicate; oath, filing; perjury.

Sec. 3. Such report shall be executed in triplicate by the person making the same, and shall be sworn to before some officer authorized to administer oaths. If sworn to outside the limits of the state, it shall be before a commissioner for Michigan, a notary public having a seal, or other person authorized to take the acknowledgments of deeds; but unless the acknowledgment be taken before a commissioner appointed by the governor of this state for that purpose, such reports shall have attached thereto, a certificate of the clerk or other proper certifying officer of a court of record of the county or district, or of the secretary of state of the state or territory within which such acknowledgment was taken, under the seal of his office, that the person whose name is subscribed to the certificate of acknowledgment was at the date thereof such officer as he is thereon represented to be, and that he believes the signature of such person to such certificate of acknowledgment, to be genuine, and that the same is executed and acknowledged according to the laws of such state, territory or district. One of said duplicate reports shall be filed with the clerk of each county in which their works or any part thereof may be located, and one with the auditor general as herein-

before provided. All of said reports to be filed at the same time as near as may be. If any person signing said reports shall, as to any material fact therein stated, willfully swear falsely, he shall be deemed guilty of the crime of perjury.

HISTORY: How. 4064c;—CL 1897, 7107;—CL 1915, 9075;—CL 1929, 10151;—CL 1948, 450.353.

PERJURY: See Compilers' § 750.422 et seq.

450.354 Annual reports; neglect to file, penalty, collection; right to business, forfeiture.

Sec. 4. If the said officers or either of them mentioned in section 2 of this act, shall neglect for a period of 60 days after the said first Monday of July of each year, to make and file the reports in manner and form as required by this act, they shall be deemed guilty of a misdemeanor, and such of them as shall be found within the state, may be proceeded against accordingly, and shall be liable to a fine of not less than 3,000 or more than 5,000 dollars, for each and every offense. And such corporation, for every such neglect upon the part of its officers to make and file annual reports within the time limited, shall forfeit not less than 3 nor more than 10,000 dollars in addition to any fine or fines collected of the officers of such corporation or joint stock company, in the discretion of the court, to be recovered in an action of trespass on the case, in any court of competent jurisdiction. A continued refusal or neglect upon the part of such corporation, joint stock company or its officials to file such annual reports after any suit or action brought to enforce the penalty for non-compliance with the provisions of this act, shall work a forfeiture of the right to do business within the state of Michigan, and it shall be the duty of the attorney general upon such offense being brought to his notice, to institute the proper proceedings to enforce said penalty.

HISTORY: How. 4064d;—CL 1897, 7108;—CL 1915, 9076;—CL 1929, 10152;—CL 1948, 450.354.

PENALTIES: For failure to file reports under general corporation act, see Compilers' § 450.88 et seq.

Act 16, 1932 (1st Ex. Ses.), p. 31; Imd. Eff. May 2.

AN ACT to provide for the extension of the corporate life of corporations, organized under the laws of this state, whose term of existence would otherwise expire, and to fix the rights, duties and liabilities of such renewed corporations, and to validate certain resolutions, vote of stockholders, proceedings and filings.

The People of the State of Michigan enact:

450.361 Corporations; extension of term, resolution; papers, filing; franchise fee.

Sec. 1. Any corporation, organized under the laws of this state, except those whose reorganization or extension is provided for by existing laws, whose term is about to expire by limitation, may at any time within two years next preceding the expiration of such term, by a vote of at least 2/3 of its capital stock at any annual meeting or at any special meeting of its stockholders called for that purpose, and in case the corporation has no capital stock by a majority vote of the members thereof, direct the continuance of its corporate existence for such further term, not exceeding thirty years from the expiration of its former term, as may be expressed in a resolution for that purpose. Upon the adoption of such resolution by the stockholders voting in person or by proxy, duly filed, at the annual meeting or any special meeting called in accordance with the by-laws of the corporation, it shall be the duty of the president and secretary of the stockholders' meeting, to make, sign and acknowledge duplicate articles of association, to which shall be appended a copy of the proceedings of such stockholders' meeting, certified by the secretary and verified by his oath, which articles of association shall be filed in the same public offices where the original articles were required to be filed.

and be recorded in those offices, at the expense of said corporation, and the copies so filed, or the record thereof, or the certified copy of either of such records, shall be prima facie evidence of the facts therein recited: Provided, The franchise fee provided by law shall apply and be paid by such corporation reincorporated hereunder.

HISTORY: CL 1948, 450.361.

450.362 Corporations; renewal term; assets, liabilities; amendments of articles, by-laws.

Sec. 2. The renewed term of such corporation shall begin from the expiration of its former term, and a corporation which has thus been renewed shall be the same corporation, and hold and own all the rights, franchises and property held and owned by the corporation before renewal, and be subject to all its liabilities, and have the same stockholders and members and the same officers. The articles of association and by-laws thereof may be changed or amended by the corporation in the manner required by law.

HISTORY: CL 1948, 450.362.

450.363 Validation of proceedings.

Sec. 3. The resolution, vote of stockholders and proceedings of any corporation purported to have been passed and taken under the provisions of act number 328 of the public acts of 1905, being sections 10,170 and 10,171 of the compiled laws of 1929, together with the filing of the articles of association in the required public offices, are hereby validated and shall have the same legal effect and consequences as though the said act had not been repealed. Any such resolution, vote, proceedings and filing conforming to the provisions of said act shall be considered valid and legal under the provisions of this act.

HISTORY: CL 1948, 450.363.

Act 26, 1963 (2nd Ex. Ses.), p. 32; Eff. Jan. 1, 1964.

AN ACT to provide for the term of existence of domestic corporations.

The People of the State of Michigan enact:

450.371 Domestic corporations; terms of existence.

Sec. 1. Notwithstanding any other provision of law, the term of existence of every domestic corporation heretofore incorporated or hereafter incorporating under any law of this state may be perpetual or may be for a limited period of time, as fixed by its articles, or amendment thereto made before the expiration of its corporate term, or by a certificate of extension of its corporate term, or by a certificate of renewal of its corporate term.

HISTORY: New 1963, 2nd Ex. Ses., p. 32, Act 26, Eff. Jan. 1, 1964.

450.372 Effective date of act.

Sec. 2. This act shall take effect on January 1, 1964.

HISTORY: New 1963, 2nd Ex. Ses., p. 32, Act 26, Eff. Jan. 1, 1964.

Act 213, 1935, p. 348; Imd. Eff. Jun. 8.

AN ACT to provide the terms and conditions upon which certain non-profit corporations whose charters have become void through operation of law may be reinstated and validated.

The People of the State of Michigan enact:

450.401 Non-profit corporations; renewal; charter, reports, fees; certificates, forfeiture, waiver.

Sec. 1. Any non-profit corporation except ecclesiastical corporations, whose charter has become void under the provisions of section 92 of Act No. 327 of the Public Acts of 1931 for failure to file reports and/or to pay fees may file such reports and pay such delinquent filing fees, together with a certificate, duly acknowledged before a notary public by an officer of the corporation which desires to revive its corporate charter, stating that the corporation has continued to function as a de facto corporation since the date on which the corporation's charter was forfeited and setting forth the names of those who will serve as directors or trustees of the corporation upon the revival of its charter and a penalty of \$5.00 for each year or major part of a year that such delinquency has existed. Upon the filing of such reports and the payment of such delinquent fees and penalty with the approval of either a majority of the surviving members of the board of directors or trustees in office at the time of forfeiture, or a majority of the surviving members of the corporation, the charter of such corporation shall be revived and shall be in full force and effect, the forfeiture being hereby waived.

HISTORY: Am. 1937, p. 70, Act 55, Imd. Eff. May 27;—Am. 1939, p. 11, Act 5, Imd. Eff. Feb. 16;—Am. 1941, p. 21, Act 23, Imd. Eff. March 18;—Am. 1943, p. 7, Act 6, Imd. Eff. Feb. 17;—Am. 1945, p. 4, Act 3, Imd. Eff. Feb. 8;—Am. 1947, p. 372, Act 243, Eff. Oct. 11,—CL 1948, 450.401.

NOTE: Sec. 92 of Act 327, 1931, above referred to, is Compilers' § 450.92.

FORMER ACT: Act 16, 1st Ex. Ses., 1932; Act 22, 1st Ex. Ses., 1932.

ECCLESIASTICAL CORPORATIONS: See Compilers' §§ 450.421-450.422.

450.402 Non-profit corporations; rights, contracts; restoration.

Sec. 2. Upon compliance with the provisions of this act, the rights of any such corporation and its right, title and interest in and to any property, both real and personal, owned by it at the time of the forfeiture shall be the same as though no forfeiture had been operative, and all contracts entered into and other rights acquired during such interval shall be valid and enforceable.

HISTORY: Am. 1947, p. 372, Act 243, Eff. Oct. 11;—CL 1948, 450.402.

Act 2, 1945, p. 3; Imd. Eff. Feb. 8.

AN ACT to provide for the revival and extension of the existence of certain non-profit corporations whose corporate term has expired.

The People of the State of Michigan enact:

450.411 Non-profit corporations; renewal of existence; articles, reports; filing, payment of fees, penalties, waiver.

Sec. 1. Any nonprofit corporation organized under the laws of this state, now or heretofore in force, whose term of existence has expired but which has not been wound up or dissolved and which has nevertheless continued as a de facto corporation or has continued to hold real estate in its corporate name beyond such term may, by resolution adopted by a majority of its members present and voting at a meeting of the corporation duly called and held, in accordance with its last bylaws, or if the corporation has continued as a de facto corporation, in accordance with its bylaws currently in effect, direct the renewal of its corporate existence for such further term as permitted by law. Upon the adoption of such resolution the last president or vice president and secretary or assistant secretary, or if a de facto corporation with newly elected officers, the currently elected de facto president or vice president and the currently elected de facto secretary or assistant secretary, shall make, sign and acknowledge

new articles to which shall be appended a copy of the proceedings of such meeting, verified by oath of the secretary of the meeting, which new articles shall be filed in the same manner as the original articles or in the manner provided by section 5 of Act No. 327 of the Public Acts of 1931, as amended, being section 450.5 of the Compiled Laws of 1948. At the time of filing such new articles the corporation shall also file reports and pay filing fees for any years in which it may be delinquent, but without penalties, which penalties are hereby waived.

HISTORY: Am. 1947, p. 29, Act 23, Imd. Eff. Apr. 1;—CL 1948, 450.411;—Am. 1965, p. 791, Act 394, Imd. Eff. Oct. 26.

450.412 Non-profit corporations; charter, revival; validation of acts; compliance, time.

Sec. 2. Upon the filing of such new articles and reports and the payments of such fees, the charter of the corporation shall be revived and extended from the date of expiration of its original term or the date of the last extension of corporate existence, and shall be in full force and effect. The validity of all corporate acts during such period of default shall not be affected by such default, forfeiture or prior expiration. Compliance with this act shall be made before January 1, 1971.

HISTORY: Am. 1947, p. 30, Act 23, Imd. Eff. Apr. 1;—Am. 1948, 1st Ex. Ses., p. 95, Act 37, Imd. Eff. May 10;—CL 1948, 450.412;—Am. 1951, p. 114, Act 84, Imd. Eff. May 28;—Am. 1965, p. 791, Act 394, Imd. Eff. Oct. 26;—Am. 1969, p. 522, Act 283, Imd. Eff. Aug. 11.

Act 161, 1947, p. 229; Eff. Oct. 11.

AN ACT to provide for the terms and conditions upon which ecclesiastical corporations whose charters have become void through operation of law may be reinstated and validated.

The People of the State of Michigan enact:

450.421 Ecclesiastical corporations; charters, revival; certificate of continuance; filing articles.

Sec. 1. Any ecclesiastical corporation whose charter has become void under the provisions of section 92 of Act No. 327 of the Public Acts of 1931 for failure to file reports and/or to pay fees may be reinstated upon the filing of the current year's report and the payment of a penalty of \$5.00 for each year's delinquency, with a maximum penalty of \$20.00. Upon the filing of such report and the payment of such delinquent fees and penalty, the charter of such corporation shall be revived and shall be in full force and effect, the forfeiture being hereby waived.

Attached to the report shall be a certificate, duly acknowledged before a notary public, of an officer of the religious society which desires to revive its corporate charter, setting forth that the society has continued in existence as a religious society since the date on which the corporation's charter was forfeited, and that the filing of the report for the current year and the payment of fees and penalties have been duly authorized by such society in accordance with the rule of discipline or church polity of the particular denomination.

The report for the current year shall contain the names of those who will serve as directors or trustees of the corporation upon the revival of its charter, and shall be signed by the officers who will serve as such upon such revival.

In the event that any ecclesiastical corporation, whether originally incorporated under a special act or under the general statute applicable to non-profit corporations, shall not have heretofore filed in the office of the Michigan corporation and securities commission its articles of association, a true copy thereof, authenticated by the county clerk or other proper officer issuing said charter, shall be filed in said office of the

Michigan corporation and securities commission at the time of filing the delinquent report, as a condition precedent to acceptance of said report by said commission.

HISTORY: CL 1948, 450.421.

NOTE: Sec. 92, Act 327, 1931, above referred to, is Compilers' § 450.92.

450.422 Ecclesiastical corporations; rights, contracts; restoration.

Sec. 2. Upon compliance with the provisions of this act, the rights of any such corporation and its right, title and interest in and to any property, both real and personal, owned by it at the time of the forfeiture shall be the same as though no forfeiture had been operative, and all contracts entered into and other rights acquired during such interval shall be valid and enforceable.

HISTORY: CL 1948, 450.422.

Act 48, 1947, p. 54; Imd. Eff. Apr. 18.

AN ACT to provide the terms and conditions upon which certain profit corporations whose charters have become void through operation of law may be reinstated and a voidance of charter waived.

The People of the State of Michigan enact:

450.431 Profit corporations; void charters, revival; filing reports, fees, penalties; time limitation.

Sec. 1. All profit corporations whose charters have become void under the provisions of section 91 of Act No. 327 of the Public Acts of 1931, being section 450.91 of the Compiled Laws of 1948, because of failure to file reports or to pay the fees may file such reports and pay such fees and may file annual reports and pay fees for every subsequent intervening year, plus 6% interest per annum and a penalty of 10% on all fees paid hereunder, prior to January 1, 1971. Upon acceptance and filing of such reports and the payment of such fees and all penalties, the voidance of charter of the corporation shall be waived, and it shall be revived in full force and effect.

HISTORY: CL 1948, 450.431;—Am. 1949, p. 6, Act 5, Imd. Eff. Feb. 24;—Am. 1951, p. 87, Act 70, Imd. Eff. May 25;—Am. 1953, p. 95, Act 99, Imd. Eff. May 21;—Am. 1954, p. 38, Act 31, Eff. Aug. 13;—Am. 1955, p. 213, Act 145, Imd. Eff. Jun. 7;—Am. 1956, p. 145, Act 61, Imd. Eff. Apr. 2;—Am. 1957, p. 251, Act 202, Imd. Eff. Jun. 4;—Am. 1959, p. 54, Act 51, Imd. Eff. May 21;—Am. 1961, p. 42, Act 40, Imd. Eff. May 18;—Am. 1963, p. 22, Act 19, Imd. Eff. Apr. 25;—Am. 1965, p. 80, Act 48, Imd. Eff. Jun. 8;—Am. 1967, p. 161, Act 131, Imd. Eff. Jun. 27;—Am. 1969, p. 31, Act 18, Imd. Eff. Jun. 5.

450.432 Profit corporations; compliance with act; rights restoration; contract validation.

Sec. 2. Upon compliance with the provisions of this act, the rights of such corporation shall be the same as though no forfeiture had been operative and all contracts entered into during such intervals shall become valid.

HISTORY: CL 1948, 450.432.

Act 90, 1954, p. 108; Eff. Aug. 13.

AN ACT to provide the terms and conditions upon which certain non-profit corporations whose charters have expired or have become void through operation of law may be reinstated.

The People of the State of Michigan enact:

450.441 Non-profit corporations; default in payment of fees or filing reports; payment.

Sec. 1. All non-profit corporations whose charters have become void because of failure to file reports and/or pay the fees, may file such reports and pay such fees for each year in default.

HISTORY: New 1954, p. 108, Act 90, Eff. Aug. 13.

450.442 Non-profit corporations; charters, revival; filing of reports; fees, payment.

Sec. 2. Upon the filing of such reports and the payment of such fees, the charter of such corporation shall be revived and extended from the date of the expiration of its original term or the date of the last extension of corporate existence, and shall be in full force and effect, and the validity of all corporate acts during such period of default shall not be affected by such default, forfeiture or prior expiration, provided full compliance with this act shall be made before January 1, 1967.

HISTORY: New 1954, p. 108, Act 90, Eff. Aug. 13;—Am. 1957, p. 303, Act 244, Imd. Eff. Jun. 6;—Am. 1959, p. 214, Act 152, Imd. Eff. July 16;—Am. 1961, p. 49, Act 49, Imd. Eff. May 20;—Am. 1963, p. 21, Act 18, Imd. Eff. Apr. 25;—Am. 1965, p. 79, Act 47, Imd. Eff. June 8.

Act 138, 1941, p. 182; Eff. May 29, 1941.

AN ACT to provide the terms and conditions upon which nonprofit cemetery associations, the charters of which have become void through operation of law, may be reinstated and the filing of delinquent reports and fees and a voidance of charter waived; and to direct the county clerk to furnish a written list to the Michigan corporation and securities commission of all nonprofit cemetery associations located within the counties.

The People of the State of Michigan enact:

450.471 Non-profit cemetery associations; waiver; forfeiture of charter, penalty payment.

Sec. 1. The charter of any nonprofit cemetery association which has become void or shall become void prior to July 1, 1960 under the provisions of statutes of this state, requiring the filing of reports and/or the payment of fees, may be reinstated upon the payment on or before July 1, 1960, of a penalty of \$10.00 to the Michigan corporation and securities commission. Upon the payment of said penalty, the voidance of charter of such association and all delinquent reports and fees shall be waived and the charter thereof shall be revived in full force and effect. The corporation and securities commission shall notify by certified mail with return receipt requested each nonprofit cemetery association whose interests are affected by this act.

HISTORY: Am. 1947, p. 29, Act 22, Eff. Oct. 11;—CL 1948, 450.471;—Am. 1949, p. 110, Act 105, Eff. Sep. 23;—Am. 1957, p. 123, Act 102, Eff. Sep. 27.

450.472 Non-profit cemetery associations; right restoration; contracts validation.

Sec. 2. Upon compliance with the provisions of this act, the rights of such association shall be the same as though no forfeiture had been operative, and all contracts entered into and conveyances made by or to such association during such interval shall become valid.

HISTORY: CL 1948, 450.472.

450.473 Non-profit cemetery associations; county clerk, duties.

Sec. 3. The clerk of each county of this state shall, within 90 days from the effective date of this act, prepare and forward to the Michigan corporation and securities commission a written list taken from his records containing the names and addresses of all nonprofit cemetery associations located within his county, together with the dates when the certificates of organization of such associations were accepted for recording by his county.

HISTORY: CL 1948, 450.473.

R.S. 1846, Ch. 55.

GENERAL PROVISIONS RELATING TO CORPORATIONS.

Secs. 1-3.

HISTORY: CL 1857, 2143-2145;—Sec. 3 Am. 1867, p. 69, Act 50, Imd. Eff. March 13;—CL 1871, 3428-3430;—How. 4860-4862;—CL 1897, 8527-8529;—CL 1915, 11328-11330;—CL 1929, 10153-10155;—Rep. 1931, p. 624, Act 327, Eff. Sept. 18.

These sections provided for general powers, by-laws and first meeting, now covered by Act 327, 1931, being Compilers' § 450.1 et seq.

450.504 Corporations; meetings, no person to call or preside; procedure.

Sec. 4. Whenever, by reason of the death, absence, or other legal impediment of the officers of any corporation, there shall be no person duly authorized to call or preside at a legal meeting thereof, any justice of the peace of the county where such corporation is established may, on a written application of 3 or more of the members thereof, issue a warrant to either of the said members, directing him to call a meeting of the corporation, by giving such notice as shall have been previously required by law; and the justice may, in the same warrant, direct such person to preside at such meeting until a clerk shall be duly chosen and qualified, if there shall be no other officer present legally authorized to preside thereat.

HISTORY: CL 1857, 2146;—CL 1871, 3431;—How. 4863;—CL 1897, 8530;—CL 1915, 11331;—CL 1929, 10156;—CL 1948, 450.504.

Secs. 5-6.

HISTORY: CL 1857, 2147-2148;—CL 1871, 3432-3433;—How. 4864-4865;—CL 1897, 8531-8532;—CL 1915, 11332-11333;—CL 1929, 10157-10158;—Rep. 1931, p. 624, Act 327, Eff. Sept. 18.

These sections provided for waiver of notice of meeting and powers of members at meetings, now covered by Act 327, 1931, being Compilers' § 450.1 et seq.

450.507 Holding of land; subscriptions; donations; stock transfer; articles, amendment.

Sec. 7. Every such corporation may hold land to an amount authorized by law, and may convey the same and may receive subscriptions to its capital stock in lands situate in the state of Michigan, or may receive donations of lands situate in the state of Michigan, to assist or enable such corporation to perform or complete any work of public improvement in which such company may be engaged in pursuance of its charter, and may sell and convey the same; and whenever the capital stock of such corporation is divided into shares, and certificates thereof are issued, such shares may be transferred by indorsement and delivery of the certificate thereof, such indorsement being by the signature of the proprietor, or his attorney or legal representative; but such transfer shall not be valid, except between the parties thereto, until the same shall have been so entered on the books of the corporation as to show the names of the parties by and to whom transferred, the number and designation of the shares, and the date of the transfer. Where no other provision is especially made any corporation organized for profit and having a capital stock, may at any annual meeting of its stockholders, or at any special meeting duly called for that purpose, amend its articles of association in any manner not inconsistent with the act or acts under which such corporation may be organized, by a resolution adopted by a vote of 2/3 in interest of its capital stock; but such amendment shall not become operative until a certificate showing it to have been adopted as herein required, signed by the president and secretary of the corporation shall have been filed or recorded or both filed and recorded in the same manner as required in case of original articles of such corporation. And any corporation not organ-

ized for profit, and having no capital stock may amend its articles of association by a vote of a majority of the members of such corporation at any regular meeting, or at any special meeting called for that purpose, but such amendment shall not become operative until a certificate showing it to have been regularly adopted in the manner herein prescribed, signed by the president, or other chief officer, and a majority of the directors or trustees of such corporation shall have been filed, or recorded or both filed and recorded, in the same manner as required in case of original articles of such corporation.

HISTORY: CL 1857, 2149;—Am. 1871, p. 114, Act 86, Imd. Eff. April 8;—CL 1871, 3434;—How. 4866;—CL 1897, 8533;—Am. 1901, p. 251, Act 176, Eff. Sept. 5;—Am. 1905, p. 495, Act 317, Eff. Sept. 16;—CL 1915, 11334;—CL 1929, 10159;—CL 1948, 450.507.

Sec. 8.

HISTORY: CL 1857, 2150;—CL 1871, 3435;—How. 4867;—CL 1897, 8534;—CL 1915, 11335;—CL 1929, 10160;—Rep. 1931, p. 624, Act 327, Eff. Sept. 18.

This section provided for continuance of corporate life for certain purposes. For present law, see Compilers' § 450.75.

Secs. 9-18.

HISTORY: CL 1857, 2151-2160;—CL 1871, 3436-3445;—How. 4868-4877;—CL 1897, 8535-8544;—Rep. 1945, p. 410, Act 267, Imd. Eff. May 25.

Secs. 9 to 16 inc., though not expressly repealed, were re-enacted and superseded by Secs. 65 to 72 of Ch. 23 of Act 314 of 1915 (Jud. Act). Secs. 17 and 18 were expressly repealed in 1915, p. 480, Act 314, Eff. Jan. 1, 1916. These sections related to when and how the franchise of a corporation, authorized to receive toll, might be sold on execution.

450.519 Contributions; recovery in chancery.

Sec. 19. When the officers or members of a corporation, or any of them, are liable for any debts of the corporation, or for any acts of such officers or members, respecting the business of the corporation, and also when any of the said officers or members shall be liable to contribute, for money paid by any other or others of them, on account of any such debt or acts, the money may be recovered by a bill in chancery; and the said court may make all such orders and decrees therein, as may be necessary to do justice between the parties.

HISTORY: CL 1857, 2161;—CL 1871, 3446;—How. 4878;—CL 1897, 8545;—CL 1915, 11336;—CL 1929, 10161;—CL 1948, 450.519.

CONTRIBUTION: See Compilers' § 450.30 and GCR 775.

450.520 Acts of incorporation; amendment, alteration or repeal.

Sec. 20. Every act of incorporation passed since the twentieth day of April, in the year 1839, or which shall be hereafter passed, shall at any time be subject to amendment, alteration or repeal, at the pleasure of the legislature: Provided, That no act of incorporation shall be repealed, unless for some violation of its charter or other default, when such charter shall contain an express provision limiting the duration of the same.

HISTORY: CL 1857, 2162;—CL 1871, 3447;—How. 4879;—CL 1897, 8546;—CL 1915, 11337;—CL 1929, 10162;—CL 1948, 450.520.

FORMER LAW: For law prior to 1846, see Sec. 11 of Act 115 of 1839.

450.521 Assessing officers; returns, contents.

Sec. 21. It shall be the duty of the clerk of every corporation within this state, whose capital stock is or shall be subject to taxation for county or township purposes, and if there be no such clerk, then of the directors of such corporation, annually, between the fifteenth day of March and the first day of April, to make returns in person or by mail, to the supervisor of each township, and the assessors of each ward or district in any city in this state, in which any shareholder in such corporation shall reside; which return shall state the name of each owner residing in such township or city, the number of shares belonging to each on the fifteenth day of March of that year, and the par value of such shares.

HISTORY: CL 1857, 2163;—CL 1871, 3448;—How. 4880;—CL 1897, 8547;—CL 1915, 11338;—CL 1929, 10163;—CL 1948, 450.521.

450.522 Assessing officers; returns, default; penalty.

Sec. 22. If any clerk or director mentioned in the preceding section, shall refuse or neglect to make such return, or shall wilfully make a false return, he shall forfeit the sum of 50 dollars.

HISTORY: CL 1857, 2164;—CL 1871, 3449;—How. 4881;—CL 1897, 8548;—CL 1915, 11339;—CL 1929, 10164;—CL 1948, 450.522.
FORFEITURE, SUIT FOR: See (Jud. Act) Compilers' § 600.4805 et seq.

450.523 Fraudulent transfer of shares to avoid taxation; penalty.

Sec. 23. If any shareholder shall fraudulently transfer any share in either of the corporations mentioned in the *twenty third section of this chapter, for the purpose of avoiding taxation, he shall forfeit a sum equal to 1/2 the par value of the shares so transferred.

HISTORY: CL 1857, 2165;—CL 1871, 3450;—How. 4882;—CL 1897, 8549;—CL 1915, 11340;—CL 1929, 10165;—CL 1948, 450.523.
*NOTE: It is evident that the "twenty third" section mentioned should be "twenty-first" section.
FORFEITURE, SUIT FOR: See (Jud. Act) Compilers' § 600.4805 et seq.

450.524 Returns to state treasurer; default, computation, state tax.

Sec. 24. The cashier of each bank and the secretary or clerk of each incorporated railroad, canal or turnpike company shall, on the first Monday of October in each year, or within 15 days previous thereto, make a return to the state treasurer, *verified by his oath, stating the amount of capital stock of such bank or railroad, canal or turnpike company then actually paid in, and in default thereof, the whole capital stock mentioned in the act of incorporation of such bank or company shall, for the purpose of computing the state tax payable by such bank or company, be deemed to have been paid in.

HISTORY: CL 1857, 2166;—CL 1871, 3451;—How. 4883;—CL 1897, 8550;—CL 1915, 11341;—CL 1929, 10166;—CL 1948, 450.524.
*NOTE: It is evident the word "verified" should be "verified".

450.525 Attorney general and legislature; examination.

Sec. 25. It shall be the duty of the attorney general whenever and as often as he shall be required by the governor, to examine into the affairs and conditions of any bank or banks or other corporations in this state, and report such examination in writing, together with a detailed statement of facts, to the governor, who shall lay the same before the legislature, and for that purpose the said attorney general shall have power to administer all necessary oaths to the directors and officers of any such bank or other corporation and to examine them on oath in relation to the affairs and conditions thereof, and to examine the vaults, books, papers and documents belonging to such bank, or pertaining to its affairs and condition; and the legislature, or either branch thereof shall have full power to examine into the affairs and condition of any bank or other corporation in this state at all times and for that purpose any committee appointed by the legislature or either branch thereof, shall have full power to administer all necessary oaths, to the directors, officers and stockholders of such bank or other corporation, and to examine them on oath in relation to the affairs and condition thereof, and to examine the vaults, safes, books, papers and documents belonging to such corporation or pertaining to its affairs and conditions, and to compel the production of all keys, books, papers, and documents by summary process to be issued on application to any court of record, or any judge thereof, under such rules and regulations as the said court may prescribe.

HISTORY: CL 1857, 2167;—CL 1871, 3452;—How. 4884;—CL 1897, 8551;—CL 1915, 11342;—CL 1929, 10167;—CL 1948, 450.525.

Sec. 26.

HISTORY: Add. 1872, p. 83, Act 53, Imd. Eff. March 29;—How. 4885;—CL 1897, 8552;—CL 1915, 11343;—CL 1929, 10168;—Rep. 1931, p. 624, Act 327, Eff. Sept. 18.

Sale of property and franchises under mortgage or deed of trust. For present law, see Compilers' §§ 450.57 and 450.58.

450.601 Repealed. 1964, p. 392, Act 256, Eff. Aug. 28.

Section authorized any corporation to change its name.

Act 112, 1889, p. 126; Imd. Eff. May 24.

AN ACT to authorize any corporation organized under the laws of this state, to sell its property, franchise, rights and privileges to any other corporation organized under the same or any similar laws of this state for the same corporate purpose.

The People of the State of Michigan enact:

450.631 Sale of property, rights and franchises to similar corporation; stockholders' consent; meeting, notice; exception.

Sec. 1. That any corporation formed under any general law of this state may at any general or special meeting of its stockholders, with the consent of 3/4 of its capital stock, sell and convey all its property and franchises, rights and privileges or any portion of its real property or franchises to any other corporation formed under the same or any similar law for corporate purposes of the same character. No such meeting of stockholders of any corporation shall be legal or valid, or the proceedings thereof of any force or effect unless the directors or other officers or parties calling the same shall cause a notice of the time, place and object of holding the same to be published in accordance with the provisions of the law or laws of this state under which such corporation is organized: Provided, That nothing herein contained shall be construed as authorizing any railroad corporation to consolidate its stock, property, or franchises with any other railroad corporation owning a parallel or competing line.

HISTORY: How. 4904e;—CL 1897, 8572;—CL 1915, 11350;—CL 1929, 10172;—CL 1948, 450.631.

Act 211 of 1927, entitled "An act to repeal certain obsolete and inoperative laws", included Act 112 of 1889. In *C. N. Ray Corp. v. Secy. of State*, 241 Mich. 457, 461, 217 N.W. 334, Act 211 of 1927 was held to have repealed nothing. Act 309 of 1929, (superseding Act 211 of 1927) did not repeal Act 112 of 1889.

NOTE: This act inapplicable to corporations covered by Act 327, 1931, see Compilers' § 450.191.

PROPERTY AND FRANCHISES: Sale or lease, general corporation act, see Compilers' §§ 450.57-450.58; telephone companies, see Compilers' § 484.108; street railway company, see Compilers' § 472.15; railroad property and franchises, see Compilers' § 469.221 et seq.

450.632 Corporation to purchase property, rights and franchises; selling corporation, liabilities; scope of act, limitation.

Sec. 2. Any number of persons desiring to purchase the property, franchises, rights and privileges of any existing corporation may organize a corporation under the law under which said corporation is formed, or any similar law, and in accordance with its requirements and provisions, and the corporation so organized or any corporation already organized under such law shall have power to purchase the property, franchise [franchises], rights and privileges of any such existing corporation: Provided, That nothing herein contained shall release in whole or in part said selling corporation from any or all of its liabilities previously contracted: Provided further, That the provisions of this act shall not apply to corporations organized or existing under an act entitled "An act to revise the laws providing for the incorporation of companies for mining, smelting and manufacturing iron, copper, silver, mineral coal and other ores, minerals, and to fix the duties and liabilities of such corporations" approved May eleventh, 1877.

HISTORY: How. 4904f;—CL 1897, 8573;—CL 1915, 11351;—CL 1929, 10173;—CL 1948, 450.632.

NOTE: The act of 1877, above referred to, was CL 1915, 8967-9011, repealed by Act 84 of 1921; CL 1929, 10134, in turn superseded and repealed by Act 327, 1931, being Compilers' § 450.1 et seq.

450.651 Repealed. 1967, p. 87, Act 67, Eff. Nov. 2.

Section related to cumulative voting for corporate directors.

Act 354, 1917, p. 868; Eff. Aug. 10.

AN ACT to prohibit the practice of law by corporations and voluntary associations and to provide penalties for violations.

The People of the State of Michigan enact:

450.681 Practice of law by corporations and voluntary associations prohibited; exceptions; penalty.

Sec. 1. It shall be unlawful for any corporation or voluntary association to practice or appear as an attorney-at-law for any person other than itself in any court in this state or before any judicial body, or make it a business to practice as an attorney-at-law, for any person other than itself, in any of said courts or to hold itself out to the public as being entitled to practice law, or render or furnish legal services or advice, or to furnish attorneys or counsel or to render legal services of any kind in actions or proceedings of any nature or in any other way or manner, or in any other manner to assume to be entitled to practice law or to assume, use or advertise the title of lawyer or attorney, attorney-at-law, or equivalent terms in any language in such manner as to convey the impression that it is entitled to practice law, or to furnish legal advice, services or counsel, or to advertise that either alone or together with or by or through any person whether a duly and regularly admitted attorney-at-law, or not, it has, owns, conducts or maintains a law office or an office for the practice of law, or for furnishing legal advice, services or counsel. It shall be unlawful further for any corporation or voluntary association to solicit itself or by or through its officers, agents or employes any claim or demand for the purpose of bringing an action thereon or of representing as attorney-at-law, or for furnishing legal advice, services or counsel to a person sued or about to be sued in any action or proceeding or against whom an action or proceeding has been or is about to be brought, or who may be affected by any action or proceeding which has been or may be instituted in any court or before any judicial body, or for the purpose of so representing any person in the pursuit of any civil remedy. Any corporation or voluntary association violating the provisions of this section, and every officer, trustee, director, agent or employe of such corporation or voluntary association who directly or indirectly engages in any of the acts herein prohibited or assists such corporation or voluntary association to do such prohibited acts shall be guilty of a misdemeanor, and shall be punished by a fine of not to exceed 1,000 dollars or by imprisonment for a period of not to exceed 6 months, or by both such fine and imprisonment, in the discretion of the court. The fact that such officer, trustee, director, agent or employe shall be a duly and regularly admitted attorney-at-law shall not be held to permit or allow any such corporation or voluntary association to do the acts prohibited herein nor shall such fact be a defense upon the trial of any of the persons mentioned herein for a violation of the provisions of this section. This section shall not apply to any corporation or voluntary association lawfully engaged in a business authorized by the provisions of any existing statute, nor to a corporation or voluntary association lawfully engaged in the examination and insuring of titles of real property, nor shall it prohibit a corporation or voluntary association from employing an attorney or attorneys in and about its own immediate affairs or in any litigation to which it is or may be a party, or from employing an attorney or attorneys to render legal aid without charge to any employes of such corporation or voluntary association, nor shall it apply to organizations organized for benevolent or charitable purposes, or for the purpose of assisting persons without means in the pursuit of any civil remedy, whose existence, organization or incorporation may be approved by the circuit court of the circuit in which the principal office of said corporation or voluntary association may be located. Nothing herein contained shall be construed to prevent a corporation from furnishing to any person, lawfully engaged in the practice of the law, such information or such clerical services in and about his professional work as, except for the provisions of this act, may be lawful: Provided, That at all times the lawyer receiving such information or such services shall maintain full professional and direct responsibility to his clients

for the information and services so received. But no corporation shall be permitted to render any services which cannot lawfully be rendered by a person not admitted to practice law in this state nor to solicit directly or indirectly professional employment for a lawyer.

HISTORY: CL 1929, 10175;—CL 1948, 450.681.

CITED IN OTHER SECTIONS: The above section is cited in § 500.7304.

R.S. 1846, Ch. 53.

LIBRARIES AND LYCEUMS

450.691 Libraries; incorporation; meeting, calling.

Sec. 1. Any 7 or more proprietors of a library may form themselves into a corporation, under such corporate name as they may adopt, for the purpose of enlarging, regulating and using such library; and for that purpose any justice of the peace may, on the application of 5 or more of the proprietors, issue his warrant to 1 of them, directing him to call a meeting of the proprietors at the time and place expressed in the warrant, for the purpose of forming such corporation, and such meeting shall be called by posting up a notice containing the substance of such warrant, in at least 2 public places in the township where such library is kept, at least 7 days before the time of meeting.

HISTORY: CL 1857, 1782;—CL 1871, 3146;—How. 4407;—CL 1897, 8164;—CL 1915, 10683;—CL 1929, 10176;—CL 1948, 450.691.

LIBRARIES: For provisions relating to the state library, see Compilers' § 397.51 et seq., and to local libraries, see Compilers' § 397.201 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' § 450.301 et seq.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920 and 600.1910 and GCR 103, 104.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.1 et seq.

450.692 Libraries; proprietors; powers; proceedings, certificate; recording.

Sec. 2. Any 7 or more of the proprietors of such library, met in pursuance of such notice, may choose a president, a clerk, a librarian, collector, treasurer, and such other officers as they may deem necessary; and they may also determine upon the mode of calling future meetings of the proprietors; and the proceedings of such first meeting, containing a specification of the corporate name adopted by such proprietors, shall be certified by the clerk of such corporation, and recorded by the county clerk of the county within which the same is formed, who shall be entitled to receive 75 cents for recording the same.

HISTORY: CL 1857, 1783;—CL 1871, 3147;—How. 4406;—CL 1897, 8165;—CL 1915, 10684;—CL 1929, 10177;—CL 1948, 450.692.

450.693 Libraries; powers of corporation; governing law.

Sec. 3. When such proprietors shall be organized as a corporation in the manner hereinbefore provided, they shall have all the powers and privileges, and be subject to all the duties of a corporation, according to the provisions of chapter 55, so far as such provisions shall be applicable in such case, and not inconsistent with the provisions of this chapter.

HISTORY: CL 1857, 1784;—CL 1871, 3148;—How. 4409;—CL 1897, 8166;—CL 1915, 10685;—CL 1929, 10178;—CL 1948, 450.693.

NOTE: Ch. 55, above referred to, is Ch. 55 of R.S. 1846, and is Compilers' § 450.504 et seq.

GENERAL CORPORATION ACT: See Compilers' § 450.1 et seq.

450.694 Libraries; collector and treasurer, bond.

Sec. 4. The treasurer and collector shall give bond to such corporation, with sufficient sureties, to the satisfaction of the president, for the faithful discharge of their duties.

HISTORY: CL 1857, 1785;—CL 1871, 3149;—How. 4410;—CL 1897, 8167;—CL 1915, 10686;—CL 1929, 10179;—CL 1948, 450.694.

450.695 Libraries; shares, assessment and transfer; holding of property.

Sec. 5. The said proprietors may raise such sums of money by assessment on the shares as they shall judge necessary for the purpose of preserving, enlarging and using the library; and the shares may be transferred according to such regulations as they may prescribe, and such corporation may hold (and may acquire by gift, grant, bequest or devise) real and personal estate to any amount not exceeding (25,000 dollars),

in addition to the value of their books; (and may hold in trust property granted, bequeathed or devised as may be prescribed by the grantor or testator; and may be the beneficiaries of trusts created for their benefit.)

HISTORY: CL 1857, 1786;—CL 1871, 3150;—How. 4411;—CL 1897, 8168;—Am. 1899, p. 9, Act 10, Imd. Eff. March 2;—CL 1915, 10687;—CL 1929, 10180;—CL 1948, 450.695.

UNIFORM STOCK TRANSFER ACT: See Compilers' § 440.8309 et seq.

GIFTS, GRANTS OR DEVISES: Indefiniteness, see Act 280 of 1915, being Compilers' § 554.351 et seq.; settlement of probate contest when donee unnamed, see Act 207 of 1917, being Compilers' §§ 720.51 to 720.53; in perpetuity, restraint of alienation, see Act 373 of 1925, being Compilers' §§ 554.381 and 554.382.

SALE OF LANDS: In case of change in conditions, see Act 258 of 1925, being Compilers' §§ 554.401 to 554.404.

LYCEUMS.

450.696 Libraries; organization; powers.

Sec. 6. Any 15 or more persons, in any township or county within this state, who shall by writing associate for the purpose of mental improvement, and the promotion of education, may form themselves into a corporation by the name of "the lyceum of _____," (the name of the place where the meetings of the corporation are to be holden) by calling their first meeting and being organized in like manner as is provided in this chapter, in the case of library corporations, and every lyceum, upon becoming a corporation as aforesaid, shall have, during the pleasure of the legislature, all the like rights, powers, and privileges, as the proprietors of such libraries, and may hold real and personal estate, not exceeding 6,000 dollars.

HISTORY: CL 1857, 1787;—CL 1871, 3151;—How. 4412;—CL 1897, 8169;—CL 1915, 10688;—CL 1929, 10181;—CL 1948, 450.696.

See Note under Compilers' § 450.693.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' § 450.301 et seq.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.1 et seq.

SERVICE OF PROCESS: See Compilers' §§ 600.1920, 600.1923 and GCR 103 and 104.

Act 156, 1955, p. 225; Eff. Oct. 14.

AN ACT to require directors, managers, trustees and other officers of corporations organized under the laws of the state of Michigan to appoint the resident agent of such corporation as their attorney in fact for the service of process in certain actions; to provide for the method of service in such cases; to provide for continuances to afford reasonable opportunity to defend said actions; and to provide for the resignation of any such director, manager, trustee or other officer so that this act shall not be applicable as to any such resigning director, manager, trustee or other officer.

The People of the State of Michigan enact:

450.701 Corporation director, manager, trustee or officer; resident agent, attorney; appointment, duration.

Sec. 1. Every person, whether a resident or nonresident of this state, by the acceptance of election, appointment or employment as a director, manager, trustee or other officer of any corporation organized under the laws of the state of Michigan, or by continuance as such director, manager, trustee or other officer for a period of 30 days following approval of this act, shall be held, by such acceptance or continuance, to have appointed the resident agent of such corporation as his true and lawful attorney in fact upon whom service of process may be made while such person is a director, manager, trustee or other officer and after he has ceased to be such a director, manager, trustee or other officer, as long as such cause of action is not barred by the statute of limitations, in any action commenced in any court of general jurisdiction in the

state of Michigan, arising out of or founded upon any action of such a domestic corporation or of such a person as a director, manager, trustee or other officer of such a domestic corporation.

HISTORY: New 1955, p. 226, Act 156, Eff. Oct. 14.

450.702 Corporation director, manager, trustee or officer; resident agent; service of process, copy forwarded.

Sec. 2. Any such director, manager, trustee or other officer may be served with process in such actions while he holds office as such and after he has ceased to be such a director, manager, trustee or other officer, as long as such actions are not barred by the statute of limitations, by serving the resident agent of such corporation with 2 copies of the summons and pleadings. Such resident agent shall forthwith forward 1 copy of such summons and pleadings to the director, manager, trustee or other officer so served, by registered mail, directed to such director, manager, trustee or other officer at his last known address.

HISTORY: New 1955, p. 226, Act 156, Eff. Oct. 14.

450.703 Corporation director, manager, trustee or officer; continuance.

Sec. 3. In any action in which any director, manager, trustee or other officer of a domestic corporation has been served with process as hereinabove provided, the court in which such action has been commenced shall order such continuance or continuances as may be necessary to afford such director, manager, trustee or other officer reasonable opportunity to defend the action.

HISTORY: New 1955, p. 226, Act 156, Eff. Oct. 14.

450.704 Corporation director, manager, trustee or officer; resignation.

Sec. 4. Any person, director, manager, trustee or other officer of any corporation organized under the laws of the state of Michigan who, within 30 days from the date of approval of this act, shall resign in good faith as such director, manager, trustee or other officer, and shall file with the resident agent of such corporation a copy of such signed resignation, shall not be subject to the provisions of this act.

HISTORY: New 1955, p. 226, Act 156, Eff. Oct. 14.

Act 368, 1965, p. 724; Imd. Eff. Jul. 23.

AN ACT to provide for the organization and regulation of nonprofit corporations engaged in promoting educational cooperative scholarship plans; to provide for regulation by the corporation and securities commission; to provide for certificates of authority, reports and examinations; to levy certain fees and provide exemptions from occupational licenses; to prohibit certain activities without authority; to authorize proceedings for enforcement, revocation or dissolution; to prescribe penalties; and to authorize participation by banks.

The People of the State of Michigan enact:

450.711 Educational cooperative or scholarship plans; definitions.

Sec. 1. As used in this act:

- (1) "Commission" means the corporation and securities commission.
- (2) "Plan" means any educational cooperative plan or scholarship plan subject to the provisions of this act.
- (3) "Corporation" means a corporation not for profit authorized to administer a plan in the state.
- (4) "Scholarship" means educational benefits payable pursuant to a plan which shall not be deemed to be distribution of income to a member of a corporation.

(5) "Member" means any person who is accepted as a member by the plan and who may later become eligible for a scholarship as provided in the charter and bylaws of the plan.

(6) "Trustee of member" means the person or persons including corporations, partnerships or other entities, who on behalf of a minor executes an application for membership in the plan.

(7) "Recipient of scholarship" means any member who has been granted a scholarship by the plan.

(8) "Fiscal year" means the period between January 1 and December 31 of each year.

HISTORY: New 1965, p. 724, Act 368, Imd. Eff. Jul. 23.

450.712 Educational cooperative or scholarship plans; solicitation or collection of contributions, authorization, plans subject to act.

Sec. 2. No person, firm, corporation or corporation for profit shall solicit or collect contributions for the operation and administration of any plan except as specifically authorized hereunder. Any educational cooperative plan or scholarship plan the principal features of which shall consist of (a) participation by a specific person based on contributions made on behalf of such person, and (b) qualification for participation in whole or in part based upon amount and duration of such contribution, shall be deemed a plan subject to the provisions of this act.

HISTORY: New 1965, p. 724, Act 368, Imd. Eff. Jul. 23.

450.713 Educational cooperative or scholarship plans; operation and administration; rules and regulations, approval.

Sec. 3. (1) The commission is authorized to regulate the operation and administration of any plan or plans, as provided in this act and may make rules and regulations necessary for administration of this act in accordance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948. In the adoption of such regulations the commission shall give paramount consideration to the safeguarding of funds and the protection of scholarship recipients.

(2) No plan shall be approved by the commission which does not comply with regulations relating to the following:

- (a) Rights to withdrawal of principal investment;
- (b) Enrollment fees and dues not exceeding an amount reasonably necessary to administer the plan; and in no event shall the enrollment fee exceed the amount of \$20.00;
- (c) Incorporation and qualification with the commission by a corporation;
- (d) Security of funds for scholarships;
- (e) Qualifications of institutions in which scholarships may be granted;
- (f) Maximum duration of scholarship;
- (g) Scholastic achievement as qualification for commencement or continuation of scholarship not exceeding average passing grade in institution;
- (h) Amount of contributions and duration necessary to participation in benefits of plan;
- (i) Good moral character of management personnel;
- (j) Voting rights of members or trustees of members.

HISTORY: New 1965, p. 725, Act 368, Imd. Eff. Jul. 23.

450.714 Educational cooperative or scholarship plans; solicitation of funds unlawful, exception.

Sec. 4. It shall be unlawful for any person, firm, corporation or corporation for profit to solicit funds for the operation of any plan except as provided in this act; or to advertise any plan prior to the approval of such advertisement by the commission to prevent material misrepresentation of law or fact with regard to any such plan.

HISTORY: New 1965, p. 725, Act 368, Imd. Eff. Jul. 23.

450.715 Scholarship corporations; formation, purpose.

Sec. 5. Any 7 or more persons may, pursuant to the provisions of Act No. 327 of the Public Acts of 1931, as amended, being sections 450.1 to 450.192 of the Compiled Laws of 1948, form a corporation not for profit for the purpose of establishing, maintaining and operating a plan or plans subject to regulation hereunder. Every such corporation so organized and licensed hereunder shall be deemed to be a charitable and benevolent institution.

HISTORY: New 1965, p. 725, Act 368, Imd. Eff. Jul. 23.

450.716 Scholarship corporations; certificate of authority; operation, prerequisites; applications; supplemental data, necessary findings.

Sec. 6. (1) No corporation shall commence or continue operation in this state, or advertise any plan, subject to regulation hereunder, prior to the issuance to it of a certificate of authority by the commission. Every person, firm, corporation or corporation for profit engaged in any such activity on the effective date of this act shall within 60 days of the effective date commence proceedings to comply with this act and make application to the commission.

(2) Applications shall be accompanied by such supplemental data as the commission may require, including, but not limited to the following:

(a) Charter certified by the corporation and securities commission, together with all amendments thereto as the date of such certification.

(b) Bylaws of the corporation.

(c) Proposed plan or plans for payment of scholarships.

(d) Copies of membership certificates, applications and other documents to be used in connection with the operation and administration of the plan.

(e) Financial statement of the corporation.

(f) Names and addresses of officers and directors of officers of the commission.

All such data shall be submitted with oath, to be prescribed by the commission, taken and subscribed by 2 officers of the corporation, that the facts are true and that documents submitted are truly representative and in use or to be put in use. Proposed changes in the charter, bylaws or forms used, including contracts with educational institutions, shall be submitted to the commission for approval at least 10 days before such change or use.

(3) The commission shall issue a certificate of authority to each qualified applicant if the commission finds that:

(a) The applicant has been organized bona fide for the purpose of establishing, maintaining and operating a nonprofit plan in accordance with regulations promulgated by the commission;

(b) The plan is fair and reasonable and actuarially capable of providing all or a substantial portion of the educational scholarship needs of members in accordance with representations contained in the plan;

(c) The operation of the plan complies with section 7 and regulations of the commission respecting the security of scholarship funds; and

(d) The applicant has paid a filing fee of \$10.00, which fee shall be deposited in the general revenue fund unallocated.

HISTORY: New 1965, p. 725, Act 368, Imd. Eff. Jul. 23.

450.717 Scholarship funds; deposit; special or trust funds; trustee, selection, approval.

Sec. 7. All scholarship funds shall be deposited in a special fund or trust funds established for the purpose of depositing all funds, contributions, donations, pledged earnings, interest, income and dividends, except enrollment fees and dues as set forth in section 3 (2) (b), to be used exclusively and solely for scholarships and educational benefits for members found eligible for scholarships, pursuant to the terms, conditions, purposes and uses set out in the plan, and that the deposits or payments into said special fund or trust fund and disbursements out of said fund shall not be subject to levy, attachment or garnishment on account of any debts or liabilities of the corporation or of any member, trustee of member or recipient, and that the special fund is to be deposited in and managed by an insured bank, having trust powers, as trustee. The trustee shall be selected or appointed by the corporation and approved by the commission. The commission is authorized to adopt regulations respecting such security by the depository as shall be necessary to the protection of such funds and to assure their availability for the purposes set forth in the plan or plans under which said moneys are received.

HISTORY: New 1965, p. 726, Act 368, Imd. Eff. Jul. 23.

450.718 Scholarship corporations; operating capital, definition.

Sec. 8. Operating capital of the corporation shall not be deemed trust funds. Operating capital shall consist of enrollment fees and annual dues of members. Advancements to the corporation for working capital shall be deemed operating capital repayable from such fees and dues only.

HISTORY: New 1965, p. 726, Act 368, Imd. Eff. Jul. 23.

450.719 Scholarship corporations; financial condition, annual report, verification.

Sec. 9. Each corporation shall annually on or before February 1 after the end of the fiscal year, as defined in this act, file with the commission a statement showing the financial condition of the corporation as of the last day of the fiscal year in such form and containing such information as the commission may require. The report shall be verified by a certified public accountant or be submitted under oath subscribed by 2 officers of the corporation.

HISTORY: New 1965, p. 726, Act 368, Imd. Eff. Jul. 23.

450.720 Scholarship corporations; visitation and examination of corporate affairs, books and records, examination fees; resources, definition.

Sec. 10. The commission shall have the power of visitation and examination into the affairs of each such corporation. All of the books and records of the corporation shall be available to the commission for examination by the commission. The commission, and any deputy or bank examiner, shall have the power to summon and examine under oath any person in relation to the affairs, transactions and conditions of any corporation and to require the production of books, records, papers and other documents relating to any of the activities of the corporation. Each such corporation shall pay for such examinations the fees prescribed by regulations pursuant to section 3. For the purposes of this act "resources" shall be denied [defined] as the total of both operating funds and trust funds in such corporation and that the minimum fee for such examination shall be \$100.00.

HISTORY: New 1965, p. 727, Act 368, Imd. Eff. Jul. 23.

450.721 Scholarship corporations; dissolution or liquidation, regulation.

Sec. 11. The dissolution or liquidation of any corporation shall be under the supervision of the commission and pursuant to regulations promulgated by it for the protection of members and trustees of members.

HISTORY: New 1965, p. 727, Act 368, Imd. Eff. Jul. 23.

450.722 Scholarship corporations; certificate of authority, revocation; proceedings; involuntary dissolution or liquidation; reasons, notice, hearing; review.

Sec. 12. The commission shall have the power to revoke the certificate of authority or bring proceedings for the dissolution or liquidation of any such corporation, pursuant to regulations promulgated by it relating to notice, hearing and opportunity for review, whenever the commission finds that:

- (1) The corporation is being operated for profit;
- (2) The affairs of the corporation are being fraudulently conducted;
- (3) The corporation is guilty of a violation of any of the provisions of this act;
- (4) The certificate of authority was obtained by fraud;
- (5) The corporation is guilty of false or misleading advertising;
- (6) Trust funds have been or are being used for purposes other than scholarships;
- (7) There has been a material variance between any plan or plans as filed with the commission and the actual administration thereof to the detriment of any member, trustee of member or class thereof;
- (8) The corporation has wilfully failed to file reports required by the commission pursuant to this law; or
- (9) The corporation has refused or prevented examination of its books and records by the commission; or
- (10) The corporation was engaged in such activity on the effective date of this act and did not, within 60 days after such date, apply for a certificate as provided in section 6(1).

HISTORY: New 1965, p. 727, Act 368, Imd. Eff. Jul. 23.

450.723 Scholarship corporations; occupational license taxes, corporate exemption.

Sec. 13. Every corporation holding a certificate of authority under the provisions of this act and its officers, agents and solicitors shall be exempt from the payment of any occupational license taxes levied by virtue of its activities or those of its officers, agents or solicitors authorized hereunder.

HISTORY: New 1965, p. 727, Act 368, Imd. Eff. Jul. 23.

450.724 Scholarship corporations; powers, restrictions; approval.

Sec. 14. Each corporation shall have all the powers provided by law for corporations not for profit which are consistent with the provisions of this act, but the exercise of such powers shall be subject to the approval of the commission where in the opinion of the commission any such exercise of powers may impair or interfere with the ability of the corporation properly to execute, administer or operate any of the plans approved by the commission.

HISTORY: New 1965, p. 727, Act 368, Imd. Eff. Jul. 23.

450.725 Scholarship corporations; board of directors, number, nomination; filling vacancies.

Sec. 15. The charter of each corporation shall provide for a board of directors of not less than 8 persons. At the time of application to the commission there shall be 5 vacancies on said board. Within 10 days of the granting of a certificate of authority the commission shall notify the following organizations of the application and the right of

each to place a member on the board of directors, who shall not be required to be members or otherwise affiliated with the corporation:

The Michigan congress of parents and teachers

Michigan education association

Michigan bankers association

Michigan savings and loan league

Michigan credit union league.

If any of the foregoing shall within 60 days of such notice fail or refuse to designate a member to serve on the board of directors of any corporation, the remaining members of the board may fill the vacancy in the manner provided in the charter or bylaws. Each such organization shall be notified by the corporation not less than 30 days prior to the meeting at which directors are elected annually of its rights hereunder, which shall be continuing. Failure or refusal of any such organization to designate 1 of its members to serve on the board of directors, within 30 days from the date of such annual meeting, shall create a vacancy on such board of directors, to be filled as in the charter or bylaws provided.

HISTORY: New 1965, p. 728, Act 368, Imd. Eff. Jul. 23.

450.726 Violation of act; misdemeanor; perjury.

Sec. 16. (1) Any person, firm or corporation who shall violate any of the provisions of this act shall be guilty of a misdemeanor.

(2) The wilful making of any false and material statement on any report to or required by the commission shall constitute perjury and punishable as such.

HISTORY: New 1965, p. 728, Act 368, Imd. Eff. Jul. 23.

450.727 Non-profit educational corporations; inapplicability of act.

Sec. 17. The provisions of this act shall not apply to any nonprofit educational corporation or association which makes provision for scholarships as incidental to its principal functions and activities only; nor shall the provisions of this act apply to the offering of scholarships under any plan subject to supervision of the insurance commissioner of the state, nor shall the provisions of this act apply to any corporation organized prior to December 1, 1958.

HISTORY: New 1965, p. 728, Act 368, Imd. Eff. Jul. 23.

450.728 Banks and trust companies; participation in scholarship plans.

Sec. 18. All banks and trust companies, industrial savings banks, building and loan associations, savings and loan associations and credit unions are hereby authorized to participate in scholarship plans operating under the provisions of this act.

HISTORY: New 1965, p. 728, Act 368, Imd. Eff. Jul. 23.

CHAPTER 451. CORPORATION AND SECURITIES COMMISSION

MICHIGAN CORPORATION AND SECURITIES
COMMISSION
Act 13 of 1935

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Act 13, 1935, p. 24; Eff. Sep. 21.

AN ACT to create a commission to be known as the Michigan corporation and securities commission; to define the powers and duties thereof; to provide for the transfer to said commission of certain powers and duties now vested by law in the Michigan securities commission and the secretary of state, and to abolish the Michigan securities commission.

The People of the State of Michigan enact:

451.1 Michigan corporation and securities commission; creation; commissioner, term, disqualification; seal; offices.

Sec. 1. A commission to be known and designated as the Michigan corporation and securities commission is hereby created. Immediately upon the taking effect of this act a corporation and securities commissioner shall be appointed by the governor for the term of 4 years, subject to confirmation by the senate. The said commissioner shall devote his entire time in the performance of the duties of his office. Upon the expiration of the said term a successor shall be appointed in like manner for a term of 4 years and until his successor is appointed and qualified. Vacancies shall be filled in the same manner as is provided for the appointment in the first instance. Said commissioner shall not be directly or indirectly interested in any corporation, firm or association engaged in the business of underwriting, issuing or selling securities of any character. The commission shall adopt and have a suitable seal, of which all courts of the state shall take judicial notice, and all proceedings, orders and decrees shall be authenticated thereby. It shall be the duty of the board of state auditors to provide suitable offices, supplies, and equipment in Lansing, Michigan, and in such other place or places in the state as may be determined upon by the commissioner and governor; expenses thereof to be audited, allowed and paid in such manner as is or may be provided by law for the payment of necessary state expenses.

HISTORY: CL 1948, 451.1.

CITED IN OTHER SECTIONS: Sections 451.1 to 451.4 are cited in § 451.806.

451.2 Corporation and securities commission; powers; employees, salary; fees.

Sec. 2. Said commissioner shall have the power to appoint not more than 3 deputy commissioners, who shall have the power and authority to conduct hearings in the several matters submitted to the commissioner for his determination, and to make report of such evidence as may be submitted to them, together with their conclusions and

recommendations, to the commissioner for his action, and shall likewise have power and authority to perform such other duties as may be delegated to them by the commissioner. The commission shall have power to appoint a secretary and such clerks, assistants, examiners, and other employes as shall be necessary for the proper exercise of the powers hereby granted. The commissioner, each deputy commissioner and the secretary shall receive such annual salary as shall be appropriated by the legislature, payable in the same manner as are the salaries of other state officials. The salaries of clerks, assistants, examiners and other employes, shall be fixed and determined by the commissioner, subject to the approval of the director of finance. The commissioner, deputies and other employes of the commission shall be entitled to reasonable expenses while traveling in the performance of any of the duties hereby imposed. All salaries and expenses authorized hereunder shall be paid out of the state treasury in the same manner as the salaries of other state officers and employes are paid. Any appropriation made for the Michigan securities commission, or for the secretary of state, insofar as the corporation division thereof is concerned, together with any sums receivable by said Michigan securities commission under any act or acts under which said commission has existed and functioned, or receivable by the secretary of state incident to the operation of the corporation laws of the state of Michigan, shall be paid into the general fund of the state of Michigan. For furnishing photostatic or typewritten or other copies of records or proceedings of the commission or of documents and papers required or permitted by law to be filed with the commission, and for certifying same, the commission shall charge in accordance with a schedule of fees which it shall adopt with the approval of the state administrative board, which schedule of fees may be changed or amended by the commission with the approval of the state administrative board: Provided, however, that a minimum charge of \$1.00 shall be made for each certificate.

HISTORY: Am. 1939, p. 423, Act 228, Imd. Eff. June 14;—CL 1948, 451.2.

451.3 Michigan securities commission; abolition, transfer of powers and duties to corporation and securities commission; records; fees, taxes and charges.

Sec. 3. The powers and duties now vested by law in the Michigan securities commission, by virtue of the provisions of Act No. 220, Public Acts of 1923, and the acts amendatory thereof and supplemental thereto, and that conferred under and by virtue of the provisions of Act No. 306, Public Acts of 1919, and the powers and duties now vested by law in the secretary of state, with respect to the formation, organization, regulation and control of corporations, and the fees, taxes and charges to be paid by corporations, under Act No. 327, Public Acts of 1931, as amended, and Act No. 85, Public Acts of 1921, as amended, are hereby transferred to and vested in the Michigan corporation and securities commission hereby created. Immediately on the taking effect of this act the Michigan securities commission, whose powers and duties are hereby transferred, shall cease to exist and the tenure of the office of the members thereof shall be at once terminated, and whenever reference thereto is made in any law of the state; or to the secretary of state with reference to the formation, organization, regulation and control of corporations, and the fees, taxes and charges to be paid by corporations, under Act No. 327, Public Acts of 1931, as amended, and Act No. 85, Public Acts of 1921, as amended, reference shall be deemed to be intended to be made to the Michigan corporation and securities commission. All hearings, matters and proceedings of whatever nature now pending before the Michigan securities commission, or the secretary of state, with reference to the formation, organization, regulation and control of corporations, and the fees, taxes and charges to be paid by corporations, under Act No. 327, Public Acts of 1931, as amended, and Act No. 85, Public Acts of 1921, as amended, shall not be terminated or abated, but shall be transferred

to the Michigan corporation and securities commission created hereby, and shall be carried on in the same manner and subject to the same incidents as though such transfer were not made. All records, files and other papers belonging to the Michigan securities commission, or to the secretary of state respecting the formation, organization, regulation and control of corporations, and the fees, taxes and charges to be paid by corporations, under Act No. 327, Public Acts of 1931, as amended, and Act No. 85, Public Acts of 1921, as amended, the duties of which are hereby transferred to the Michigan corporation and securities commission, shall be turned over to said commission and shall be continued as part of the records and files thereof.

HISTORY: CL 1948, 451.3.

NOTE: Act 220, 1923, is Compilers' § 451.101 et seq.; Act 306, 1919, is Compilers' § 451.201 et seq.; Act 327, 1931, is Compilers' § 450.1 et seq.; Act 85, 1921 is Compilers' § 450.301 et seq.

451.4 Corporation and securities commission; review of orders; injunctions.

Sec. 4. Any final order of said commission shall be subject to review in the manner now provided by law for reviewing orders of the Michigan securities commission. In no case, however, shall any injunction or other order issue, suspending or staying any order of the commission, except after due notice to the commission and reasonable opportunity for hearing thereon.

HISTORY: CL 1948, 451.4.

451.101-451.133 Repealed. 1964, p. 438, Act 265, Eff. Jan. 1, 1965.

Sections consisted of Blue Sky Law of 1923.

Act 306, 1919, p. 535; Eff. Aug. 14.

AN ACT to define, regulate and license real estate brokers and real estate salesmen, including within the term real estate broker, also those who act as real estate appraisers, real estate mortgage brokers, building job brokers, business chance brokers and those who, as owners or otherwise, engage in the sale of real estate as a principal vocation, and persons employed by any of them as salesmen, and to provide a penalty for a violation of the provisions hereof. Am. 1939, p. 495, Act 268, Eff. Sep. 29;—Am. 1943, p. 60, Act 57, Eff. Jul. 30.

The People of the State of Michigan enact:

451.201 Real estate broker or salesman; license requirement.

Sec. 1. It shall be unlawful for any person, firm, partnership association, copartnership or corporation, whether operating under an assumed name or otherwise, from and after January first, 1920, to engage in the business or capacity, either directly or indirectly, of a real estate broker or real estate salesman within this state without first obtaining a license under the provisions of this act.

HISTORY: CL 1929, 9906;—Am. 1943, p. 60, Act 57, Eff. July 30;—CL 1948, 451.201.

NOTE: Act 306 of 1919 was specifically excepted from the provisions of Act 307 of 1925 relating to finance companies, by Sec. 1 thereof being Compilers' § 492.1.

AGREEMENT FOR COMMISSION: For sale of any interest in real estate must be in writing, see Compilers' § 506.132 subd. 5.

CITED IN OTHER SECTIONS: Sections 451.201 to 451.219 are cited in § 16.428.

451.202 Real estate broker or salesman; definition; scope of act, applicability.

Sec. 2. A real estate broker within the meaning of this act is any person, firm, partnership association, copartnership or corporation, who with intent to collect or receive a fee, compensation or valuable consideration, sells or offers for sale, buys or offers to buy, appraises or offers to appraise, lists or offers or attempts to list, or negotiates the purchase or sale or exchange or mortgage of real estate, or negotiates for the construction of buildings thereon, or who leases or offers to lease or rents or offers for rent any

real estate or the improvements thereon for others, as a whole or partial vocation, or who sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the good will of an existing business for others, or who, as owner or otherwise, engages in the sale of real estate as a principal vocation. A real estate salesman within the meaning of this act is any person who for compensation or valuable consideration is employed either directly or indirectly by a licensed real estate broker to sell or offer to sell, or buy or offer to buy, to appraise or offer to appraise, to list, or offer or attempt to list, or to negotiate the purchase or sale or exchange or mortgage of real estate, or to negotiate for the construction of buildings thereon, or to lease or offer to lease, rent or offer for rent any real estate, or who sells or offers for sale, buys or offers to buy, leases or offers to lease, or negotiates the purchase or sale or exchange of a business, business opportunity, or the good will of an existing business for others, as a whole or partial vocation. The provisions of this act shall not apply to any person, firm, partnership association, copartnership or corporation, who as owner or lessor or as attorney-in-fact acting under a duly executed and recorded power of attorney from such owner or lessor, or who has been appointed by court, shall perform any of the acts aforesaid with reference to property owned by them, unless performed as a principal vocation not through brokers duly licensed hereunder, nor shall this act be construed to include in any way the services rendered by an attorney at law in the performance of his duties as such attorney at law, nor shall it be held to include a receiver, trustee in bankruptcy, administrator or executor, or any person selling or appraising real estate under order of any court, nor to a trustee selling under a deed of trust: Provided, That this exemption of trustee shall not apply to repeated and/or successive sales of real estate by such trustee, unless such sales are made through brokers duly licensed hereunder.

HISTORY: Am. 1921, p. 708, Act 387, Eff. Aug. 18;—CL 1929, 9807;—Am. 1937, p. 294, Act 188, Imd. Eff. July 14;—Am. 1939, p. 495, Act 268, Eff. Sept. 29;—Am. 1943, p. 60, Act 57, Eff. July 30;—CL 1948, 451.202.

451.203 Real estate broker or salesman; constituent persons, violation of act.

Sec. 3. One acting for a compensation or valuable consideration of buying or selling real estate of or for another, or offering for another to buy or sell or exchange or mortgage or appraise real estate, or to negotiate for the construction of buildings thereon, or leasing or renting or offering to rent real estate, or selling or offering for sale, or buying or offering to buy, or leasing or offering to lease, or negotiating the purchase or sale or exchange of a business, business opportunity, or the good will of an existing business for others, or one who, as owner or otherwise, engages in the sale of real estate as a principal vocation, except as herein specifically excepted, shall constitute the person, firm, partnership association, copartnership or corporation performing, offering or attempting to perform any of the acts enumerated herein, a real estate broker or a real estate salesman within the meaning of this act. The commission of a single act prohibited hereunder shall constitute a violation.

HISTORY: CL 1929, 9806;—Am. 1937, p. 294, Act 188, Imd. Eff. July 14;—Am. 1939, p. 496, Act 268, Eff. Sept. 29;—Am. 1943, p. 61, Act 57, Eff. July 30;—CL 1948, 451.203.

451.204 Corporation and securities commission; enforcement of act.

Sec. 4. It shall be the duty of the Michigan corporation and securities commission, created by Act No. 13 of the Public Acts of 1935, and hereinafter referred to in this act as "the commission" to administer and provide for the enforcement of all of the provisions of this act.

HISTORY: CL 1929, 9809;—Am. 1943, p. 61, Act 57, Eff. July 30;—CL 1948, 451.204.

NOTE: Act 13, 1935, above referred to, is Compilers' § 451.1 et seq.

451.205 Corporation and securities commission; clerks, offices.

Sec. 5. The commission shall employ such clerks and assistants as shall be deemed necessary to discharge the duties imposed by the provisions of this act. Such clerks and assistants shall perform such duties as the commission shall prescribe and shall receive such compensation as shall be fixed by the commission, subject to the general laws of the state. The commission shall obtain such office space, furniture, stationery, fuel, light and other proper conveniences as shall be reasonably necessary for carrying out the provisions of this act.

HISTORY: CL 1929, 9610;—CL 1948, 451.205.

ADMINISTRATIVE BOARD: Supervisory powers, see Compilers' § 17.3.

451.206 Corporation and securities commission; seal; records, inspection.

Sec. 6. The commission shall adopt a seal with such design as the commission may prescribe engraved thereon, by which it shall authenticate its proceedings. Copies of all records and papers in the office of the commission, duly certified and authenticated by the seal of said commission shall be received in evidence in all courts equally and with like effect as the original. All records kept in the office of the commission under authority of this act shall be open to public inspection under such rules and regulations as shall be prescribed by the commission.

HISTORY: CL 1929, 9611;—CL 1948, 451.206.

451.207 Corporation and securities commission; fees, disposition; expenses.

Sec. 7. All fees and charges collected by the commission under the provisions of this act shall be paid into the general fund in the state treasury. All expenses incurred by the commission under the provisions of this act, including compensation to clerks and assistants, and such costs as fees and mileage, shall be paid out of the general fund in the state treasury upon warrants of the auditor general from time to time when vouchers therefor are exhibited and approved by the commission: Provided, That the total expense for every purpose incurred shall not exceed the total fees and charges collected and paid into the state treasury.

HISTORY: Am. 1921, p. 709, Act 387, Eff. Aug. 18;—CL 1929, 9612;—CL 1948, 451.207.

451.208 License; application; branch office.

Sec. 8. All applications for licenses shall be made in writing to the commission. Such applications shall also be accompanied by the recommendation of at least 2 citizens, real estate owners, who have owned real estate for a period of 1 year or more, in the county in which said applicant resides or had his place of business, which recommendation shall certify that the applicant bears a good reputation for honesty and fair dealing, and recommending that a license be granted to the applicant. Every applicant for a license shall furnish a sworn statement setting forth his present address, both of business and residence, the complete address of all former places where he may have resided or been engaged in business, or acted as a real estate salesman, for a period of 60 days or more, during the last 5 years, and the length of such residence, together with the name of at least 1 real estate owner in each of the said counties where he may have resided, engaged in business, or acted as a salesman. Every applicant for a broker's license shall also state the name of the person, firm, partnership association, co-partnership or corporation, and the location of the place, or places, for which said license is desired, and set forth the period of time, if any, which said applicant has been engaged in the business, and shall be executed by such person, or by an officer or member thereof. A broker's license shall not be issued to any new applicant who is not a citizen of the United States nor to any person who has been convicted of embezzlement or misappropriation of funds. Every real estate broker shall maintain a place of business in this state. In case a real estate broker maintains more than 1 place of busi-

ness within the state a duplicate license must be secured by such broker for each branch office so maintained. A broker shall be permitted to maintain, in the city which constitutes the situs of his main office, not more than 1 branch office for each 60,000 residents, according to the last federal decennial census or any subsequent federal decennial census. Any branch office maintained in excess of 25 miles from the city limits in which such broker maintains his main office must be under the personal, direct supervision of an associate broker. Every applicant for a salesman's license shall, in addition to the requirements of the first paragraph of this section, also set forth the period of time, if any, during which he has been engaged in the business, stating the name of his last employer and the name and the place of business of the person, firm, partnership association, copartnership or corporation then employing him or in whose employ he is to enter. The application shall be accompanied by a written statement by the broker in whose employ he is to enter stating that in his opinion the applicant is honest, truthful and of good reputation, and recommending that the license be granted to the applicant. Every applicant for a salesman's license shall be a citizen of the United States.

Proof of character; rules, examination, fee.

The commission shall have the right to prescribe the form of application for all licenses. The commission is hereby authorized to require and procure any and all satisfactory proof as shall be deemed desirable in reference to the honesty, truthfulness, business experience, competence and reputation of any applicant for a real estate broker's or salesman's license or of any of the officers or members of any such applicant, prior to the issuance of any such license. The commission is expressly vested with the power and authority to make, prescribe and enforce, after having been approved by the attorney general and recorded by the secretary of state, as required under Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.82 of the Compiled Laws of 1948, any and all such rules and regulations connected with the application, for any license, and the issuing of the same as shall be deemed necessary to administer and enforce the provisions of this act, and the issuance or refusal of a license shall be discretionary with the commission. The commission shall also require each applicant for broker's or salesman's license to pass an examination establishing, in a manner satisfactory to the commission, that the applicant has a fair knowledge of the English language, including reading, writing, spelling and elementary arithmetic, a satisfactory understanding of the fundamentals of real estate practice and of the laws and principles of real estate conveyancing, deeds, mortgages, land contracts, leases, the obligations of a broker to the public and his principal, and the provisions of the Michigan statutes defining, regulating and licensing real estate brokers and salesmen. The commission shall have the authority to require at its discretion written examination or written re-examination of brokers or salesmen, and in these cases that passing grades, satisfactory to the commission shall be required as a condition precedent to reissuance of licenses to such brokers or salesmen. The commission shall also require proof that each applicant for a broker's license has been engaged in the real estate business for a period of not less than 3 years, at least 2 of which shall have been as a salesman licensed hereunder, or its equivalent in relevant, related experience in the discretion of the commission: Provided, That brokers heretofore licensed hereunder shall not be required to meet said 3 year requirement. An examination fee of \$5.00 shall be collected from each applicant to defray the expenses of holding such examination.

HISTORY: Am. 1921, p. 708, Act 387, Eff. Aug. 18;—Am. 1929, p. 257, Act 111, Eff. Aug. 28;—CL 1929, 9813;—Am. 1931, p. 231, Act 148, Eff. Sept. 18;—Am. 1937, p. 294, Act 188, Imd. Eff. July 14;—Am. 1939, p. 496, Act 268, Eff. Sept. 29;—Am. 1943, p. 61, Act 57, Eff. July 30;—Am. 1947, p. 660, Act 352, Eff. Oct 11;—CL 1948, 451.208;—Am. 1960, p. 117, Act 112, Eff. Aug. 17.

451.209 License; form, custody, display; change of location; pocket card.

Sec. 9. The commission shall issue to each licensee a license in such form and size as

shall be prescribed by the commission. This license shall show the name and address of the licensee and in case a real estate salesman's license, shall show the name of the real estate broker by whom he is employed. Each license shall have imprinted thereon the seal of the commission, and in addition to the foregoing shall contain such matter as shall be prescribed by the commission. The license of each real estate salesman shall be delivered or mailed to the real estate broker by whom such real estate salesman is employed and shall be kept in the custody and control of such broker. It shall be the duty of each real estate broker to conspicuously display his license in his place of business. Notice in writing shall be given to the commission by each licensee of any change of either principal or branch business location, whereupon the commission shall issue a new license for the unexpired period upon payment of the required fees. The commission shall prepare and deliver to each licensee a pocket card not larger than 2 ¼ inches in width and 3 ¾ inches in length, which card among other things shall contain the name and address of the licensee, and in case of a salesman the name and address of the employer, and shall contain the imprint of the seal of the commission and shall certify that the person whose name appears thereon is a licensed real estate salesman or real estate broker, as the case may be. The matter to be printed on such pocket card, except as above set forth, shall be prescribed by the commission.

HISTORY: Am. 1921, p. 710, Act 387, Eff. Aug. 18;—CL 1929, 9814;—Am. 1947, p. 661, Act 352, Eff. Oct. 11;—CL 1948, 451.209;—Am. 1960, p. 118, Act 112, Eff. Aug. 17.

451.210 License; termination of employment, surrender or transfer; relicensing fee.

Sec. 10. When any real estate salesman shall be discharged or shall terminate his employment with the real estate broker by whom he is employed, by giving employer a written notice of such termination, it shall be the duty of such real estate broker to deliver or mail by registered mail to the commission, within 5 days, such real estate salesman's license. When no written notice of termination of employment is served upon the said broker by the said salesman, any application to the commission for a transfer of license by said salesman shall be communicated in writing by the commission to said broker and from the date of said communication said notice shall operate as if a written notice has been served by the said salesman upon said broker. The real estate broker shall at the time of mailing such real estate salesman's license to the commission, address a communication to the last known residence address of such real estate salesman, which communication shall advise such real estate salesman that his license has been delivered or mailed to the commission. A copy of such communication to the real estate salesman shall accompany the license when mailed or delivered to the commission. It shall be unlawful for any real estate salesman to perform any of the acts contemplated by this act either directly or indirectly under authority of said license from and after the date of receipt of the said license from said broker by the commission: Provided, That another license shall not be issued to such real estate salesman until he shall return his former pocket card to the commission or shall satisfactorily account to it for same: Provided further, That not more than 1 license shall be issued to any real estate salesman for the same period of time. The commission shall, at its discretion, issue a new license to said salesman upon the filing of an application for a transfer and the payment of a transfer fee of \$5.00.

HISTORY: Am. 1921, p. 711, Act 387, Eff. Aug. 18;—CL 1929, 9815;—CL 1948, 451.210;—Am. 1960, p. 119, Act 112, Eff. Aug. 17.

451.211 License; fees.

Sec. 11. (a) The following filing fees shall be charged by the commission:

(1) For each original broker's license a fee of \$30.00; and for each renewal thereof a fee of \$15.00.

(2) For each associate broker's license a fee of \$30.00; and for each renewal thereof a fee of \$15.00.

(3) For each original salesman's license a fee of \$25.00; and for each renewal thereof a fee of \$10.00.

(4) For each reexamination a fee of \$15.00.

(5) For each branch office a fee of \$10.00; and for each renewal thereof a fee of \$10.00.

(6) For each transfer of a salesman's license a fee of \$5.00.

(7) For change of name or address of licensee on the records of the commission a fee of \$3.00.

All real estate license fees shall be payable in advance of issuing the licenses and at the time of filing the application.

No part of any fee paid in accordance with the provisions of this section is refundable. It is deemed earned by the commission upon its receipt.

Broker's license; associate broker; revocation, effect on salesman's license.

(b) Each real estate broker's license which may be granted to an individual shall entitle such individual to perform all of the acts contemplated by this act with respect to a real estate broker. Each real estate broker's license granted to any firm, partnership association, copartnership or corporation consisting of more than 1 person shall entitle such real estate broker to designate which of its officers or members are active, who upon compliance with the terms of this act, upon the payment of the required fee and upon issuance of said broker's license, shall be entitled to perform all of the acts of a real estate broker contemplated by this act. A broker's license granted to any firm, partnership association, copartnership or corporation shall not be transferable. The officers and members so designated, however, must make application for an associate broker's license, which application shall accompany the application of the real estate broker and be filed with the commission at the same time as the application of the real estate broker for a license. Every active officer or member of a firm, partnership association, copartnership or corporation shall obtain an associate broker's license, as hereinbefore provided. The license of any such officer or member who ceases to be connected with such firm, partnership association, copartnership or corporation shall be automatically suspended and shall also be automatically suspended upon the revocation of the broker's license of such firm, partnership association, copartnership or corporation. In case any such officer or member shall become connected with any firm, partnership association, copartnership or corporation, after the issuance of a broker's license thereto, he shall as a prerequisite to becoming an active officer or member secure an associate broker's license as hereinbefore provided. Every application for a license under the provisions of this act shall be accompanied by the license fee herein prescribed and every license shall expire on December 31, 1967, and on December 31 of every year thereafter. In the absence of any reason or condition which might warrant the refusal of the granting of a license, the commission shall issue a new license for each ensuing term upon receipt of application and fee therefor. The revocation of a broker's license shall automatically suspend every real estate salesman's license granted to any person by virtue of his employment by the broker whose license has been revoked, pending a change of employer and the issuance of a new license. Such new license shall be issued without charge, if granted during the same term in which the original license was granted.

HISTORY: CL 1929, 9816;—Am. 1937, p. 295, Act 188, Imd. Eff. July 14;—Am. 1939, p. 497, Act 268, Eff. Sept. 29;—Am. 1943, p. 63, Act 57, Eff. July 30;—Am. 1947, p. 662, Act 352, Eff. Oct. 11;—CL 1948, 451.211;—Am. 1960, p. 119, Act 112, Eff. Aug. 17;—Am. 1968, p. 24, Act 14, Imd. Eff. Apr. 5.

451.212 Unlawful acceptance of commission.

Sec. 12. It shall be unlawful for any real estate salesman to accept a commission or valuable consideration for the performance of any of the acts herein specified from any person, except his employer who must be a licensed real estate broker.

HISTORY: Am. 1921, p. 711, Act 387, Eff. Aug. 18;—CL 1929, 9817;—Am. 1947, p. 602, Act 352, Eff. Oct. 11;—CL 1948, 451.212.

451.212a Use of lotteries, contests or games unlawful; promotional sales; rules governing.

Sec. 12a. No plan or scheme involving lotteries, contests, games, prizes or drawings shall be used by any broker or salesman for the sale or promotion of sales of real estate.

Brokers who propose to engage in sales of a promotional nature in Michigan of property located outside of Michigan, must submit to the commission full particulars regarding such property and the proposed terms of sale, and they and their salesmen must comply with such rules, restrictions and conditions pertaining thereto as the commission may impose. All expenses incurred by the commission in investigating such property and the proposed sale thereof in Michigan, shall be borne by the broker. No broker or salesman shall in any manner refer to the Michigan corporation and securities commission, or to any officer or employee thereof, in selling, offering for sale, or advertising, or otherwise promoting the sale, mortgage or lease of any such property, nor make any representation whatsoever that such property has been inspected or approved or otherwise passed upon by said commission, or by any state official, department or employee.

HISTORY: Add. 1939, p. 468, Act 268, Eff. Sept. 29;—Am. 1943, p. 63, Act 57, Eff. July 30;—CL 1948, 451.212a.

451.213 License; suspension or revocation, investigation, grounds; civil or criminal liability.

Sec. 13. The commission may upon its own motion, and shall upon the verified complaint in writing of any person, investigate the actions of an applicant for a real estate broker or real estate salesman license or any real estate broker or real estate salesman or any person who shall assume to act in either such capacity within this state and shall have the power to deny, suspend or revoke any license issued under the provisions of this act at any time where the applicant or licensee in performing or attempting to perform any of the acts mentioned herein, is deemed to be guilty of:

- (a) Making any substantial misrepresentation.
- (b) Making any false promises of a character likely to influence, persuade or induce.
- (c) Pursuing a continued and flagrant course of misrepresentation or the making of false promises through agents or salesmen or advertising or otherwise.
- (d) Acting for more than 1 party in a transaction without the knowledge of all parties thereto.
- (e) Representing or attempting to represent a real estate broker other than the employer, without the express knowledge and consent of the employer.
- (f) Failure to account for or to remit for any moneys coming into his possession which belong to others.
- (g) Changing his business location without notification to the commission.
- (h) Failure of a broker to return a salesman's license within 5 days as provided in section 10.
- (i) Paying a commission or valuable consideration to any person not licensed under the provisions of this act.
- (j) Failing to deposit in a custodial trust or escrow account all moneys belonging to others coming into the hands of the licensee in compliance with the following requirements:

(1) All deposits or other moneys accepted by every person, copartnership, corporation or association holding a real estate broker's license under the provisions of this act must be retained by such real estate broker pending consummation or termination of the transaction involved, and shall be accounted for in the full amount thereof at the time of the consummation or termination.

(2) Every real estate salesman promptly on receipt by him of a deposit or other moneys on any transaction in which he is engaged on behalf of his broker-employer shall pay over the deposit or other moneys to the real estate broker.

(3) Under no circumstances shall a broker permit any advance payment of funds belonging to others to be deposited in the broker's business or personal account or be commingled with any funds he may have on deposit belonging to him.

(4) Every real estate broker shall immediately deposit such moneys, of whatever kind or nature, belonging to others in a separate custodial or trust fund account maintained by the real estate broker with some bank or recognized depository until the transaction involved is consummated or terminated, at which time the real estate broker shall account for the full amount received.

(5) Every real estate broker shall keep records of all funds deposited therein, which records shall indicate clearly the date and from whom he received money, the dates deposited, the dates of withdrawals, and other pertinent information concerning the transaction, and shall show clearly for whose account the money is deposited and to whom the money belongs. All such records shall be subject to inspection by the commissioner or his deputies and by employees of the commission. Such separate custodial or trust fund account shall designate the real estate broker as trustee, and such account must provide for withdrawal of funds without previous notice.

(k) Any other conduct whether of the same or a different character than hereinbefore specified, which constitutes dishonest or unfair dealing.

The commission may also deny, suspend or revoke such license when the applicant or licensee has been convicted of a felony within the past 5 years.

This act shall not be construed to relieve any person from civil liability or criminal prosecution under the general laws of this state.

HISTORY: Am. 1921, p. 711, Act 387, Eff. Aug. 18;—CL 1929, 9818;—Am. 1943, p. 64, Act 57, Eff. July 30;—Am. 1947, p. 663, Act 352, Eff. Oct. 11;—CL 1948, 451.213;—Am. 1960, p. 120, Act 112, Eff. Aug. 17;—Am. 1969, p. 292, Act 143, Eff. Mar. 20, 1970.

451.214 License; suspension or revocation; hearing, notice; judicial review.

Sec. 14. The commission shall, before suspending or revoking any license, and at least 10 days prior to the date set for the hearing, notify in writing the holder of such license of any charges made and shall afford said licensee an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of the same personally to the licensee or by mailing same by certified mail to the last known business address of such licensee. If said licensee be a salesman, the commission shall also notify the broker employing him of the charges, by mailing notice by certified mail to the broker's last known business address. The hearing on such charges shall be at such time and place as the commission shall prescribe. The commission shall have the power to subpoena and bring before it any person in this state or to take the testimony of any such person by deposition in the same manner as prescribed by law in judicial procedure in courts of this state in civil cases, with the same fees and mileage as provided by law for criminal cases. If the commission shall determine that any licensee is guilty of a violation of any of the provisions of this act, said license shall be suspended or revoked. Any licensee aggrieved by the decision of the commission shall be entitled to judicial review of the commission's decision, and appeal to the supreme court in the manner provided in Act No. 197 of the Public Acts of 1952, as

amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

HISTORY: Am. 1921, p. 712, Act 387, Eff. Aug. 18;—CL 1929, 9619;—CL 1948, 451.214;—Am. 1960, p. 121, Act 112, Eff. Aug. 17.

451.215 License; suspension or revocation; unlawful act of salesman or employee, effect on broker.

Sec. 15. Any unlawful act or violation of any of the provisions of this act upon the part of any real estate salesman, or employee, or of any officer or member of a licensed real estate broker, shall not be cause for the suspension or revocation of a license of any real estate broker, unless it shall appear to the satisfaction of the commission that the real estate broker had guilty knowledge thereof.

HISTORY: Am. 1921, p. 713, Act 387, Eff. Aug. 18;—CL 1929, 9620;—CL 1948, 451.215.

451.215a License; renewal after revocation, disciplinary action; bond, cash deposit; action, claim.

Sec. 15a. If application for a license is made by any person whose license has been denied, suspended or revoked as a result of disciplinary action for violation of any of the provisions of this act or of the rules and regulations adopted pursuant thereto, the commission may require as a condition precedent to the issuance of a license to such applicant or the removal of suspension, that such applicant file or have on file with the commission a bond for a period not to exceed 5 years, issued by an admitted surety insurer or cash in a sum to be fixed by the commission, based upon the magnitude of the operations of the applicant, not to exceed the sum of \$5,000.00 in which the state of Michigan shall appear as the insured. If the commission shall by order require the filing of such bond or the posting of such cash deposit, every person injured by the unlawful acts or omissions of such applicant may bring an action in a proper court on the bond or a claim against the cash deposit for the amount of the damage he suffered as a result thereof to the extent covered by the bond or cash deposit.

HISTORY: Add. 1964, p. 323, Act 134, Imd. Eff. Apr. 23.

451.216 Non-resident license; consent to jurisdiction and service of process; manner of service.

Sec. 16. A non-resident of this state may become a real estate broker or a real estate salesman by conforming to all of the conditions of this paragraph and this act. Every non-resident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county of this state in which a cause of action may arise in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this state on the commissioner of the Michigan corporation and securities commission, said consent stipulating and agreeing that such service of such process or pleadings on said commissioner shall be taken and held in all courts to be as valid and binding as if due service had been made upon said applicant in the state of Michigan. Said instrument containing such consent shall be authenticated by the seal thereof, if a corporation, or by the acknowledged signature of a member or officer thereof, if otherwise. All such applications, except from individuals, shall be accompanied by the duly certified copy of the resolution of the proper officers or managing board authorizing the proper officer to execute same. In case any process or pleadings mentioned in this act are served upon the commissioner of the Michigan corporation and securities commission, it shall be by duplicate copies, 1 of which shall be filed in the office of the commission and the other immediately forwarded by registered mail to the main office of the applicant against which said process or pleadings are directed.

HISTORY: CL 1929, 9621;—Am. 1939, p. 496, Act 268, Eff. Sept. 29;—CL 1948, 451.216.

NON-RESIDENT: See Sec. 8, being Compilers' § 451.208, in connection with this section. Also see Sec. 9 et seq., being Compilers' § 451.209 et seq.

451.217 List of licensees; distributees, fees.

Sec. 17. Whenever funds are available for the purpose, the commission may publish a list of the names and addresses of real estate brokers and salesmen licensed under this act, together with any suspension or revocations which have been ordered or such further information with respect to this act, its administration and enforcement, as it deems proper. When such lists are published, they shall be furnished the prosecuting attorney and clerk of each county and such other public officials as may be deemed proper. Copies of the lists may also be furnished by the commission upon request to any firm or individual upon the payment of a reasonable fee fixed by the commission.

HISTORY: Am. 1921, p. 713, Act 387, Eff. Aug. 18;—CL 1929, 9822;—Am. 1939, p. 490, Act 268, Eff. Sep. 29;—Am. 1943, p. 64, Act 57, Eff. July 30;—Am. 1947, p. 663, Act 352, Eff. Oct. 11;—CL 1948, 451.217;—Am. 1958, p. 148, Act 134, Eff. Sep. 13.

451.217b List of licensees; nondiscrimination; burden of proof.

Sec. 17b. The department of licensing and regulation shall require that all listing agreements entered into subsequent to December 31, 1970 between the broker and seller or lessor of property contain language that discrimination because of race, creed, color or national origin on the part of the broker or seller or lessor shall be prohibited. Nothing in this act shall authorize the commission to assume any facts not in evidence or compel a party to prove his innocence of charges before the same have been proven by the commission and the commission shall at all times bear the burden of proof to all charges made against a party. Nothing contained in this act shall be construed to diminish the right of any party to direct and immediate legal or equitable remedies in the courts of this state.

HISTORY: Add. 1969, p. 554, Act 298, Imd. Eff. Aug. 11.

Sec. 18. (This was a severing clause section.)

HISTORY: CL 1929, 9823;—Rep. 1945, p. 413, Act 267, Imd. Eff. May 25.

451.219 Violation of act; penalty.

Sec. 19. Any person, firm, partnership, association, copartnership or corporation violating the provisions of this act shall upon conviction thereof, if a natural person, be for the first offense punished by a fine of not more than 100 dollars or imprisonment in the county jail not to exceed 90 days and for a second offense be punished by a fine of not to exceed 500 dollars, or imprisonment for a term not to exceed 2 years, or by both such fine and imprisonment in the discretion of the court. In all cases where the violator is other than a natural person the fine for the first offense shall be not more than 100 dollars, and for the second not more than 1,000 dollars.

HISTORY: Am. 1921, p. 713, Act 387, Eff. Aug. 18;—CL 1929, 9824;—CL 1948, 451.219.

Act 275, 1937, p. 496; Imd. Eff. Jul. 22.

AN ACT to provide for the keeping of records of real estate bonds and other real estate securities, to require reports and other information relative to real estate bonds and other real estate securities in default, and the filing of such information with the public trust commission, and to provide for the giving of information relative to such defaulted obligations, by all persons, firms, associations or corporations acting as trustees, depositaries or fiscal agents or in any other capacity in which funds may be received for the retirement of real estate bonds, notes, debentures, certificates of participation, or other like real estate securities, or for the payment of interest thereon.

The People of the State of Michigan enact:

451.251 Real estate bonds and securities; records; duties of fiduciaries; report to public trust commission, contents; authority of commission.

Sec. 1. All persons, firms, associations or corporations acting as trustees or depositaries or fiscal agents or in any other capacity in which funds may be received for the retirement of real estate bonds or other real estate securities, or for the payment of interest thereon, shall keep an accurate record of all transactions in connection therewith, which record shall be open to examination when bonds are in default by the public trust commission or its duly authorized representative or representatives, and, in case of a default in principal or interest payments upon any such obligation, shall make a report thereof to the said public trust commission, setting forth such information as it may have of the number and face value of the bonds or securities originally issued, the number and face value of the bonds or securities outstanding, the cash on hand for application thereon, the extent of default or deficiency in funds for retirement of principal and interest, the period of time for which such real estate bonds or securities were issued, a description of the lands which constitute the security for the payment of said obligations sufficient to identify the same, and, upon demand of the public trust commission, any other information pertinent to the default upon such obligations or the possibility of payment thereon, and shall also, upon demand of the public trust commission, furnish like and further information as and when the same may be required by the said public trust commission. The public trust commission is hereby given express authority to demand that any and all additional information necessary for the performance of its duties be included or given to supplement, at any time, any report required hereby. Upon receiving such demand the trustee, depositary or fiscal agent shall, within the time specified therein, furnish to the said public trust commission such of said requested information as may then be available to said trustee, depositary or fiscal agent. Every such report and such additional information shall be in writing and sworn to by the persons or by the owner or 1 of the owners, if a partnership or unincorporated association, or by any officer having knowledge of the facts if a corporation acting as trustee, depositary, fiscal agent or in any other capacity as above set forth.

HISTORY: CL 1948, 451.251.

451.252 Real estate bonds and securities; failure to file reports or give information; authority of attorney general, procedure, requirement; taxable costs.

Sec. 2. Upon the failure or refusal of any person, firm, association or corporation to file reports or give information required by this act, the attorney general upon the relation of said public trust commission, may file a verified petition in the proper circuit court in chancery praying for the production of any and all records or other information relative to any such obligation in default and for permission to examine any person or persons in relation thereto, and the court may thereupon enter an order directing the production of any and all records, papers, documents or other information and the appearance of any person or persons to be examined on a day to be fixed by the court: Provided, however, That no action as herein provided shall be taken by the attorney general except upon request of said public trust commission and unless and until there shall have been deposited with said public trust commission an amount of money by the holder or holders of such obligations sufficient to meet all expenses in connection with such proceeding, the initiation of the proceeding and the amount of said deposit required to rest solely within the discretion of the attorney general and said public trust commission. The circuit court upon the conclusion of the hearing on such petition may tax the costs of said proceeding. Any and all proceedings by virtue

of such petition, not otherwise prescribed herein, shall be in accordance with the usual chancery practice.

HISTORY: CL 1948, 451.252.

Act 89, 1933, p. 106; Imd. Eff. May 25.

AN ACT to prevent fraud, deception and imposition in the solicitation within the state of Michigan of the deposit of bonds, notes, debentures and other evidences of indebtedness under, and/or the consent of the holders or owners of such securities, to a protective committee agreement, and to prevent fraud, deception and imposition in the operations and activities of protective committees organized within the state of Michigan to act for and in behalf of the holders or owners of such securities, and for such purposes to create a commission to regulate and supervise the establishment and the operations of protective committees, depositaries under protective committee agreements, and solicitors for protective committee agreements; to authorize said commission to have supervision over defaulted bonds, notes, debentures, certificates of participation and similar evidences of indebtedness; to prescribe the powers and duties of such commission; to license members or protective committees, depositaries under protective committee agreements and solicitors for protective committee agreements; to regulate and supervise and control the solicitation by anyone of bonds, notes, debentures and all other similar evidences of indebtedness, issued by the maker of any security for the purpose of procuring the modification and/or amendment and/or foreclosure of any instrument in writing securing any issue of bonds, notes, debentures and all other similar evidences of indebtedness; to authorize such commission to act as custodian or receiver and appoint custodians, agents and managers of defaulted mortgage property under orders of court or otherwise; to prescribe penalties for violation of this act; and to repeal Act No. 37 of the Public Acts of the first extra session of 1932. Am. 1935, p. 360, Act 218, Imd. Eff. Jun. 8.

The People of the State of Michigan enact:

Sec. 1.

HISTORY: Rep. 1943, p. 190, Act 149, Imd. Eff. April 14.

Title Am. 1935, p. 360, Act 218, Imd. Eff. June 8.

Section 1 provided for a public trust commission. Act 149, 1943, contained a section 3 as follows:

"Section 3. The powers and duties vested by law in the public trust commission by virtue of the provisions of this act and of Act No. 89 of the Public Acts of 1933 and the acts amendatory thereof and supplemental thereto and that conferred under and by virtue of the provisions of Act No. 205 of the Public Acts of 1933 and Act No. 218 of the Public Acts of 1935 and Act 212 of the Public Acts of 1937, are hereby transferred to and vested in and shall be exercised by, the Michigan corporation and securities commission. Immediately on the taking effect of this act the public trust commission, whose powers and duties are hereby transferred, shall cease to exist and shall be abolished and the tenure of the office of the members thereof shall be at once terminated, and whenever reference thereto is made in any law of the state, such reference shall be deemed to be intended to be made to the Michigan corporation and securities commission. All hearings, matters and proceedings of whatever nature now pending before the public trust commission shall not be terminated or abated but shall be transferred to the Michigan corporation and securities commission and shall be carried on in the same manner and subject to the same incidents as though such transfer were not made. All records, files and other papers belonging to the public trust commission under Act No. 89 of the Public Acts of 1933, as amended by Act No. 205 of the Public Acts of 1933, Act No. 218 of the Public Acts of 1935 and Act No. 212 of the Public Acts of 1937, the powers and duties of which are hereby transferred to the Michigan corporation and securities commission shall be turned over to said commission and shall be continued as part of the records and files thereof."

451.302 Protective committees, depositaries and solicitors; definitions.

Sec. 2. Definitions as used in this act are as follows:

- (a) The term "commission" means the public trust commission as hereinbefore created.
- (b) The term "person" or "persons" shall include natural persons, corporations, partnerships, associations, companies, and syndicates.
- (c) The term "security" or "securities" shall include bonds, notes, debentures, and any other instrument of like character used to evidence indebtedness.

(d) The term “protective committee” shall include all persons who propose or purport to act, or who are now acting, for and in behalf of others and/or themselves with respect to a security and/or for the purpose of protecting and preserving the common interests of the holders or owners of the particular security.

(e) The term “depository” shall include all persons who propose to act, or who are now acting, in connection with a protective committee for the purpose of accepting securities for deposit under and/or consents to a protective committee agreement.

(f) The term “solicitor” shall include all persons who procure or solicit directly or indirectly, or who are now procuring or soliciting directly or indirectly the deposit of securities with a depository under a protective committee agreement or similar instrument and/or who procure or solicit directly or indirectly, or who are now procuring or soliciting directly or indirectly, the consent of holders or owners of securities to a protective committee agreement or similar instrument.

HISTORY: CL 1948, 451.302.

451.303 Protective committees, depositories and solicitors; license applications, fees, hearing, bonds; inactive committee or depository; names, inspection.

Sec. 3. It shall be unlawful for any person to act as a member of a protective committee, as a depository or as a solicitor in this state for the purpose of procuring the modification and/or amendment and/or foreclosure of any instrument in writing securing any issue of bonds, notes, debentures and all other similar evidences of indebtedness without first procuring a license and continuing to be licensed therefor. Any person desiring a license either as a member of a protective committee, as a depository, or as a solicitor shall apply therefor to the commission upon application forms to be furnished by the commission. Such application shall, in the event that the applicant is a natural person, set forth the name, age, residence, business address, principal occupation and antecedent business experience of the applicant, the name of the security with respect to which the applicant desires to act, and such other facts as the commission shall require. In the event that the applicant is a non-natural person the application shall set forth such pertinent information as the commission may require including information and facts concerning the applicant's principal officers or members similar to those required of natural persons. The commission may require such further information as it shall deem necessary to satisfy it of the integrity and the financial responsibility of the applicant. Every application shall be under oath. An annual license fee of 5 cents for each 1,000 dollars par value of outstanding bonds or notes shall be charged each protective committee and each depository, and an annual license fee of 25 dollars shall be charged each solicitor, for each issue, and these respective license fees shall accompany the application: Provided, however, That the commission, in its discretion, may provide that such respective license fees need not accompany the application, but the payment thereof may be deferred to such time as the commission shall designate. In case the payment of such respective license fees is deferred as above provided, such fees shall be a lien on the securities deposited. If the commission should conclude that a license should not issue, the application may be denied: Provided, That no order of denial shall be entered until the applicant has been given a hearing on the reasons for such denial. Any duly licensed member of a protective committee may act as a solicitor without procuring a license as such.

The commission may in its discretion require a sufficient bond to be filed by each of the members of the bondholder's committee. Such bonds shall be subject to the approval of the commission.

In case any protective committee or depository which is in existence at the time this act shall take effect, shall fail to function, the commission, in its discretion, may grant

to the protective committee or depositary whose application covering the same issue of securities has been granted under the provisions of this act, power to function as and in lieu of such inactive protective committee or depositary or the commission may designate a person or persons to act as a protective committee and/or the commission may designate a person or persons to act as a depositary under the provisions of this act, and/or the commission may designate a person or persons to act as conservator of the deposit agreement of the inactive protective committee and/or the deposited securities pledged or remaining or deposited under the emergency clause of this act. In all cases of inactive or delinquent protective committees or inactive or delinquent depositaries the commission shall have power to summon and compel such committees and/or depositaries to appear at a hearing before said commission, by giving 3 days notice to such inactive or delinquent committee and/or depositary. At such hearing, the commission shall take proofs and hear evidence as to the delinquency and/or inactivity complained of. In the event the commission shall decide that it is necessary for the safeguarding of the interests of the holders or owners of the particular security under control of delinquent and inactive committee and/or depositary it shall enter such order in the premises in accordance with its findings, and shall have power to compel the inactive or delinquent committee and/or depositary to surrender, deliver and yield up forthwith to the commission, or to any depositary nominated by said commission, all securities of every kind theretofore deposited with said inactive or delinquent committee or depositary whose license was revoked by this commission and make such other order and/or orders in the matter, as may be necessary or advisable in the judgment of the commission to safeguard and protect the interest of said security holders, and preserve any liens, attaching to such securities. The names and addresses of bondholders filed with the commission shall be open to the mortgagor, or successor to title of record upon proper application to the commission, but shall not be made public or subject to inspection by anyone not connected with the commission, except by order of the commission.

HISTORY: Am. 1933, p. 320, Act 205, Imd. Eff. June 28;—Am. 1935, p. 360, Act 218, Imd. Eff. June 8;—CL 1948, 451.303.

Act 205 of 1933 contained a section 2 reading as follows:

"Section 2. This act, being enacted to meet an emergency under the police power of the state, is hereby declared to be immediately necessary for the preservation of the public welfare, peace, health and safety."

451.304 Protective committees, depositaries and solicitors; licenses, non-resident applicants, filing; service of process.

Sec. 4. Every applicant for a license who is a non-resident of this state shall file with the application an irrevocable consent that suits and actions arising out of or founded upon any activity of such applicant in this state as a member of a protective committee, as depositary, or as solicitor, as the case may be, may be commenced against the applicant in the proper court of any county in the state in which the plaintiff may reside, or if the plaintiff is a non-resident, in Ingham county, by the service of any process authorized by the laws of this state on the chairman of the commission; said consent stipulating and agreeing that such service of any process on such chairman shall be taken and held in all courts to be as valid and binding as if due service had been made on the applicant personally. All process which shall be served upon said chairman in reliance upon the consent of an applicant shall be served in duplicate, 1 of which shall be retained in the office of the commission and the other forwarded by the commission forthwith by registered mail to the address of the person against whom said process is directed.

HISTORY: CL 1948, 451.304.

451.305 Protective committees, depositaries and solicitors; licenses, suspension or revocation.

Sec. 5. The commission shall have the power to suspend or revoke licenses once issued for any practices on the part of the person licensed partaking of, or actually resulting in, fraud, deception or imposition upon the holders or owners of securities whether or not such holders or owners have deposited their securities and/or consented to a protective committee agreement, and also for activity in violation of the commission's orders or rulings or the provisions of this act, or in case of members of protective committees for failure to act expeditiously in the matter with respect to which they organized: Provided, That no order of suspension or revocation of license shall be entered until the person licensed has been given a hearing on the reasons for such suspension or revocation. Upon notice of revocation, it shall be the duty of the person licensed to return the license to the commission for cancellation.

HISTORY: CL 1948, 451.305.

451.306 Protective committees; statement, contents; application to solicit security holders.

Sec. 6. Before any protective committee now in existence or hereafter formed, shall employ solicitors, or itself solicit, the deposit of securities with a depositary under a protective agreement and/or the consent of holders or owners of securities to a protective agreement, it shall file with the commission a statement under oath containing the following information:

- (a) The amount of the particular security originally issued;
- (b) The amount of the particular security outstanding at the date of the execution of the statement;
- (c) The names and addresses of all persons known to or believed by the protective committee to be the holder or owner of the particular security and the amount of the particular security which such persons severally hold or own;
- (d) A copy of the agreement or indenture, if any, under which the security was issued;
- (e) The purpose and reasons for the organization and formation of the protective committee;
- (f) A copy of the depository or protective agreement which the protective committee proposes to employ, and in the case of existing protective committees, a copy of the depository or protective agreement which the committee is now employing, in the procurement of the deposit of securities and/or the consent to a protective committee agreement of the holders or owners of securities;
- (g) A complete list of the names and addresses of the members of the protective committee and an identification of its chairman and its secretary;
- (h) The name and address of the person or persons who executed the security.

The foregoing statement shall, in the case of protective committees organized after the date this act goes into effect, be accompanied by an application for permission to solicit the holders or owners to make deposit of the particular security under, and/or to procure the consent of holders or owners to the proposed protective committee agreement, and no such solicitation shall be made unless and until the application is granted by the commission.

HISTORY: CL 1948, 451.306.

451.307 Protective committees; solicitation of security holders; fraud, conditions, limitation of charges.

Sec. 7. The right to solicit the deposit of securities by, and/or the consent to a protective committee agreement of, the holders or owners of securities in this state by

protective committees organized after this act goes into effect shall not be granted by the commission in any case where it appears to the commission that such solicitation of deposit and/or consent would work a fraud, deception, or damage on the holders or owners of said securities. The commission may impose such conditions as it may determine to be necessary to safeguard the holders or owners of the particular security and said commission may also supervise the terms and provisions of the depository or protective committee agreement and may limit the compensation of, and the charges to be made against a depositing and/or consenting holder or owner, by the protective committee, which compensation shall include all expenses of said protective committee, its agents, and attorneys.

HISTORY: CL 1948, 451.307.

451.308 Protective committees; notice to issuer of security, objections, hearing.

Sec. 8. Before said commission shall authorize a protective committee which is organized after this act goes into effect to solicit, either through its members or its employes, the deposit of securities and/or the consent of holders or owners of securities, it shall cause notice to be served by registered mail upon the person or persons who executed said security, advising said person or persons that an application for permission to solicit the deposit of the particular security and/or the consent of the holders or owners to a protective committee agreement has been filed with said commission and that if there are any objections to the granting of such application written objections thereto shall be filed with the commission within 15 days from the date of the receipt of said notice. The commission is hereby authorized and empowered for good cause shown to extend the time within which such written objections may be filed.

In the event that no written objections are filed with said commission by the person or persons who executed said security within 15 days from the date of the receipt of the aforesaid notice or within such further time as the commission may allow, said commission shall proceed promptly to dispose of said application.

In the event, however, that written objections are filed within proper time as aforesaid, the commission shall promptly serve notice upon the chairman and secretary of the protective committee and upon the person or persons who filed the written objections that a hearing of the matter will be had before the commission at a time and place designated by the commission. At such hearing there may be presented to the commission such testimony and evidence as bears upon the question whether the solicitation of the deposit of securities and/or the consent of holders or owners to the protective committee agreement would work a fraud, deception, or damage on the holders or owners of said security. After said hearing, the commission shall proceed promptly to dispose of said application.

HISTORY: CL 1948, 451.308.

451.309 Protective committees; records and reports.

Sec. 9. Every protective committee now in existence or hereafter to be formed shall keep a written record of its meetings, doings and activities and it shall file with the commission at least as often as once each month a written report under oath of its meetings, doings and activities for the period preceding the date of the report. The report shall set forth the minutes of its meetings, all data as to negotiations with or in behalf of the holders or owners of the security with respect to which the protective committee was organized; the names and addresses of persons who have deposited their security and/or consented to the protective committee agreement, the total amount of the security which has been deposited and/or with respect to which consent to the protective agreement has been obtained, and such other or further facts pertinent to its activity. Said commission may request any protective committee to supplement its

reports from time to time with such information as the said commission may deem necessary or expedient.

HISTORY: CL 1948, 451.309.

451.310 Protective committees; authority to take action.

Sec. 10. No protective committee, either now in existence or hereafter to be organized, shall take or authorize the taking of any action by suit or otherwise, against the property and/or business with respect to which a security was issued and/or against any person or persons liable or obligated in connection with said property or security, or consent to or approve of any plan, agreement, sale or exchange with respect to such security and/or property, unless the authority so to do has been conferred upon the protective committee by the commission.

Any committee desiring to obtain such authority shall file with the commission an application therefor; which application shall set forth the proposed action, plan, agreement, sale or exchange. Thereupon the commission shall enter an order appointing a time and place for a hearing before the commission upon said application and upon the fairness of the terms and conditions of the proposed action, plan, agreement, sale or exchange, and providing for the giving of notice of said hearing, either by mail or by publication, or both, as the commission shall determine, to all holders or owners of said securities, and to all persons to whom it is proposed to issue securities in exchange for 1 or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash. Any interested party, including all persons to whom it is proposed to issue securities in such exchange, shall have the right to appear at said hearing and to be heard.

The commission shall have the authority to approve said application, if satisfied that said action, plan, agreement, sale or exchange will not work a fraud, deception or damage upon the holders or owners of the securities affected thereby. If it is proposed to issue any security in exchange for 1 or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, authority to make, consent to or approve of such exchange shall not be granted unless, after such hearing, the fairness of the terms and conditions of such exchange are approved by the commission.

HISTORY: Am. 1935, p. 362, Act 218, Imd. Eff. June 8;—Am. 1943, p. 189, Act 149, Imd. Eff. April 14;—CL 1948, 451.310.

See note concerning section 3 of Act 149 of 1943 preceding Compilers' § 451.302.

451.311 Public trust commission; investigations, audits and appraisals.

Sec. 11. The said commission is authorized and empowered to make investigations, audits, or appraisals relative to or in connection with the property and/or business located in this state with respect to which the security for the protection of which a protective committee has been organized. The said commission is authorized to act for and in behalf of the holders or owners of defaulted mortgage securities by acting as custodian, and is hereby authorized to appoint custodians of defaulted mortgage property and to have supervision of defaulted bonds, notes, debentures, and any other instruments of like character used to evidence indebtedness secured by mortgage. All books, records and documents of the commission whether filed with it or prepared by it shall be open to the public.

HISTORY: Am. 1935, p. 362, Act 218, Imd. Eff. June 8;—CL 1948, 451.311.

451.312 Public trust commission; subpoenas, oaths, records.

Sec. 12. The said commission is authorized and empowered to issue subpoenas to compel the attendance of witnesses and to compel the production of books, records and documents in connection with any investigation, hearing, or other matter pending before the board, to issue process to compel such attendance and production. Each member shall be authorized to swear witnesses and administer oaths in any matter

coming before him or the commission. The commission shall keep records of its hearings, meetings and other activities. Any witness who refuses to obey a subpoena or who refuses to be sworn or testify, or who fails to produce any papers, books or documents touching any matter under investigation, or any witness, party or attorney who is guilty of any contempt while in attendance at any hearing held under this act may be punished as for contempt of court; and for this purpose an application may be made to any circuit court within whose territorial jurisdiction the offense is committed, and for which purpose the court is hereby given jurisdiction.

HISTORY: CL 1948, 451.312.

451.313 Public trust commission; investigations, expenses; audits and appraisals.

Sec. 13. Any person interested in any security in connection with which a protective committee is organized may request said commission to make an investigation, audit or appraisal and report with respect to the property and/or business to which such security pertains: Provided, however, That before any investigation, audit or appraisal and report shall be made by said commission upon such a request, such person so requesting shall when required by the commission, deposit with said commission such sum of money as said commission shall believe necessary to meet the cost thereof. In the event that the money so deposited shall prove to be insufficient to defray the cost of said investigation, audit or appraisal and report, said commission may request further deposits as a condition of the continuance by it of its investigation, audit or appraisal and report. All money so deposited shall be deposited by said commission in the state treasury in a special fund and disbursements from said fund shall be upon the vouchers drawn by said commission and the warrant of the auditor general drawn on the state treasurer and such disbursements shall be for the purposes for which the money is paid. Any excess over and above the cost of such requested investigation, audit or appraisal and report shall be returned to the person who made the deposit.

HISTORY: CL 1948, 451.313.

Sec. 14.

HISTORY: Rep. 1943, p. 190, Act 149, Imd. Eff. April 14.

This section provided for a quorum of the commission.

See note concerning section 3 of Act 149 of 1943 preceding Compilers' § 451.302.

451.315 Public trust commission; suspension of orders, grounds, procedure.

Sec. 15. The commission may temporarily suspend any of its orders when it appears to such commission that the terms of an order have been or are about to be violated but no such suspension order shall be effective for longer than 10 days unless the commission shall within such time serve notice upon the persons affected of the reason therefor, and shall grant a hearing thereon at a date not more than 15 days from the date of the suspension order. After such hearing the commission may either withdraw its suspension order or make the order of suspension a permanent order of revocation in accordance with the evidence.

HISTORY: CL 1948, 451.315.

451.316 Aggrieved parties; action in circuit court.

Sec. 16. Any person aggrieved by any order or action of the commission may apply to the circuit court of which such person is a resident or to the circuit court for Ingham county for any relief to which said person shall deem himself entitled, and in said suit the members of said commission shall be named as defendant and process may be served on the commission by serving any member thereof: Provided, That no injunc-

tion or other order shall issue suspending or staying any order or decree of said commission except after due notice to the commission and a reasonable opportunity for hearing thereon.

HISTORY: CL 1948, 451.316.

451.317 Fiduciary's relation to security holders; reports of purchases.

Sec. 17. All mortgagors and all persons who are depositaries, solicitors, and members of protective committees shall be deemed to be in a fiduciary relationship to the holders or owners of the securities with respect to which they are mortgagors, depositaries, solicitors, and members of protective committees, respectively, whether or not such holders or owners have deposited their securities and/or consented to the protective committee agreement; and every purchase by a mortgagor, depositary, solicitor or member of a protective committee of securities with respect to which such purchaser is the mortgagor, depositary, solicitor or member of a protective committee, respectively, shall be forthwith disclosed in writing to the commission by such purchaser.

HISTORY: Am. 1937, p. 339, Act 212, Imd. Eff. July 21;—CL 1948, 451.317.

451.318 Construction of act; severing clause.

Sec. 18. The provisions of this act shall be liberally construed to the end that the purposes thereof may be accomplished by preventing fraud, deception and damage on holders or owners of securities. Should any section or clause of this act be declared invalid by any court of last resort having jurisdiction in the premises, then such decision shall affect only the section or clause so declared to be invalid and shall not affect any other section or clause of this act.

HISTORY: CL 1948, 451.318.

451.318a Bonds; exception from act; securities exempt from blue sky law and mortgage tax act.

Sec. 18a. The provisions of this act shall not be construed to apply to the bonds and other obligations issued by the United States government, by any state of the United States, or by any political subdivision thereof, or by any assessment district.

The exchange of securities for other securities, when such exchange has been approved by the commission, shall be exempt from the provisions of Act No. 220 of the Public Acts of 1923, as amended, and Act No. 91 of the Public Acts of 1911.

HISTORY: Add. 1933, p. 321, Act 205, Imd. Eff. June 28;—CL 1948, 451.318a.

Act 205 of 1933 contained a section 2 reading as follows:

"Section 2. This act, being enacted to meet an emergency under the police power of the state, is hereby declared to be immediately necessary for the preservation of the public welfare, peace, health and safety."

451.319 Violation of act; penalty.

Sec. 19. Any person violating any of the provisions of sections 3, 5, 6, 9, 10 and 17 shall be punished by a fine of not less than 500 dollars nor more than 5,000 dollars, together with costs of prosecution, or by imprisonment in the Michigan reformatory at Ionia, state prison or other penal institutions for not less than 6 months nor more than 2 years, or both such fine and imprisonment in the discretion of the court. The term "person" as is used in this section shall include an officer or employe of a corporation or a member or employe of a partnership who as such officer, employe or member is under duty to perform the act in respect to which the violation occurred.

HISTORY: CL 1948, 451.319.

Sec. 20. (This was a repeal section.)

HISTORY: Rep. 1945, p. 408, Act 267, Imd. Eff. May 25.

ACT REPEALED: Act 37, 1st Ex. Ses., 1932.

451.351-451.365 Repealed. 1964, p. 393, Act 256, Eff. Aug. 28.

Sections declared public emergency in regard to owners of trust mortgages and bonds, created state bondholders committee, and defined its powers and duties.

Act 210, 1933, p. 330; Imd. Eff. Jul. 3.

AN ACT to provide for the acquisition, management and disposition, by the trustee or trustees as a trust under the jurisdiction of equity, of property mortgaged to such trustee or trustees to secure bonds or other obligations, where such acquisition is requested or assented to by the holders of a majority in amount of such bonds or obligations and no bid for the mortgaged property at public sale under decree of foreclosure was or is made or appears to be obtainable for a sum representing the fair and reasonable value of the interest in said property of all holders of such bonds or obligations; to provide for the concurrence or non-concurrence of such holders in said request and for the method, time and manner of payment to non-concurring holders of their pro rata share of the amount so bid by said trustee or trustees.

The People of the State of Michigan enact:

451.401 Trust mortgage foreclosure; definitions.

Sec. 1. As used in this act:

The term "trust mortgage" means any trust mortgage, trust indenture or deed of trust given to secure bonds or other obligations issued and authenticated as therein set forth.

The term "trustee" means the trustee or trustees of any such "trust mortgage."

The term "bonds" means bonds or other obligations outstanding and secured by any such "trust mortgage."

The term "request" as used in sections 2 and 3 of this act means the written request filed by the trustee or holders of bonds for authorization of the trustee to bid for and acquire the mortgaged property as provided in section 2 of this act.

The term "non-concurring holder or holders" means such holder or holders as shall have filed written refusal to concur in said "request."

HISTORY: CL 1948, 451.401.

451.402 Trust mortgage foreclosure; insufficient bid; request for trustee to bid, procedure.

Sec. 2. Upon filing in any circuit court in chancery a report of the proceedings had in relation to the sale under a decree of said court for the foreclosure of any trust mortgage given to a trustee to secure bonds issued and authenticated as therein set forth, if it shall appear from said report that no bid was made for the mortgaged property or if a bid therefor was made and it shall, in the manner hereinafter set forth, be made to appear to the court that the sum so bid does not represent the then fair and reasonable value of the interest of the holders of such bonds secured thereby, and, in either event, that no bid for a sum representing such fair and reasonable value of said interest appears to be obtainable, the court may authorize the trustee to bid for and acquire said mortgaged property as hereinafter set forth. Such authorization to bid for and acquire such property shall be made only upon written request therefor to said court by said trustee, or the holders of not less than a majority of the amount of such bonds then secured by said trust mortgage. The request by such holders may be executed by said holders in person, or by agent or attorney. Upon the filing of such request the court shall make an order requiring all interested persons to appear at a time to be designated in said order and show cause, if any, why the court should not authorize the trustee to bid for and acquire the mortgaged property as above provided. The trustee shall cause said order to be published in some newspaper designated by the court and printed in the county where such foreclosure proceedings are pending, and/or in such other newspaper as the court may direct, once in each week for 15 successive weeks prior to the return day of said order to show cause and shall mail or

cause to be mailed a copy thereof to the mortgagor, to all other parties in said foreclosure proceedings and to each holder of said bonds secured by said mortgage insofar as the names of such holders are known to the trustee, at least 12 weeks prior to the date specified in said order, such notice to be mailed in each instance to the last known postoffice address. Proof of such publication and of such mailing shall be filed in said proceedings on or before the return day of said order, and proof of mailing shall be sufficient if made by affidavit of the trustee, or by an agent, employee or representative of the trustee having knowledge of the facts, merely averring [averring] that a copy of said order was so mailed. Neither the validity nor the regularity of proceedings under this act shall be affected by the fact that any mortgagor, party, holder of said bonds or interested person may not have had actual notice of said order to show cause or by the fact that a copy of said order may not have been mailed to, or, for any other reason, may not have been received by such mortgagor, party, holder of said bonds or interested person. Any interested party shall have a right to be heard and may offer testimony upon the hearing on said order to show cause. On or before the return day of said order to show cause any holder of bonds secured by said trust mortgage may file in writing a refusal to concur in such request. An order authorizing but not requiring the trustee to bid for and acquire the mortgaged property for such sum as shall, in the judgment of the court, represent the fair and reasonable value of the interests therein of the holders of the bonds may be entered if, upon said hearing, the court shall find either that no bid was made for the property offered for sale under said decree or that the sums so bid therefor did not represent the fair and reasonable value of the interests of such holders in said property and that no bid for a sum representing such fair and reasonable value of such interest appears to be obtainable: Provided, however, That no such order shall be entered where the request has been made by the trustee unless the holders of not less than a majority of the amount of such bonds then outstanding shall, prior to the entry of said order, have joined in said request, by a writing filed in said proceedings executed by said holders in person or by agent or attorney. The trustee may make such bid in open court or may file said bid in writing in said proceedings within 30 days after the entry of said order. Such bid for and acquisition of said property by said trustee shall be for and on behalf of all holders of bonds secured by said trust mortgage who shall not, in the manner herein set forth, have filed in said proceedings their written refusal to concur in the request whereon said order to show cause was entered, according to respective pro rata interests, and every holder of said bonds shall be conclusively presumed to have assented to such acquisition of said property and to the use of such bonds of such holders therefor unless such holder shall have filed such refusal to concur. Any such acquisition by the trustee shall be subject to all rights of redemption of the mortgagor and other parties. The subsequent transfer of any bond in respect of which any request, assent or action under any provision of this act shall have been made, presumed or taken shall not affect such request, assent or action. To the extent of the net amount which would have been distributable on the bonds secured by said trust mortgage if such bid were fully paid in cash, the bid shall be satisfied by a pro rata credit deemed to have been made on each such bond. The court shall make provision in said order for payment to non-concurring holders of their pro rata share of the net amount to which each of said holders shall be entitled by reason of said bid and acquisition.

HISTORY: CL 1948, 451.402.

451.403 Trust mortgage foreclosure; payment to non-concurring holders.

Sec. 3. The court may in its discretion provide in said order that such payment to non-concurring holders may be made in installments, or otherwise deferred for a period of time if the amount so deferred shall not exceed 25 per cent of the net amount of the bid: Provided, however, That the full pro rata to be paid said non-concurring

holders hereunder shall, in any event, be made within 18 months from the entry of said order. The sum so deferred shall bear interest at the rate borne by said bonds. No personal obligation for such deferred payment shall be imposed upon the trustee but such deferred payment shall be secured upon the right, title and interest acquired by the trustee as a result of such acquisition and shall be enforced as herein provided. If payment to said non-concurring holders shall not be made as provided in said order, the court may, upon application of any non-concurring holder to whom such payment shall not have been made, order the trustee to sell the property so purchased by the trustee, or such part thereof as may be necessary, either at public or private sale after notice thereof shall have been given to all interested parties in such manner as the court shall direct, and out of the proceeds of said sale pay the sums due said non-concurring holders, the balance, if any, to belong to the beneficiaries of the trust hereafter provided for and to be held and dealt with by the trustee as the court shall direct.

HISTORY: CL 1948, 451.403.

451.404 Trust mortgage foreclosure; trustee, maintenance and operation of property; sale, accounting.

Sec. 4. Any property acquired by the trustee as aforesaid shall be managed and administered by the trustee under and in accordance with the rules and principles of law and equity pertaining to express trusts generally subject to the jurisdiction of said court to be exercised in said cause by proceedings subsequent to the decree therein. The trustee shall be allowed all proper expenses and disbursements and reasonable compensation to be approved by the court. The trustee shall have power and authority to repair, maintain, protect, preserve and operate or lease the property until such time as a sale or other disposal thereof shall be approved or directed. The trustee may borrow money for any of said purposes, to discharge prior liens, taxes, assessments or other incumbrances against said property or for any other purpose of the trust and may secure such money so borrowed by mortgage of said property or by pledge of the income thereof. Any such mortgage or pledge shall be superior to and binding on the interests of the beneficiaries of said trust. It shall be the duty of the trustee to negotiate and effect a sale or other disposal of the property and make distribution of the proceeds of such sale or disposal to the beneficiaries of the trust at the earliest time at which the same can be done without sacrifice of the fair and reasonable value of such property. Any sale, unless for cash, shall be upon such terms as the court may approve after notice shall have been given to all beneficiaries of the trust in such manner as the court shall direct. No operating contract which is for more than 2 years or borrowing of money, mortgage, sale or other disposal shall be made except by and with the approval and authorization of the court upon notice in such manner as the court shall direct to the beneficiaries of said trust. The court may provide such other terms and conditions of the trust and powers, duties and authority of the trustee, not inconsistent with the foregoing, as to the court shall be deemed to be to the interests of the beneficiaries of the trust as a whole. Upon the complete consummation of a sale or other disposition of all of the trust property the trustee shall render in writing a full and complete report and account of the administration of said trust and of the distribution of the assets, income and proceeds thereof upon which a hearing shall be had after such notice to the beneficiaries of the trust as the court shall direct. If any such trust shall continue for more than 1 year an account and report of the administration of such trust shall be rendered at such times as may be required by the court but at least annu-

ally and when any such report shall have been made the final account and report aforesaid shall be required to cover only from the date of the then last account and report.

HISTORY: CL 1948, 451.404.

451.405 Construction and application of act; severing clause.

Sec. 5. This act is intended to be remedial and to be liberally construed and to be supplemented by rule of court if necessary or expedient to the accomplishment or furtherance of the intents and purposes thereof. This act shall be applicable to and in all foreclosure proceedings of the nature aforesaid pending at the time of the coming into effect hereof in which the sale shall not then have been confirmed as well as to and in all such proceedings begun after the coming into effect hereof. If any provision hereof shall be found invalid or unenforceable the remaining provisions hereof shall not be affected thereby.

HISTORY: CL 1948, 451.405.

Act 135, 1961, p. 171; Eff. Sep. 8.

AN ACT to regulate the business of debt management; to require licenses and to fix fees therefor; to prescribe the powers and duties of the Michigan corporation and securities commission and commissioner; to prescribe conditions for debt management contracts; to provide for the disposition of revenues; and to provide penalties for violations of the provisions of this act.

The People of the State of Michigan enact:

451.451 Debt management business; definitions.

Sec. 1. As used in this act:

(a) "Debt management" means the planning and management of the financial affairs of a debtor for a fee and the receiving therefrom money or evidences thereof for the purpose of distributing the same to his creditors in payment or partial payment of his obligations.

(b) "Licensee" means any individual, copartnership, unincorporated association or corporation licensed under this act.

(c) "Commission" means the Michigan corporation and securities commission.

(d) "Commissioner" means the Michigan corporation and securities commissioner.

(e) "Debtor" means a person, 50% or more of whose income is in the form of wages or salaries.

(f) "Office" means each location by street number, building number, city and state where any person engages in debt management.

(g) "Creditor" means a person for whose benefit moneys are being collected and disbursed by licensees.

HISTORY: New 1961, p. 171, Act 135, Eff. Sep. 8.

CITED IN OTHER SECTIONS: Sections 451.451 to 451.468 are cited in § 16.337.

451.452 Applicability of act.

Sec. 2. Any person engaged in debt management shall be deemed to be rendering financial planning service, but this act shall not apply to the following when engaged in the regular course of their respective businesses and professions:

(a) Attorneys at law.

(b) Banks, fiduciaries, financing and lending institutions, as duly authorized and admitted to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business.

- (c) Title insurers and abstract companies, while doing an escrow business.
- (d) Employees of licensees under this act.
- (e) Judicial officers or others acting under court orders.

HISTORY: New 1961, p. 171, Act 135, Eff. Sep. 8;—Am. 1965, p. 605, Act 321, Eff. Mar. 31, 1966.

451.453 Debt management business; license requirement.

Sec. 3. After January 1, 1962, it shall be unlawful for any person to engage in the business of debt management without first obtaining a license as required in this act.

HISTORY: New 1961, p. 172, Act 135, Eff. Sep. 8.

451.454 Debt management business; license application, contents; fee; bond.

Sec. 4. Any person desiring to obtain a license to engage in the debt management business in this state shall file with the commission an application in writing, under oath, setting forth his business name, the exact location of his office, names and addresses of all officers and directors if an association or a corporation, and if a partnership, the partnership name and the names and addresses of all partners, and a copy of the certificate of assumed name or certificate of copartnership or articles of incorporation. At the time of filing the application the applicant shall pay to the commission a license fee of \$50.00 for each office and an investigation fee of \$50.00. At the time of filing the application the applicant shall furnish a bond to the people of the state in the sum of \$5,000.00, conditioned upon the faithful accounting of all moneys collected upon accounts entrusted to such person engaged in debt management, and their employees and agents. The bond or bonds shall be approved by the commissioner and filed in the office of the Michigan corporation and securities commission. No person, firm or corporation shall engage in the business of debt management until a good and sufficient bond is filed in accordance with the provisions of this act.

Copy of contract with debtors; changes.

Each licensee shall furnish with his application a blank copy of the contract he intends to use between himself and the debtor and shall notify the commissioner of all charges and amendments thereto.

Term of license, renewal.

The license issued under this act shall expire on December 31 next following its issuance unless sooner surrendered, revoked or suspended, but may be renewed as provided in this act.

Service of process on commissioner.

The application shall be accompanied by an appointment of the commissioner as agent of the applicant for service of process in this state. Service upon the commissioner shall be sufficient service upon any licensee under the act.

HISTORY: New 1961, p. 172, Act 135, Eff. Sep. 8.

451.455 Debt management business; license application, investigation, issuance.

Sec. 5. Upon the filing of the application and the payment of the fees and the approval of the bond, the commission shall investigate the facts, and if it finds that the financial responsibility, experience, character and general fitness of the applicant and of the members thereof, if the applicant is a partnership or an association, and of the officers and directors thereof, if the applicant is a corporation, are such as to command the confidence of the community to warrant belief that the business will be operated fairly and honestly within the purposes of this act and that the applicant or the applicant and the members thereof or the applicant and the officers and directors thereof have not been convicted of any crime involving moral turpitude, or that such person has not had a record of having defaulted in the payment of money collected for others,

including the discharge of such debts through bankruptcy proceedings, the commission shall issue the applicant a license to engage in the debt management business in accordance with the provisions of this act. The commission may require as part of the application a credit report and other information.

HISTORY: New 1961, p. 172, Act 135, Eff. Sep. 8.

451.456 Debt management business; licenses, renewal.

Sec. 6. Each licensee on or before December 1 may make application to the commission for renewal of its license. The application shall be on the form prescribed by the commission and shall be accompanied by a fee of \$50.00, together with a bond as in the case of an original application. A separate application shall be made for each office.

HISTORY: New 1961, p. 173, Act 135, Eff. Sep. 8.

451.457 Debt management business; persons presently engaged in business, license.

Sec. 7. Any person lawfully engaged in debt management in this state for at least 2 years immediately prior to the effective date of this act shall be entitled to receive a license within the provisions of this act by filing an application, furnishing a bond and paying the annual fee as herein specified within 90 days after the effective date of this act.

HISTORY: New 1961, p. 173, Act 135, Eff. Sep. 8.

451.458 Debt management business; denial, revocation or suspension of license, procedure; transfer.

Sec. 8. (1) The commissioner may deny, revoke or suspend any license issued or applied for under this act for the following causes:

- (a) Conviction of a felony or of a misdemeanor involving moral turpitude.
- (b) For violating any of the provisions of this act.
- (c) For fraud or deceit in procuring the issuance of a license under this act.
- (d) For indulging in a continuous course of unfair conduct.
- (e) For insolvency, filing in bankruptcy, receivership, or assigning for the benefit of creditors by any licensee or applicant for a license under the act.

(2) The denial, revocation or suspension shall only be made upon specific charges in writing, under oath, filed with the commissioner or by the commission, whereupon a hearing shall be had as to the reasons for any denial, revocation or suspension and a certified copy of the charges shall be served on the licensee or applicant for license not less than 10 days prior to the hearing.

(3) No license shall be transferable or assignable.

HISTORY: New 1961, p. 173, Act 135, Eff. Sep. 8.

451.459 Debt management business; rules and regulations.

Sec. 9. Rules and regulations issued by the commissioner under this act shall be promulgated in accordance with Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.82 of the Compiled Laws of 1948, and subject to the provisions of Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

HISTORY: New 1961, p. 173, Act 135, Eff. Sep. 8.

451.460 Debt management business; contract of licensee with debtor, contents.

Sec. 10. Each licensee shall make a written contract between himself and a debtor and immediately furnish the debtor with a true copy of the contract. The contract shall set forth the complete list of the debtor's obligations to be adjusted, a complete list of the creditors holding such obligations, the total charges agreed upon for the

services of the licensee and the beginning and expiration date of the contract. No contract shall extend for a period longer than 24 months.

HISTORY: New 1961, p. 173, Act 135, Eff. Sep. 8.

451.461 Debt management business; bank accounts; records, preservation.

Sec. 11. Each licensee shall maintain a separate bank account for the benefit of debtors in which all payments received from the debtor for the benefit of creditors shall be deposited and in which all payments shall remain until a remittance is made to either the debtor or the creditor. Every licensee shall keep, and use in his business, books, accounts and records which will enable the commission to determine whether such licensee is complying with the provisions of this act and with the rules and regulations of the commission. Every licensee shall preserve such books, accounts and records for at least 7 years after making the final entry on any transaction recorded therein.

HISTORY: New 1961, p. 173, Act 135, Eff. Sep. 8.

451.462 Debt management business; licensees, examination; fee, failure to pay.

Sec. 12. The commission may examine without notice the condition and affairs of each licensee. In connection with any examination, the commission may examine on oath any licensee, and any director, officer, employee, customer, creditor or stockholder of a licensee concerning the affairs and business of the licensee. The commission shall ascertain whether the licensee transacts its business in the manner prescribed by law and the rules and regulations issued thereunder. The licensee shall pay the actual cost of the examination as determined by the commission, which fee shall be deposited in the state treasury to the credit of the general fund. Failure to pay the examination fee within 30 days of receipt of demand from the commission shall automatically suspend the license until the fee is paid.

Investigation of violations, compulsory attendance, production of records.

In the investigation of alleged violations of this act, the commission may compel the attendance of any person or the production of any books, accounts, records and files used therein; and may examine under oath all persons in attendance pursuant thereto.

HISTORY: New 1961, p. 174, Act 135, Eff. Sep. 8.

451.463 Debt management business; licensees, payment of fees.

Sec. 13. (a) The fee of the licensee shall be agreed upon in advance and stated in the contract and provision for settlement in case of cancellation or prepayment shall be clearly stated in the contract. Fees shall be amortized equally each month over the length of the contract and no more than the monthly amortized amount may be applied to charges while the contract is in full force and effect, except in event of prepayment or cancellation. In the event of total payment of the contract before the term of the contract has expired, or in the event of cancellation, the company will be entitled to an amount equal to not more than 25% of the remaining unamortized amount specified in the terms of the contract. No licensee shall be entitled to any fee or charge against the debtor, upon any contract until the debt management program is arranged and approved by the debtor. A contract shall not be effective until a debtor has made a payment to the licensee for distribution to his creditors.

Consents required for fee.

(b) A licensee shall not receive any fee unless he has the consent of at least 51% of the total amount of indebtedness and of the total number of the creditors listed in the licensee's contract with the debtor or such a like number of creditors have accepted a distribution of payment.

HISTORY: New 1961, p. 174, Act 135, Eff. Sep. 8.

451.464 Debt management business; licensees, duties.

Sec. 14. Each licensee shall:

Records, contents, preservation, inspection.

(a) Keep complete and adequate records during the term of the contract and for a period of 7 years from the date of cancellation or completion of the contract with each debtor, which records shall contain complete information regarding the contract, extensions thereof, payments, disbursements and charges, which records shall be open to inspection by the commission and its duly appointed agents during normal business hours.

Remittances to creditors.

(b) Make remittances to creditors within 15 days after receipt of any funds, less fees and costs, unless the reasonable payment of 1 or more of the debtor's obligations requires that such funds be held for a longer period so as to accumulate a sum certain.

Accounting to debtor.

(c) Upon request furnish the debtor a written statement of his account each 90 days, or a verbal accounting at any time the debtor may request it during normal business hours.

Acceptance of account.

(d) No licensee shall accept an account unless a written and thorough budget analysis indicates that the debtor can reasonably meet the requirements required by the budget analysis.

Compromise of debt.

(e) In the event a compromise of a debt is arranged by the licensee with any one or more creditors, the debtor shall have the full benefit of that compromise.

HISTORY: New 1961, p. 174, Act 135, Eff. Sep. 8.

451.465 Debt management business; acts prohibited.

Sec. 15. No licensee shall:

(a) Purchase from a creditor any obligation of a debtor.

(b) Operate as a collection agent and as a licensee as to the same debtor's account.

(c) Execute any contract or agreement to be signed by the debtor unless the contract or agreement is fully and completely filled in and finished.

(d) Receive or charge any fee in the form of a promissory note or other promise to pay, or receive or accept any mortgage or other security for any fee, both as to real or personal property.

(e) Pay any bonus or other consideration to any person for the referral of a debtor to his business, nor shall he accept or receive any bonus, commission or other consideration for referring any debtor to any person for any reason.

(f) Advertise his services, display, distribute, broadcast or televise or permit to be displayed, advertised, distributed, broadcasted or televised his services in any manner whatsoever wherein any false, misleading or deceptive statement or representation with regard to the services to be performed by the licensee or the charges to be made therefor.

HISTORY: New 1961, p. 175, Act 135, Eff. Sep. 8.

451.466 Debt management business; conduct without license, penalty.

Sec. 16. (1) Any person, partnership, association, corporation or any other group of individuals, however organized, or any owner, partner, member, officer, director, employee, agent or representative thereof who wilfully or knowingly engages in the business of debt management without the license required by this act, is guilty of a misdemeanor and shall be fined not more than \$1,000.00 for each violation or imprisoned for not more than 1 year, or both.

Violation of act, penalty.

(2) Any licensee under this act who violates any provision of this act is guilty of a misdemeanor and shall be fined not more than \$1,000.00 for the first offense, and for each subsequent offense a like fine and imprisonment not to exceed 1 year.

HISTORY: New 1961, p. 175, Act 135, Eff. Sep. 8.

451.467 Limitation of actions.

Sec. 17. All actions in any of the courts of this state pursuant to this act shall be commenced within 6 years next after the causes of action shall accrue, except that sections 13 to 29 of chapter 9 of Act No. 314 of the Public Acts of 1915, as amended, being sections 609.13 to 609.29 of the Compiled Laws of 1948, shall apply wherever possible.

HISTORY: New 1961, p. 175, Act 135, Eff. Sep. 8.

451.468 Disposition of fees.

Sec. 18. All fees collected under the provisions of this act shall be paid promptly into the state treasury to the credit of the general fund.

HISTORY: New 1961, p. 175, Act 135, Eff. Sep. 8.

Act 265, 1964, p. 415; Eff. Jan. 1, 1965.

AN ACT to enact the uniform securities act relating to the issuance, offer, sale or purchase of securities; to prohibit fraudulent practices in relation thereto; to require the registration of broker-dealers, agents, investment advisers, and securities; to make uniform the law with reference thereto; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

PART I

FRAUDULENT AND OTHER PROHIBITED PRACTICES

451.501 Uniform securities act; fraudulent and other practices prohibited.

Sec. 101. It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly:

- (1) To employ any device, scheme or artifice to defraud.
- (2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.
- (3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

HISTORY: New 1964, p. 415, Act 265, Eff. Jan. 1, 1965.

CITED IN OTHER SECTIONS: Sections 451.501 to 451.818 are cited in §§ 16.335 and 450.228.

451.502 Investment adviser; unlawful acts.

Sec. 102. (a) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

- (1) To employ any device, scheme or artifice to defraud the other person.
- (2) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon the other person.

Same; contracts, contents, compensation, assignment.

(b) It is unlawful for any investment adviser to enter into, extend or renew any investment advisory contract unless it provides in writing:

(1) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(2) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(3) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

Clause (1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment", as used in clause (2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of 1 or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

Same; custody of securities or funds.

(c) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if:

(1) The administrator by rule prohibits custody; or

(2) In the absence of rule, the investment adviser fails to notify the administrator that he has or may have custody.

HISTORY: New 1984, p. 415, Act 265, Eff. Jan. 1, 1985.

PART II

REGISTRATION OF BROKER-DEALERS, AGENTS AND INVESTMENT ADVISORS

451.601 Broker-dealers, agents and investment advisers; registration requirement.

Sec. 201. (a) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless he is registered under this act.

Agent's registration, effectiveness, notice to administrator.

(b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under this act or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the administrator in writing on a form prescribed by it.

Investment adviser; registration; exemption, filing.

(c) It is unlawful for any person to transact business in this state as an investment adviser unless:

(1) He is so registered under this act;

(2) He is registered as a broker-dealer without the imposition of a condition under section 204 (b) (5);

(3) His only clients in this state are investment companies as defined in the investment company act of 1940 or insurance companies, banks or trust companies; or

(4) He is an investment adviser who is fully registered with the securities and exchange commission pursuant to the investment advisers act of 1940 and who at no time takes or has custody of any securities or funds of any client, provided that such federally registered investment adviser files with the administrator annually an exemption statement limited to identifying data consisting of name, address and evidence of currently effective full registration as an investment adviser under the investment advisers act of 1940.

Expiration of registration; renewal; reduction of terms or fees.

(d) Every initial registration under this act shall be for a period of 1 year or less from its effective date as specified by the administrator, and the administrator by rule or order may reduce the registration filing fees for periods of less than 1 year. Renewal registrations shall be for 1 year. If the administrator determines to stagger registration throughout the year, by rule or order it may reduce initially the term of registration and the fees for this purpose.

HISTORY: New 1964, p. 416, Act 285, Eff. Jan. 1, 1965;—Am. 1965, p. 606, Act 322, Imd. Eff. Jul. 22.

451.602 Registration; applications, contents, effectiveness.

Sec. 202. (a) A broker-dealer, agent or investment adviser may obtain an initial or renewal registration by filing with the administrator an application together with a consent to service of process pursuant to section 414 (g). The application shall contain whatever information the administrator by rule requires concerning such matters as:

- (1) The applicant's form and place of organization;
- (2) The applicant's proposed method of doing business;
- (3) The qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; and, in the case of an investment adviser, the qualifications and business history of any employee;
- (4) Any injunction or administrative order or conviction of a misdemeanor or of a felony; and
- (5) The applicant's financial condition and history.

The administrator may by rule or order require an applicant for initial registration to publish an announcement of the application in 1 or more specified newspapers published in this state. If no denial order is in effect and no proceeding is pending under section 204, registration becomes effective at noon of the thirtieth day after an application is filed. The administrator may by rule or order specify an earlier effective date, and it may by order defer the effective date until noon of the thirtieth day after the filing of any amendment.

Filing fees; additional office; successor, administrator.

(b) Every applicant for initial or renewal registration shall pay a filing fee of \$100.00 in the case of a broker-dealer, \$10.00 in the case of an agent, and \$25.00 in the case of an investment adviser. A broker-dealer maintaining more than 1 office for the purpose of conducting his business within this state shall pay an additional filing fee of \$50.00 for each additional office. Every applicant filing an application for registration of a successor pursuant to section 202 (c) shall pay a filing fee of \$25.00 for the unexpired portion of the year. The administrator, in connection with any examination pursuant to section 204 (b) (6), may require by rule the payment of a reasonable fee sufficient to defray the expense of preparing, administering, scoring and disseminating information concerning the examination. It may either collect this fee for, or direct that it be paid in whole or in part to, any agency cooperating in giving this examination.

Successor, application for registration.

(c) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. The administrator may grant or deny the application.

Minimum capital and capital-debt ratio.

(d) The administrator may by rule require a minimum capital for registered broker-dealers and investment advisers and prescribe a ratio between net capital and aggregate indebtedness.

Surety bonds or deposit; limitation of actions.

(e) The administrator may by rule require registered broker-dealers, agents and investment advisers to post surety bonds in amounts up to \$100,000.00, and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any registrant whose net capital, which may be defined by rule, exceeds \$100,000.00. Every bond shall provide for suit thereon by any person who has a cause of action under section 410 and, if the administrator by rule or order requires, by any person who has a cause of action not arising under this act. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within 2 years after the sale or other act upon which it is based.

HISTORY: New 1964, p. 416, Act 265, Eff. Jan. 1, 1965;—Am. 1965, p. 607, Act 322, Imd. Eff. Jul. 22.

451.603 Accounts and records.

Sec. 203. (a) Every registered broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books and other records as the administrator by rule prescribes. All records so required shall be preserved for 3 years unless the administrator by rule prescribes otherwise for particular types of records.

Financial reports.

(b) Every registered broker-dealer and investment adviser shall file such financial reports as the administrator by rule prescribes.

Filed document, correction.

(c) If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under section 201 (b).

Examination of records, reciprocity with other administrators.

(d) All the records referred to in subsection (a) are subject at any time or from time to time to such reasonable periodic, special or other examinations by representatives of the administrator, within or without this state, as the administrator deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the administrator, insofar as it deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the securities exchange act of 1934.

HISTORY: New 1964, p. 417, Act 265, Eff. Jan. 1, 1965.

451.604 Registration; denial, suspension or revocation, grounds.

Sec. 204. (a) The administrator may by order deny, suspend or revoke any registration if it finds:

(1) That the order is in the public interest, and

(2) That the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(A) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) Has violated or failed to comply with any provision of this act or a predecessor act or any rule or order under this act or a predecessor act;

(C) Has been convicted of any misdemeanor involving moral turpitude or any felony;

(D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(E) Is the subject of an order of the administrator denying, suspending or revoking registration as a broker-dealer, agent or investment adviser;

(F) Is the subject of an order entered by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a broker-dealer, agent or investment adviser, or the substantial equivalent of those terms as defined in this act, or is the subject of an order of the securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the securities exchange act of 1934, or is the subject of a United States post office fraud order;

(G) Has engaged in dishonest or unethical business practices;

(H) Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the administrator may not enter an order against a broker-dealer or investment adviser under this clause without a finding of insolvency as to the broker-dealer or investment adviser; or

(I) Is not qualified on the basis of such factors as training, experience and knowledge of the securities business, except as otherwise provided in subsection (b).

The administrator may by order deny, suspend or revoke any registration if it finds

(1) that the order is in the public interest and (2) that the applicant or registrant:

(J) Has failed reasonably to supervise his agents if he is a broker-dealer or his employees if he is an investment adviser; or

(K) Has failed to pay the proper filing fee; but the administrator may enter only a denial order under this clause, and it shall vacate any such order when the deficiency has been corrected.

Qualifications, governing rules; examination of applicants.

(b) The following provisions govern the application of section 204 (a) (2) (I):

(1) The administrator may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than (A) the broker-dealer himself if he is an individual or (B) an agent of the broker-dealer.

(2) The administrator may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than (A) the investment adviser himself if he is an individual or (B) any other person who represents the investment adviser in doing any of the acts which make him an investment adviser.

(3) The administrator may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.

(4) The administrator shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer.

(5) The administrator shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When it finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, it may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this state as an investment adviser.

(6) The administrator may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser.

Summary postponement or suspension of registration, hearing, notice.

(c) The administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within 15 days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

Cancellation of registration or application, grounds.

(d) If the administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the administrator may by order cancel the registration or application.

Withdrawal of registration, effectiveness.

(e) Withdrawal from registration as a broker-dealer, agent or investment adviser becomes effective 30 days after receipt of an application to withdraw or within such shorter period of time as the administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the administrator may nevertheless institute a revocation or suspension proceeding under section 204 (a) (2) (B) within 1 year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

Entry of orders; notice, hearing, written findings of fact and conclusions of law.

(f) No order may be entered under any part of this section except the first sentence of subsection (c) without:

(1) Appropriate prior notice to the applicant or registrant, as well as to the employer or prospective employer if the applicant or registrant is an agent;

(2) Opportunity for hearing; and

(3) Written findings of fact and conclusions of law.

HISTORY: New 1964, p. 418, Act 265, Eff. Jan. 1, 1965.

PART III

REGISTRATION OF SECURITIES

451.701 Sale of securities; registration requirement.

Sec. 301. It is unlawful for any person to offer or sell any security in this state unless (1) it is registered under this act or (2) the security or transaction is exempted under section 402.

HISTORY: New 1964, p. 420, Act 265, Eff. Jan. 1, 1965.

451.702 Securities; registration by notification.

Sec. 302. (a) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under section 303:

(1) Any security whose issuer and any predecessors have been in continuous operation for at least 5 years if (A) there has been no default during the current fiscal year or within the 3 preceding fiscal years in the payment of principal, interest or dividends on any security of the issuer, or any predecessor, with a fixed maturity or a fixed interest or dividend provision, and (B) the issuer and any predecessors during the past 3 fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, (i) which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed and equal at least 5% of the amount of such outstanding securities, as measured by the maximum offering price or the market price on a day, selected by the registrant, within 30 days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within 90 days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price, or (ii) which, if the issuer and any predecessors have not had any security of the type specified in clause (i) outstanding for 3 full fiscal years, equal at least 5% of the amount, as measured in clause (i), of all securities which will be outstanding if all the securities being offered or proposed to be offered, whether or not they are proposed to be registered or offered in this state, are issued.

(2) Any security, other than a certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, registered for nonissuer distribution if (A) any security of the same class has ever been registered under this act or a predecessor act, or (B) the security being registered was originally issued pursuant to an exemption under this act or a predecessor act.

Registration statement; accompanying documents; consent to service of process.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 305 (c) and the consent to service of process required by section 414 (g):

(1) A statement demonstrating eligibility for registration by notification;

(2) With respect to the issuer and any significant subsidiary: its name, address and form of organization; the state, or foreign jurisdiction, and the date of its organization; and the general character and location of its business;

(3) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; and a statement of his reasons for making the offering;

- (4) A description of the security being registered;
- (5) The information and documents specified in clauses (8), (10), (11) and (12) of section 304 (b); and
- (6) In the case of any registration under section 302 (a) (2) which does not also satisfy the conditions of section 302 (a) (1), a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, and a summary of earnings for each of the 2 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than 2 years.

Same; automatic effectiveness.

(c) If no stop order is in effect and no proceeding is pending under section 306, a registration statement under this section automatically becomes effective at 3 p.m., eastern standard time, on the twentieth full day after the filing of the registration statement or the last amendment, or at such earlier time as the administrator determines.

Same; copy to offeree.

(d) The administrator may by rule or order require as a condition of registration under this section that a copy of the registration statement filed under subsection (b) be given or sent to each person to whom an offer is made before or concurrently with such offer.

HISTORY: New 1964, p. 420, Act 265, Eff. Jan. 1, 1965.

451.703 Securities; registration by coordination.

Sec. 303. (a) Any security for which a registration statement has been filed under the securities act of 1933 in connection with the same offering may be registered by coordination.

Registration statement; accompanying documents; consent to service of process.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 305 (c) and the consent to service of process required by section 414 (g):

- (1) Three copies of the latest form of prospectus filed under the securities act of 1933;
- (2) If the administrator by rule or otherwise requires, a copy of the articles of incorporation and bylaws, or their substantial equivalents, currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;
- (3) If the administrator requests, any other information, or copies of any other documents, filed under the securities act of 1933; and
- (4) An undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly, and in any event not later than the first business day after the day they are forwarded to or filed with the securities and exchange commission, whichever first occurs.

Same; automatic effectiveness, conditions.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

(1) No stop order is in effect and no proceeding is pending under section 306.

(2) The registration statement has been on file with the administrator for at least 10 days.

(3) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for 2 full business days or such shorter period as the administrator permits by rule or otherwise and the offering is made within those limitations.

Federal registration statement, notice of effectiveness; stop order; waiver of conditions.

The registrant shall promptly notify the administrator by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the administrator may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if it promptly notifies the registrant by telephone or telegram, and promptly confirms by letter or telegram when it notifies by telephone, of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and post-effective amendment, the stop order is void as of the time of its entry. The administrator may by rule or otherwise waive either or both of the conditions specified in clauses (2) and (3). If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether it then contemplates the institution of a proceeding under section 306; but this advice by the administrator does not preclude the institution of such a proceeding at any time.

HISTORY: New 1964, p. 421, Act 265, Eff. Jan. 1, 1965.

451.704 Securities; registration by qualification.

Sec. 304. (a) Any security may be registered by qualification.

Registration statement; accompanying documents; consent to service of process.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 305 (c) and the consent to service of process required by section 414 (g):

(1) With respect to the issuer and any significant subsidiary: its name, address and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.

(2) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address and principal occupation for the past 5 years; the amount of securities of the issuer held by him as of a spec-

ified date within 30 days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past 3 years or proposed to be effected.

(3) With respect to persons covered by clause (2): the remuneration paid during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, together with all predecessors, parents, subsidiaries and affiliates, to all those persons in the aggregate.

(4) With respect to any person owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer: the information specified in clause (2) other than his occupation.

(5) With respect to every promoter if the issuer was organized within the past 3 years: the information specified in clause (2), any amount paid to him within that period or intended to be paid to him, and the consideration for any such payment.

(6) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past 3 years or proposed to be effected; and a statement of his reasons for making the offering.

(7) The capitalization and long-term debt, on both a current and a pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill or anything else, for which the issuer or any subsidiary has issued any of its securities within the past 2 years or is obligated to issue any of its securities.

(8) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

(9) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection

with the acquisition, including the cost of borrowing money to finance the acquisition.

(10) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in clause (2), (4), (5), (6) or (8) and by any person who holds or will hold 10% or more in the aggregate of any such options.

(11) The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past 2 years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets, including any such litigation or proceeding known to be contemplated by governmental authorities.

(12) A copy of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature intended as of the effective date to be used in connection with the offering.

(13) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.

(14) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, with an English translation if it is in a foreign language, which shall state whether the security when sold will be legally issued, fully paid and nonassessable, and, if a debt security, a binding obligation of the issuer.

(15) The written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation, other than a public and official document or statement, which is used in connection with the registration statement.

(16) A balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than 3 years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant.

(17) Such additional information as the administrator requires by rule or order.

Same; effectiveness.

(c) A registration statement under this section becomes effective when the administrator so orders.

Prospectus to offeree; supplementation.

(d) The administrator may by rule or order require as a condition of registration under this section that a prospectus be sent or given to each person to whom an offer is made. The administrator may by rule or order fix the requirements as to the use, content, revision and supplementation of the prospectus.

Report by accountant, engineer, appraiser, or other professional person; investigation by employee of administrator, deposit.

(e) The administrator may by rule or order require as a condition of registration under this section that a report by an accountant, engineer, appraiser or other profes-

sional person be filed and may require that the estimated cost of such report be deposited in advance by the applicant in an escrow account. The administrator may also designate an employee to make an investigation of the books, records and affairs of any applicant for registration by qualification and may require the estimated cost thereof to be deposited in advance by the applicant in an escrow account.

HISTORY: New 1964, p. 422, Act 265, Eff. Jan. 1, 1965.

451.705 Registration statement; filing.

Sec. 305. (a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer.

Same; filing fee; withdrawal.

(b) Every person filing a registration statement shall pay a filing fee of 1/10 of 1% of the maximum aggregate offering price at which the registered securities are to be offered in this state, but the fee shall in no case be less than \$50.00 or more than \$250.00. When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under section 306, the administrator shall retain \$25.00 of the fee.

Same; matters specified.

(c) Every registration statement shall specify:

- (1) The amount of securities to be offered in this state.
- (2) The states in which a registration statement or similar document in connection with the offering has been or is to be filed.
- (3) Any withdrawal or any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the securities and exchange commission.

Same; incorporation of documents by reference.

(d) Any document filed under this act or a predecessor act within 5 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

Same; omissions permissible.

(e) The administrator may by rule or otherwise permit the omission of any item of information or document from any registration statement.

Escrow of securities or proceeds.

(f) The administrator may by rule or order require as a condition of registration by qualification or coordination:

- (1) That any security issued or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and
- (2) That the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The administrator may by rule or order determine the conditions of any escrow or impounding required hereunder, and, after prior notice and opportunity for hearing, may order the cancellation in whole or in part of any such security deposited in escrow where necessary for the protection of security holders. The administrator may not reject a depository solely because of location in another state.

Conditions of sale of security registered by qualification.

(g) The administrator may by rule or order impose conditions under which a security registered by qualification may be sold, if it finds that such conditions are reasonable and in the public interest.

Registration statement; duration of effectiveness; withdrawal.

(h) Every registration statement is effective for 1 year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, except during the time a stop order is in effect under section 306. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction (1) so long as the registration statement is effective and (2) between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under section 306, if the registration statement did not relate in whole or in part to a nonissuer distribution, and 1 year from the effective date of the registration statement. A registration statement may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the administrator.

Same; reports during effectiveness.

(i) So long as a registration statement is effective, the administrator may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

Same; face-amount certificates or certain redeemable securities; amendment to increase offering, effectiveness.

(j) A registration statement relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the investment company act of 1940, may be amended after its effective date so as to increase the securities specified as proposed to be offered. Such an amendment becomes effective when the administrator so orders. Every person filing such an amendment shall pay a filing fee, calculated in the manner specified in subsection (b), with respect to the additional securities proposed to be offered.

HISTORY: New 1964, p. 424, Act 265, Eff. Jan. 1, 1965.

451.706 Registration statement; effectiveness, denial, suspension or revocation by administrator's stop order; findings.

Sec. 306. (a) The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if it finds (1) that the order is in the public interest and (2) that:

(A) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under section 305 (j) as of its effective date, or any report under section 305 (i) is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) Any provision of this act or any rule, order or condition lawfully imposed under this act has been violated, in connection with the offering, by (i) the person filing the registration statement, (ii) the issuer, any partner, officer or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (iii) any underwriter;

(C) The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of

competent jurisdiction entered under any other federal or state act applicable to the offering; but (i) the administrator may not institute a proceeding against an effective registration statement under clause (C) more than 1 year from the date of the order or injunction relied on, and (ii) it may not enter an order under clause (C) on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(D) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(E) The offering has worked or tended to work a fraud, deception or imposition or would so operate, or such offering is on unfair terms;

(F) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options; with respect to the sale of periodic payment plan certificates for the purchase of securities of investment companies registered under the investment company act of 1940 commissions up to 9% of the total payments to be made during the entire term of the plan, and deductions for such commissions from any of the first twelve monthly payments, or their equivalent, up to one-half thereof, shall be allowed.

(G) When a security is sought to be registered by notification, it is not eligible for such registration;

(H) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by section 303 (b) (4); or

(I) The applicant or registrant has failed to pay the proper filing fee; but the administrator may enter only a denial order under this clause and it shall vacate any such order when the deficiency has been corrected.

Same; summary postponement or suspension of effectiveness, notice, hearing.

(b) The administrator may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify each person specified in subsection (c) that it has been entered and of the reasons therefor and that within 15 days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person specified in subsection (c), may modify or vacate the order or extend it until final determination.

Same; stop order, notice, hearing, written findings of fact and conclusions of law.

(c) No stop order may be entered under any part of this section except the first sentence of subsection (b) without (1) appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered, (2) opportunity for hearing, and (3) written findings of fact and conclusions of law.

Same; vacation or modification of stop order.

(d) The administrator may vacate or modify a stop order if it finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

HISTORY: New 1964, p. 426, Act 265, Eff. Jan. 1, 1965.

PART IV

GENERAL PROVISIONS, DEFINITIONS AND EXEMPTIONS

451.801 Uniform securities act; definitions.

Sec. 401. When used in this act, unless the context otherwise requires:

Administrator.

(a) "Administrator" means the Michigan corporation and securities commission, or any other agency authorized by law to enforce the provisions of this act.

Agent; nonincluded persons; exclusion by administrator.

(b) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in (1) effecting transactions in a security exempted by clause (1), (2), (3), (9) or (10) of section 402 (a), (2) effecting transactions exempted by section 402 (b), or (3) effecting transactions with existing employees, partners or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. "Agent" does not include an officer of an issuer whose securities are registered under the provisions of this act, who represents the issuer in effecting transactions in such registered securities, if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition. The administrator may by rule or order exclude other persons from the definition of the word "agent".

Broker-dealer; nonincluded persons.

(c) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include (1) an agent, (2) an issuer, (3) a bank, savings institution or trust company, (4) a person who has no place of business in this state if (A) he effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of 12 consecutive months he does not direct more than 15 offers to sell or buy into this state in any manner to persons other than those specified in clause (A), whether or not the offeror or any of the offerees is then present in this state, or (5) a person who effects transactions in certificates of interest or participation in oil, gas or mining titles or leases or in payments out of production under such titles or leases, to the extent that such transactions are exempted under section 402 (b) (9).

Fraud, deceit, defraud.

(d) "Fraud", "deceit", and "defraud" are not limited to common-law deceit.

Guaranteed.

(e) "Guaranteed" means guaranteed as to payment of principal, interest or dividends.

Investment adviser; nonincluded persons; exclusion by administrator; trustees.

(f) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling securities, or who, for compensation and as a part of a regular business, issues or promul-

gates analyses or reports concerning securities. "Investment adviser" does not include (1) a bank, savings institution or trust company; (2) a lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of his profession; (3) a broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them; (4) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular and paid circulation; (5) a person whose advice, analyses or reports relate only to securities exempted by section 402 (a) (1); (6) a person who has no place of business in this state if (A) his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of 12 consecutive months he does not direct business communications into this state in any manner to more than 5 clients other than those specified in clause (A), whether or not he or any of the persons to whom the communications are directed is then present in this state; (7) such other persons not within the intent of this paragraph as the administrator may by rule or order designate; or (8) a trustee whose custody of assets is pursuant to judicial appointment, appointment under a trust indenture or agreement and who does not hold himself out to the general public as giving advice to others with respect to securities and who maintains close contact with the personal financial affairs of his clients as a part of his fiduciary responsibilities.

Issuer.

(g) "Issuer" means any person who issues or proposes to issue any security, except that:

(1) With respect to certificates of deposit, voting-trust certificates or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions or of the fixed, restricted management or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(2) With respect to certificates of interest or participation in oil, gas or mining titles or leases or in payments out of production under such titles or leases, there is not considered to be any "issuer".

Nonissuer.

(h) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

Person.

(i) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government.

Sale, sell, offer, offer to sell.

(j) (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(4) A purported gift of assessable stock is considered to involve an offer and sale.

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(6) The terms defined in this subsection do not include:

(A) Any bona fide pledge or loan.

(B) Any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock.

(C) Any act incident to a class vote by stockholders, pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation.

(D) Any act incident to a judicially approved reorganization in which a security is issued in exchange for 1 or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash.

Securities act of 1933, securities exchange act of 1934, public utility holding company act of 1935, investment company act of 1940, investment advisers act of 1940, small business investment act of 1958.

(k) "Securities act of 1933", "securities exchange act of 1934", "public utility holding company act of 1935", "investment company act of 1940", "investment advisers act of 1940" and "small business investment act of 1958", mean the federal statutes of those names as amended before or after the effective date of this act.

Security; exclusions.

(l) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period.

State.

(m) "State" means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

HISTORY: New 1964, p. 427, Act 265, Eff. Jan. 1, 1965;—Am. 1965, p. 663, Act 339, Imd. Eff. Jul. 23.

451.802 Uniform securities act; exemptions.

Sec. 402. (a) The following securities are exempted from sections 301 and 403:

(1) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of 1 or more of the foregoing; or any certificate of deposit for any of the foregoing.

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality

of 1 or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor.

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution or trust company organized and supervised under the laws of any state.

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(5) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state.

(6) Any security issued or guaranteed by any railroad, other common carrier, public utility or holding company which is:

(A) A registered holding company under the public utility holding company act of 1935 or a subsidiary of such a company within the meaning of that act; or

(B) Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada or any Canadian province; also, any equipment trust certificate or equipment note or bond based on chattel mortgages, leases or agreements for conditional sales of cars, motive power, or other rolling stock mortgages, leased or sold to or furnished for the use of or upon such railroads, other common carriers, public utilities or holding companies supervised as above, or equipment, notes or bonds where the ownership or title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States, any state, Canada or any Canadian province, to secure the payment of such equipment trust certificates, bonds or notes.

(7) Any security listed or approved for listing upon notice of issuance on the New York stock exchange; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing.

(8) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic or reformatory purposes, or as a chamber of commerce or trade or professional association.

(9) Any negotiable promissory note or commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within 12 months of the date of issuance, exclusive of days of grace, or any renewal of such note or paper which is likewise limited, or any guarantee of such note or paper or of any such renewal.

(10) Any investment contract or option issued in connection with an employees' stock purchase, option, savings, pension, profit-sharing or similar benefit plan, if the administrator is notified in writing before the issuance thereof.

Exempt transactions.

(b) The following transactions are exempted from sections 301 and 403:

(1) Any isolated nonissuer transaction, whether effected through a broker-dealer or not.

(2) Any nonissuer distribution of an outstanding security whose issuer and any predecessors have been in continuous operation for at least 5 years if:

(A) A recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and

loss statement for either the fiscal year preceding that date or the most recent year of operations, or

(B) The security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years, or during the existence of the issuer and any predecessors if less than 3 years, in the payment of principal, interest or dividends on the security.

(3) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the administrator may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period.

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.

(6) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator.

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this act.

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the investment company act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(9) Any transaction pursuant to an offer directed by the offeror to not more than 15 persons, other than those designated in paragraph (8), in this state during any period of 12 consecutive months, whether or not the offeror or any of the offerees is then present in this state, if:

(A) The seller reasonably believes that all the buyers in this state, other than those designated in paragraph (8), are purchasing for investment; and

(B) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state, other than those designated in paragraph (8); but the administrator may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in clauses (A) and (B) with or without the substitution of a limitation on remuneration.

(10) Any offer or sale of a preorganization certificate or subscription, and the issuance of securities pursuant thereto, if:

(A) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;

(B) The number of subscribers does not exceed 10; and

(C) Each of the subscribers signs the articles of incorporation in person and not by agent and is purchasing for investment.

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(A) No commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state; or

(B) The issuer first files a notice specifying the terms of the offer and the administrator does not by order disallow the exemption within the next 5 full business days.

(12) Any offer, but not a sale, of a security for which registration statements have been filed under both this act and the securities act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act.

(13) Any offer, sale or issuance of securities pursuant to an investment contract or option which is exempt under the provisions of section 402 (a) (10).

(14) Any offer or sale of a security as contemplated under the small business investment act of 1958 (1) to the federal small business administration, or (2) by a small business concern to a small business investment company or to a development company for equity capital provided or loans made, or (3) by a small business investment company to a small business concern as a condition to providing the latter with equity capital or loans.

(15) Any offer or sale of any security by a nonprofit development corporation, formed and existing under the laws of this state, if the primary purpose of the corporation is to promote and assist the growth and development of business enterprises in the area covered by its operations.

(16) The distribution by a co-operative corporation of its securities to its patrons as patronage refunds or returns distributed on a patronage basis.

(17) Any nonissuer transaction effected by or through a broker-dealer in a security of the same class that has been previously registered for general public sale under this act or to a predecessor act. This exemption shall not be available to any seller who offers for sale in this state or elsewhere 5% or more of that class of securities during any period of 12 consecutive months. This limitation shall not apply to any broker-dealer trading in the securities in the ordinary course of business and who does not at any time during the period of 12 consecutive months own directly or beneficially 5% or more of that class of securities. The administrator, if it finds such action in the public interest, by order, may withdraw or condition this exemption as to any security.

(18) The sale of securities issued by a professional service corporation formed under Act No. 192 of the Public Acts of 1962, as amended, being sections 450.221 to 450.235 of the Compiled Laws of 1948.

Denial or revocation of exemption; procedure.

(c) The administrator may by order deny or revoke any exemption specified in clause (8) or (10) of subsection (a) or in subsection (b) with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this subsection. Upon the entry of a summary order, the administrator shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated section 301 or 403 by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that

he did not know, and in the exercise of reasonable care could not have known, of the order.

Exemption or exception; burden of proof.

(d) In any proceeding under this act, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

HISTORY: New 1964, p. 429, Act 265, Eff. Jan. 1, 1965;—Am. 1965, p. 608, Act 322, Imd. Eff. Jul. 22;—Am. 1968, p. 262, Act 171, Eff. Nov. 15.

451.803 Nonexempt securities and transactions; prospectus, circular or form letter; filing, approval.

Sec. 403. The administrator may by rule or order require the filing and approval prior to use of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, unless the security or transaction is exempted by section 402.

HISTORY: New 1964, p. 432, Act 265, Eff. Jan. 1, 1965.

451.804 False or misleading statements unlawful.

Sec. 404. It is unlawful for any person to make or cause to be made, in any document filed with the administrator or in any proceeding under this act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

HISTORY: New 1964, p. 432, Act 265, Eff. Jan. 1, 1965.

451.805 Application for registration; statement, filing, effect; unlawful representations.

Sec. 405. (a) Neither (1) the fact that an application for registration under sections 201 to 204 or a registration statement under sections 301 to 306 has been filed nor (2) the fact that a person or security is effectively registered constitutes a finding by the administrator that any document filed under this act is true, complete and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the administrator has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security or transaction.

(b) It is unlawful to make, or cause to be made, to any prospective purchaser, customer or client any representation inconsistent with subsection (a).

HISTORY: New 1964, p. 432, Act 265, Eff. Jan. 1, 1965.

451.806 Administration of act; unlawful disclosure of information.

Sec. 406. (a) This act shall be administered by the Michigan corporation and securities commission, created by Act No. 13 of the Public Acts of 1935, as amended, being sections 451.1 to 451.4 of the Compiled Laws of 1948.

(b) It is unlawful for the administrator or any of its officers or employees to use for personal benefit any information which is filed with or obtained by the administrator and which is not made public. No provision of this act authorizes the administrator or any of its officers or employees to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this act. No provision of this act either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the administrator or any of its officers or employees.

HISTORY: New 1964, p. 433, Act 265, Eff. Jan. 1, 1965.

451.807 Administration of act; investigation of violations; statements, publications.

Sec. 407. (a) The administrator in its discretion:

(1) May make such public or private investigations within or outside of this state as it deems necessary to determine whether any person has violated or is about to violate any provision of this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder.

(2) May require or permit any person to file a statement in writing, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning the matter to be investigated.

(3) May publish information concerning any violation of this act or any rule or order hereunder.

Oaths, witnesses, evidence, records.

(b) For the purpose of any investigation or proceeding under this act, the administrator, or any officer designated by it, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the administrator deems relevant or material to the inquiry.

Contumacy, refusal to obey a subpoena, contempt.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the circuit court for the county of Ingham, upon application by the administrator, may issue to the person an order requiring him to appear before the administrator, or the officer designated by it, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

Privilege against self-incrimination, denial, immunity.

(d) No person is excused from attending and testifying or from producing any document or record before the administrator, or in obedience to the subpoena of the administrator, or any officer designated by it, or in any proceeding instituted by the administrator, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

HISTORY: New 1964, p. 433, Act 265, Eff. Jan. 1, 1965.

451.808 Violation of act; cease and desist order; injunction; restraining order; mandamus; receiver or conservator, appointment.

Sec. 408. Whenever it appears to the administrator that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, it may in its discretion issue a cease and desist order or bring an action in the circuit court for the county of Ingham to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the administrator to post a bond.

HISTORY: New 1964, p. 434, Act 265, Eff. Jan. 1, 1965.

451.809 Violation of act; penalty; criminal prosecutions.

Sec. 409. (a) Any person who wilfully violates any provision of this act except section 404, or who wilfully violates any rule or order under this act, or who wilfully violates section 404 knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than \$5,000.00 or imprisoned not more than 3 years, or both.

(b) The administrator may refer such evidence as is available concerning violations of this act or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this act.

(c) Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

HISTORY: New 1964, p. 434, Act 265, Eff. Jan. 1, 1965.

451.810 Offer or sale in violation of act; civil liability to buyer; damages, interest.

Sec. 410. (a) Any person who:

(1) Offers or sells a security in violation of section 201 (a), 301 or 405 (b), or of any rule or order under section 403 which requires the affirmative approval of sales literature before it is used, or of any condition imposed under section 304 (d), 305 (f) or 305 (g), or

(2) Offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

Is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at 6% per year from the date of payment, costs and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at 6% per year from the date of disposition.

Joint and several liability of participants in sale; burden of proof of nonseller; contribution.

(b) Every person who directly or indirectly controls a seller liable under subsection (a), every partner, officer or director of such a seller, every person occupying a similar status or performing similar functions, every employee of such a seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller, unless the nonseller who is so liable sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

Tender, time of making.

(c) Any tender specified in this section may be made at any time before entry of judgment.

Survival of actions.

(d) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

Limitation of actions.

(e) No person may sue under this section more than 2 years after the contract of sale. No person may sue under this section (1) if the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid together with interest at 6% per year from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within 30 days of its receipt, or (2) if the buyer received such an offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within 30 days of its receipt.

Unenforceability of illegal contract.

(f) No person who has made or engaged in the performance of any contract in violation of any provision of this act or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

Waiver of compliance void.

(g) Any condition, stipulation or provision binding any person acquiring any security to waive compliance with any provision of this act or any rule or order hereunder is void.

Additional rights; cause of action created.

(h) The rights and remedies provided by this act are in addition to any other rights or remedies that may exist at law or in equity, but this act does not create any cause of action not specified in this section or section 202 (e).

HISTORY: New 1964, p. 434, Act 265, Eff. Jan. 1, 1965.

451.811 Administrator's orders; judicial review; findings of fact conclusive; additional evidence.

Sec. 411. (a) Any person aggrieved by a final order of the administrator may obtain a review of the order in the circuit court for the county of Ingham by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the administrator, and thereupon the administrator shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order, in whole or in part. The findings of the administrator as to the facts, if supported by competent, material and substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional material evidence, and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the administrator, the court may order the additional evidence to be taken before the administrator and to be adduced upon the hearing in such manner and upon such conditions as the court considers proper. The administrator may modify its findings and order by reason of the additional evidence and shall file in court the additional evidence together with any modified or new findings or order.

Stay of administrator's orders.

(b) The commencement of proceedings under subsection (a) does not, unless specifically ordered by the court, operate as a stay of the administrator's order.

HISTORY: New 1964, p. 435, Act 265, Eff. Jan. 1, 1965.

451.812 Administrator's rules, forms and orders; making, amendment, rescission; classification of securities, persons, matters.

Sec. 412. (a) The administrator may from time to time make, amend and rescind such rules, forms and orders as are necessary to carry out the provisions of this act, in-

cluding rules and forms governing registration statements, applications and reports, and defining any terms, whether or not used in this act, insofar as the definitions are not inconsistent with the provisions of this act. For the purpose of rules and forms, the administrator may classify securities, persons and matters within its jurisdiction, and prescribe different requirements for different classes.

Public interest, protection of investors; cooperation with other securities administrators and securities and exchange commission.

(b) No rule, form or order may be made, amended or rescinded unless the administrator finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this act. In prescribing rules and forms the administrator may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications and reports wherever practicable.

Financial statements, consolidated statements, certified public accountants; accounting practices.

(c) The administrator may by rule or order prescribe (1) the form and content of financial statements required under this act, (2) the circumstances under which consolidated financial statements shall be filed, and (3) whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting practices.

Rules and forms, publication.

(d) All rules and forms of the administrator shall be published.

Action or omission in good faith in conformity with rule, form, order, subsequent amendment, rescission, or determination of invalidity.

(e) No provision of this act imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form or order of the administrator, notwithstanding that the rule, form or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

Hearing, public, discretion of administrator.

(f) Every hearing in an administrative proceeding shall be public unless the administrator in its discretion grants a request joined in by all the respondents that the hearing be conducted privately.

HISTORY: New 1964, p. 436, Act 265, Eff. Jan. 1, 1965.

451.813 Documents; filing, registration, availability, copies.

Sec. 413. (a) A document is filed when it is received by the administrator.

Register of applications for registration, registration statements, and denial, suspension, or revocation orders; public inspection.

(b) The administrator shall keep a register of all applications for registration and registration statements which are or have ever been effective under this act and all denial, suspension or revocation orders which have been entered under this act. The register shall be open for public inspection.

Same; availability to public, administrator's rules.

(c) The information contained in or filed with any registration statement, application or report may be made available to the public under such rules as the administrator prescribes.

Certified copies of register entries or documents, use as evidence.

(d) Upon request and at such reasonable charges as it prescribes, the administrator shall furnish to any person photostatic or other copies, certified under its seal of office if requested, of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this act, any copy so certified is prima facie evidence of the contents of the entry or document certified.

Interpretative opinions.

(e) The administrator in its discretion may honor requests from interested persons for interpretative opinions.

HISTORY: New 1964, p. 436, Act 265, Eff. Jan. 1, 1965.

451.814 Sale or offer to sell in state; sections applicable.

Sec. 414. (a) Sections 101, 201 (a), 301, 405 and 410 apply to persons who sell or offer to sell when (1) an offer to sell is made in this state, or (2) an offer to buy is made and accepted in this state.

Purchase or offer to buy made in this state; offer to sell made and accepted in this state; law applicable.

(b) Sections 101, 201 (a) and 405 apply to persons who buy or offer to buy when (1) an offer to buy is made in this state, or (2) an offer to sell is made and accepted in this state.

Offer to sell or to buy; when deemed made in this state.

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer (1) originates from this state or (2) is directed by the offeror to this state and received at the place to which it is directed, or at any post office in this state in the case of a mailed offer.

Offer to buy or to sell; when deemed accepted in this state.

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance (1) is communicated to the offeror in this state and (2) has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed, or at any post office in this state in the case of a mailed acceptance.

Offer to sell or to buy; when deemed not made in this state.

(e) An offer to sell or to buy is not made in this state when (1) the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular and paid circulation which is not published in this state, or which is published in this state but has had more than 2/3 of its circulation outside this state during the past 12 months, or (2) a radio or television program originating outside this state is received in this state.

Investment advisers; when prohibited conduct deemed done in this state.

(f) Sections 102 and 201 (c), as well as section 405 so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

Irrevocable consent to service of process; effectiveness of service.

(g) Every applicant for registration under this act and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the administrator, in such form as it by rule prescribes, an irrevocable consent appointing the administrator or its successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor executor or administrator which arises

under this act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the administrator, but it is not effective unless (1) the plaintiff, who may be the administrator in a suit, action or proceeding instituted by it, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the administrator, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

Prohibited or actionable conduct; substituted service of process, effectiveness of service.

(h) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this act or any rule or order hereunder, and he has not filed a consent to service of process under subsection (g) and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the administrator or its successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor executor or administrator which grows out of that conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the administrator, and it is not effective unless (1) the plaintiff, who may be the administrator in a suit, action or proceeding instituted by it, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

Continuance to afford opportunity to defend.

(i) When process is served under this section, the court, or the administrator in a proceeding before it, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

HISTORY: New 1964, p. 437, Act 265, Eff. Jan. 1, 1965.

451.815 Construction of act.

Sec. 415. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of this act with the related federal regulation.

HISTORY: New 1964, p. 438, Act 265, Eff. Jan. 1, 1965.

451.816 Uniform securities act; short title.

Sec. 416. This act shall be known and may be cited as the "uniform securities act".

HISTORY: New 1964, p. 438, Act 265, Eff. Jan. 1, 1965.

451.817 Saving clause.

Sec. 417. Except as saved in this section:

Repeal.

(a) Act No. 220 of the Public Acts of 1923, as amended, being sections 451.101 to 451.133 of the Compiled Laws of 1948, is repealed.

Duration of effect of prior law.

(b) Prior law exclusively governs all suits, actions, prosecutions or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this act, except that no civil suit or action may be

maintained to enforce any liability under prior law unless brought within any period of limitation which applied when the cause of action accrued and in any event within 2 years after the effective date of this act.

Effectiveness of registrations and administrative orders under prior law.

(c) All effective registrations under prior law, all administrative orders relating to such registrations, and all conditions imposed upon such registrations remain in effect so long as they would have remained in effect if this act had not been passed. They are considered to have been filed, entered or imposed under this act, but are governed by prior law.

Continuation of offer or sale begun before effective date of act governed by prior law.

(d) Prior law applies in respect of any offer or sale made within 1 year after the effective date of this act pursuant to an offering begun in good faith before its effective date on the basis of an exemption available under prior law.

Judicial review; limitation of actions.

(e) Judicial review of all administrative orders as to which review proceedings have not been instituted by the effective date of this act are governed by section 411, except that no review proceeding may be instituted unless the petition is filed within any period of limitation which applied to a review proceeding when the order was entered and in any event within 60 days after the effective date of this act.

HISTORY: New 1964, p. 438, Act 265, Eff. Jan. 1, 1965.

451.818 Effective date of act.

Sec. 418. This act shall take effect on January 1, 1965.

HISTORY: New 1964, p. 439, Act 265, Eff. Jan. 1, 1965.

CHAPTER 453. AGRICULTURAL ASSOCIATIONS

GRANGES

Act 68 of 1875

- 453.1 Granges; incorporation.
- 453.2 State granges; incorporators; articles of association, contents.
- 453.3 State granges; articles, proof of execution.
- 453.4 State grange; articles, filing, recording; corporate powers; property limitation.
- 453.5 State grange; officers, agents; rules, by-laws; business office.
- 453.6 State grange; articles, certified copy as evidence.
- 453.7 Subordinate granges; incorporators; articles, filing, recording; powers; property limitation; evidence.
- 453.8 Subordinate granges; by-laws, rules; business office, location; capital stock.
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MICHIGAN STATE AGRICULTURAL SOCIETY

Act 180 of 1849

- 453.51 Michigan state agricultural society; incorporation.
- 453.52 State agricultural society; powers, duties; restriction.
- 453.53 State agricultural society; annual report to legislature, contents.

Act 197 of 1849

- 453.72 State agricultural society; award of premiums, requirements.

Act 165 of 1879

- 453.81 State agricultural society; property, limitation.
- 453.82 State agricultural society; secretary and treasurer, bond approval; vacancies.
- 453.83 Annual fairs; exhibits, liability for loss.

Act 54 of 1889

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COUNTY AGRICULTURAL SOCIETIES

Act 96 of 1849

- 453.101 County agricultural societies; organization, county aid.
- 453.102 County agricultural societies; tax money, duty of county treasurer.
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Act 12 of 1867

- 453.201 County agricultural societies; tax apportionment.
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COUNTY, TOWN OR DISTRICT SOCIETIES

Act 80 of 1855

- 453.231 County, township, city or village agricultural or horticultural societies; formation.
- 453.232 Local agricultural societies; body corporate, powers; real estate, purchase and holding, limitation.
- 453.233 Local agricultural societies; stockholders.

- 453.234 Local agricultural societies; board of directors; officers; powers.

- 453.235 Repealed.

- 453.236 Local agricultural societies; sale of real estate, procedure.

- 453.237 Repealed.

- 453.238 Local agricultural societies; report to director of agriculture, contents.

- 453.239 Repealed.

- 453.240 Local agricultural societies; articles of association, amendment procedure, filing.

Act 155 of 1889

- 453.281 Local agricultural or horticultural societies; reorganization.

- 453.282 Local agricultural societies; officers; duplicate articles, contents; reorganization; body corporate.

- 453.283 Local agricultural society reorganization; rights and duties.

- 453.284 Local agricultural society reorganization; officers, directors.

Act 106 of 1893

- 453.291 Local agricultural societies; renewal procedure.

- 453.292 Local agricultural societies; duplicate articles; officers' duty; filing.

- 453.293 Local agricultural societies; renewed corporate existence; rights, duties.

- 453.294 Scope of act; limitation.

POMOLOGICAL AND HORTICULTURAL SOCIETIES

Act 125 of 1871

- 453.301 Pomological, horticultural and agricultural societies; incorporators.

- 453.302 Pomological and horticultural societies; organization meeting, notice, regulations.

- 453.303 Pomological and horticultural societies; articles of association, contents.

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- 453.305 Pomological and horticultural societies; body corporate, powers; membership.

- 453.306 State pomological and horticultural association; annual report, printing.

- 453.307 Local pomological and horticultural associations; annual reports to state association, contents.

- 453.308 Pomological and horticultural associations; privileges and immunities.

LEGALIZATION ACT

Act 106 of 1895

- 453.331 Michigan state horticultural society; legalization of acts.

SOCIETIES RECEIVING PUBLIC FUNDS

Act 188 of 1921

- 453.341 Agricultural fair associations; receipt of public funds; report, contents.

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ISSUANCE OF BONDS, OBLIGATIONS AND MORTGAGES		
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Act 100 of 1895		Act 41 of 1887
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Act 68, 1875, p. 104; Imd. Eff. Apr. 8.

AN ACT to incorporate state and subordinate granges.

The People of the State of Michigan enact:

453.1 Granges; incorporation.

Sec. 1. That state, county, or district and subordinate granges of the order of the patrons of husbandry in the state of Michigan may be incorporated under the provisions of this act.

HISTORY: How. 2332;—CL 1897, 6001;—CL 1915, 7909;—CL 1929, 10193;—CL 1948, 453.1.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

CHANGE IN NAME: See Act 139 of 1995, being Compilers' § 450.1 et seq.

CORPORATION CODE: See Compilers' § 450.1 et seq.

453.2 State granges; incorporators; articles of association, contents.

Sec. 2. Any 13 or more persons, residents of this state, and of lawful age, and members of a state grange of the patrons of husbandry of the state of Michigan, and appointed for that purpose by the executive committee of said state grange, may, under the direction of said executive committee, for the purpose of incorporating a state grange of the order of the patrons of husbandry, make and execute articles of association under their hands and seals, which articles shall be acknowledged before some officer having authority to take the acknowledgment of deeds, and shall set forth:

First, The names of the persons so associating in the first instance, and their places of residence;

Second, The corporate name by which such association shall be known in the law, and the place or places which shall be deemed to be the place of its business office;

Third, The object and purpose of such corporation, which shall be to advance the social, moral, intellectual, and material interests of the members of the corporation;

Fourth, The period of the existence of the corporation, which shall not exceed 30 years.

HISTORY: How. 2333;—CL 1897, 6002;—CL 1915, 1910;—CL 1929, 10194;—CL 1948, 453.2.

453.3 State granges; articles, proof of execution.

Sec. 3. Such articles of association shall have indorsed thereon, or annexed thereto, an affidavit made by not less than 3 of the signers thereof, sworn to before some officer in this state authorized to administer oaths, showing that the persons whose names are signed to said articles of association are members of the state grange of the patrons of husbandry, and that they have been appointed by the executive committee of said state grange, to make and execute said articles for the purpose of incorporating a state grange, as aforesaid, and that such articles of association are made and executed in accordance with the direction of said executive committee.

HISTORY: How. 2334;—CL 1897, 6003;—CL 1915, 7911;—CL 1929, 10195;—CL 1948, 453.3.

453.4 State grange; articles, filing, recording; corporate powers; property limitation.

Sec. 4. A copy of said articles of association, and of the certificate of acknowledgment thereof, and of said affidavit, with an affidavit thereto attached, showing the same to be true copies of said original articles, certificate, and affidavit, which affidavit so attached shall be made by 1 or more of the signers of said articles, shall be filed and recorded in the office of the secretary of state, and thereupon the persons who shall have signed said articles of association, their associates and successors being masters of the subordinate granges of the order of the patrons of husbandry in this state, together with such other persons (if any) as shall be designated for that purpose in the articles of association aforesaid, shall be a body politic and corporate, under and by the name expressed in such articles of association; it being hereby intended and provided that the persons who shall be the members and compose the corporation created as aforesaid, shall be composed of the persons signing such articles of association as aforesaid, and all the other masters of the subordinate granges of the patrons of husbandry in this state, during their continuance in office as such masters, and until their successors in office shall be chosen and enter upon the duties of their offices, together with such other persons as may be designated for that purpose in such articles of association as aforesaid; and the corporation formed under such articles of association as aforesaid, shall by the name designated in such articles, have succession, and be capable of suing and being sued, of contracting and being contracted with, and of purchasing, receiving, and holding real and personal estate by deed, gift, grant, or devise, and may have a common seal and may alter the same at pleasure, and shall have full power to give, grant, convey, lease, mortgage, sell, and dispose of any and all of such real and personal estate; but the rents, income and proceeds of all such property and estate shall be devoted exclusively to the objects for which the corporation is formed; and the amount of the real and personal estate owned by such corporation at any 1 time, shall not exceed the sum of 100,000 dollars in value.

HISTORY: How. 2335;—CL 1897, 6004;—CL 1915, 7912;—CL 1929, 10196;—CL 1948, 453.4.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

453.5 State grange; officers, agents; rules, by-laws; business office.

Sec. 5. Such corporation shall have power and authority to designate, elect, and appoint from its members such officers, and agents, under such name and style as shall be in accordance with the constitution of the national grange of the order of the patrons of husbandry, and as shall be provided for by the articles of association or by-laws (or both), of the corporation, and such corporation shall have authority to make all such rules, regulations, and by-laws, not repugnant to law, or to the constitution and regulations of the national grange of the order of the patrons of husbandry, as may

be necessary and convenient for the regulation, management, and government of the affairs, business, property, and interests of the corporation; and such corporation may change the location of its business office whenever desirable.

HISTORY: How. 2336;—CL 1897, 6005;—CL 1915, 7913;—CL 1929, 10197;—CL 1948, 453.5.

453.6 State grange; articles, certified copy as evidence.

Sec. 6. A copy of the record of the articles of association of every such corporation formed as aforesaid, filed in the office of the secretary of state, and certified by him under the seal of state, shall be received in all courts and places as prima facie evidence of the existence and due incorporation of such corporation.

HISTORY: How. 2337;—CL 1897, 6006;—CL 1915, 7914;—CL 1929, 10198;—CL 1948, 453.6.

453.7 Subordinate granges; incorporators; articles, filing, recording; powers; property limitation; evidence.

Sec. 7. Any 13 or more persons, of lawful age, residents of this state, and being members of any county, district, or subordinate grange of the patrons of husbandry, duly chartered by the national or state grange, by charter approved by the state grange, desirous to become incorporated, may make and execute articles of association, specifying therein, as provided in section 2 of this act, and acknowledge the same as specified in said section 2, and file a copy of such articles, together with a copy of the charter granted as aforesaid by said national or state grange, in the office of the county clerk of the county where the business office of the grange is located, and the same shall be recorded by such county clerk, in a book to be kept in his office for that purpose; and thereupon, the persons who shall have signed such articles of association together with their associates and successors who shall sign such articles, shall be a body politic and corporate, by the name expressed in such articles of association, and by that name they and their successors shall have succession, and by that name may sue and be sued, contract and be contracted with, and may have a common seal which they may alter at pleasure, and may purchase, take, receive, own and hold, real and personal estate, and the same or any part thereof grant, sell, mortgage, lease, and convey, at pleasure. But every such corporation shall be limited as to the amount of estate which it may hold, and the disposition to be made thereof, and of the income and proceeds therefrom, by the provisions of section 4 of this act, and a copy of the record of the articles of association, and of the charter thereto attached, certified by the county clerk, under the seal of the county where such record is kept, shall be received in all courts and places in this state as prima facie evidence of the existence and due incorporation of every grange incorporated under this section.

HISTORY: Am. 1877, p. 78, Act 98, Eff. Aug. 21;—How. 2338;—CL 1897, 6007;—CL 1915, 7915;—CL 1929, 10199;—CL 1948, 453.7.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

453.8 Subordinate granges; by-laws, rules; business office, location; capital stock.

Sec. 8. Every county, district, and subordinate grange incorporated under this act, shall have power and authority to designate, elect, and appoint from its members such officers, under such name and style as shall be in accordance with the constitution of the national grange, and the regulations of the state grange, and as may be provided for in the articles of association or by-laws of the corporation; and shall also have authority to make all such by-laws, rules, and regulations, not repugnant to the laws of the United States or of this state, nor repugnant to the constitution and regulations of the national grange or state grange, as may be necessary and convenient for the regulation, management, and government of the affairs, business, property, and interests of the corporation; and may change the location of its business office whenever expedient, but notice of such change shall be filed and recorded in the office of the county clerk, where the record of its articles of association are kept. And every corporation

organized under this act may, for the purpose of effecting the objects and purposes of the corporation, create a capital stock, and divide the same into convenient shares, and make all such rules and regulations in respect to the same, and the management thereof, and for the collection of assessments and calls upon such shares, as may be expedient.

HISTORY: How. 2339;—CL 1897, 6006;—CL 1915, 7916;—CL 1929, 10200;—CL 1948, 453.8.

453.9 Governing law.

Sec. 9. All corporations formed under this act, shall, in all things not herein otherwise provided, be subject to the provisions of chapter 130 of the Compiled Laws of 1871, so far as the same may be applicable to corporations formed under this act, and the legislature may alter or amend this act at any time.

HISTORY: How. 2340;—CL 1897, 6009;—CL 1915, 7917;—CL 1929, 10201;—CL 1948, 453.9.

NOTE: Ch. 130 of 1871, above referred to, included the following provisions which have not been repealed or re-enacted: Compilers' §§ 450.504 to 450.525.

GENERAL CORPORATION LAW: See Act 327, 1931, being Compilers' § 450.1 et seq.

Act 180, 1849, p. 225; Imd. Eff. Mar. 31.

AN ACT to incorporate the Michigan state agricultural society.

Be it enacted by the senate and house of representatives of the state of Michigan:

453.51 Michigan state agricultural society; incorporation.

Sec. 1. That all persons who now are, or may hereafter become associated for the purposes of this act, are hereby constituted a body corporate by the name of the "Michigan state agricultural society," for the purpose of promoting the improvement of agriculture and its kindred arts.

HISTORY: CL 1857, 1680;—CL 1871, 2156;—How. 2288;—CL 1897, 5939;—CL 1915, 7815;—CL 1929, 10202;—CL 1948, 453.51.

AGRICULTURAL FAIR SOCIETIES: Excepted from the provisions of Act 327 of 1931. See Compilers' § 450.3.

Reports, see Compilers' § 450.81.

STATE FAIRS: See Compilers' § 285.122 et seq.

HORSE RACES: Act prohibiting publication of betting odds inapplicable to agricultural society fairs, see Compilers' § 750.330.

SOFT DRINKS: Recreation hall act not to be construed as requiring license for sale at agricultural fairs, see Compilers' § 41.507.

453.52 State agricultural society; powers, duties; restriction.

Sec. 2. For the purposes aforesaid, the society shall possess the general powers and privileges, and be subject to the general liabilities contained in chapter 55, title 10, of the Revised Statutes of 1846, so far as the same may be applicable, and have not been modified or repealed; but the real and personal estate which the said society shall be authorized to take, hold, and convey, over and above its library and its scientific and agricultural collections, shall not, at any time, exceed in amount the value of 20,000 dollars.

HISTORY: CL 1857, 1681;—CL 1871, 2157;—How. 2289;—CL 1897, 5940;—CL 1915, 7816;—CL 1929, 10203;—CL 1948, 453.52.

NOTE: Ch. 55, title 10 of R.S. 1846, above referred to, is Compilers' §§ 450.504 to 450.525.

The limit of \$20,000.00 was increased to \$100,000.00 in 1879. See Compilers' § 453.81.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' § 450.301 et seq.

GIFTS, GRANTS OR DEVICES: Indefiniteness, see Act 280 of 1915, being Compilers' §§ 554.351 to 554.353; probate contested when donee unnamed, see Act 207 of 1917, being Compilers' §§ 720.51 to 720.53; in perpetuity, restraint of alienation, see Act 373 of 1925, being Compilers' §§ 554.381 and 554.382.

SALE OF LANDS: See Act 258 of 1925, being Compilers' §§ 554.401 to 554.404.

ELECTIONS FOR DIRECTORS: See Act 112 of 1885, being Compilers' § 450.651.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

453.53 State agricultural society; annual report to legislature, contents.

Sec. 3. It shall be the duty of the Michigan state agricultural society to transmit to the president of the senate, for the use of the legislature in the month of January, annually, a report and statement of its proceedings, specifying the nature of the encouragement proposed by it, and the object for which, and persons to whom, premiums have been awarded; embracing also such accurate details of the modes of cultivation, of keeping stock, and of other important incidents, as will acquaint farmers and others

with the precise manner in which the valuable results recorded can be again obtained; and presenting such other matter as the society may judge most useful in promoting a greater and more general progress in practical agriculture.

HISTORY: CL 1857, 1682;—CL 1871, 2158;—How. 2290;—CL 1897, 5941;—CL 1915, 7817;—CL 1929, 10204;—CL 1948, 453.53.
REPORTS: See Compilers' § 450.81.

Act 197, 1849, p. 240; Imd. Eff. Mar. 31.

AN ACT in aid of the Michigan state agricultural society.

Be it enacted by the senate and house of representatives of the state of Michigan:

Sec. 1.

HISTORY: This section provided for state aid for 5 years and is now obsolete.

453.72 State agricultural society; award of premiums, requirements.

Sec. 2. It shall be the duty of such officers of the Michigan state agricultural society, as it may elect for that purpose, annually to regulate and award premiums on such articles, productions, and improvements, as they may deem best calculated to promote the agricultural and household manufacturing interests of the state, having special reference to the most economical or profitable mode of competition in raising the crop or stock, or in the fabrication of the article offered: Provided always, That before any premium shall be delivered, the person claiming the same, or to whom the same shall be awarded, shall deliver to the president of the society, in writing, an accurate statement and description, verified in such manner as the officers aforesaid may direct, of the character of the soil, and the process of preparing it, including the quantity of manure applied in raising the crop, or the kind and quantity of food in feeding the animal, as the case may be, also the kind and cost of labor employed, and the total expense and the total product of the crop, or the increase in value of the animal, with a view of showing accurately the resulting profit.

HISTORY: CL 1857, 1683;—CL 1871, 2159;—How. 2291;—CL 1897, 5942;—CL 1915, 7818;—CL 1929, 10205;—CL 1948, 453.72.
PREMIUMS: Distributed by state, see Compilers' §§ 285.125 and 285.126.

Act 165, 1879, p. 156; Eff. Aug. 30.

AN ACT relative to the Michigan state agricultural society.

The People of the State of Michigan enact:

453.81 State agricultural society; property, limitation.

Sec. 1. That the Michigan state agricultural society may hold real and personal estate over and above its library, scientific and agricultural collections to amount not exceeding 100,000 dollars.

HISTORY: How. 2292;—CL 1897, 5943;—CL 1915, 7819;—CL 1929, 10206;—CL 1948, 453.81.
PROPERTY: By Act 180, 1849, Sec. 2, being Compilers' § 453.52, the amount was limited to \$20,000.

453.82 State agricultural society; secretary and treasurer, bond approval; vacancies.

Sec. 2. The secretary and treasurer of the said Michigan state agricultural society shall each give bonds in such amounts and with such sureties respectively as shall from time to time be required by the executive committee, which bonds shall be conditioned for the faithful performance of the duties of such officers respectively, and to account for and pay over, as the executive committee shall order, all such moneys as shall come into the hands of such officers respectively by virtue of their office. Each of said bonds shall, in the first instance, be approved by the president as to form and sufficiency of sureties, and his approval shall be indorsed thereon, and such bonds and the action of the president thereon shall be reported to the executive committee at its

next meeting, and shall be subject both as to form and sufficiency, to the action of the executive committee. It shall be competent for the executive committee in case either of said officers shall neglect or refuse to give such bonds within such time, and with such sureties as shall be approved as aforesaid, to declare said office vacant and thereupon fill the said office by appointment, until the next annual election.

HISTORY: How. 2293;—CL 1897, 5044;—CL 1915, 7820;—CL 1929, 10207;—CL 1948, 453.82.

453.83 Annual fairs; exhibits, liability for loss.

Sec. 3. The said society shall not be liable for the loss by fire or otherwise of animals or articles which may be placed on exhibition at the annual fairs of the society.

HISTORY: How. 2294;—CL 1897, 5045;—CL 1915, 7821;—CL 1929, 10208;—CL 1948, 453.83.

Act 54, 1889, p. 58; Imd. Eff. Apr. 19.

AN ACT to enable the executive committee of the state agricultural society to permanently locate the place of holding its annual fairs and to repeal Act No. 65 of the Public Acts of 1887.

The People of the State of Michigan enact:

453.91 Annual fairs; location, change.

Sec. 1. That the executive committee of the state agricultural society shall have the power, by a majority vote of all the members of said committee at, any annual meeting, or at any special meeting thereof, called for that purpose to permanently locate the place of holding the annual fairs of said society, and when a permanent location is selected it shall not be changed except by a 2/3 majority of all the members of said committee.

HISTORY: How. 2297a;—CL 1897, 5046;—CL 1915, 7822;—CL 1929, 10209;—CL 1948, 453.91.

FORMER ACT: Act 65 of 1887.

STATE FAIRS: See Compilers' § 285.122 et seq.

Sec. 2. (This was a repeal section.)

HISTORY: How. 2297b;—CL 1915, 7823;—CL 1929, 10210;—Rep. 1945, p. 403, Act 267, Imd. Eff. May 25.

Act 96, 1849, p. 97; Imd. Eff. Mar. 16.

AN ACT for the encouragement of agriculture, manufactures and the mechanics arts.

The People of the State of Michigan enact:

453.101 County agricultural societies; organization, county aid.

Sec. 1. In any county in this state where the inhabitants thereof have organized and established, or may hereafter organize and establish a society for the encouragement and advancement of agriculture, manufactures, and the mechanic arts and shall raise from said society annually the sum of 100 dollars or over for the promotion of the above objects in said county, which fact shall be certified by the president and secretary of the society under oath, and a certificate thereof shall be filed with the clerk of the board of supervisors. The board of supervisors of said county at their annual session in each and every year, may, at their option, levy a tax of not more than 1/10 of 1 mill on the dollar, on the assessment roll of the county, which tax shall be collected

and paid to the treasurer of the county in the same manner that other taxes are collected and paid: Provided, In any county where there is more than 1 agricultural society so reporting, the board may apportion such amount between such societies as they may deem just.

HISTORY: Am. 1855, p. 26, Act 18, Eff. May 15;—CL 1857, 1687;—Am. 1869, p. 174, Act 105, Eff. July 5;—CL 1871, 2163;—How. 2296;—Am. 1891, p. 226, Act 177, Imd. Eff. June 30;—CL 1897, 5947;—CL 1915, 7824;—CL 1929, 10211;—CL 1948, 453.101.
FORMER ACT: Act 24 of 1844.

453.102 County agricultural societies; tax money, duty of county treasurer.

Sec. 2. The treasurer of the county shall keep the sum so raised subject to the order of the board of supervisors of said county.

HISTORY: CL 1857, 1688;—CL 1871, 2164;—How. 2299;—CL 1897, 5948;—CL 1915, 7825;—CL 1929, 10212;—CL 1948, 453.102.

453.103 County agricultural societies; tax money, expenditure.

Sec. 3. The said board of supervisors shall draw upon the said treasurer for the sum so raised and the same shall be expended under the direction of said board, for the benefit of said society in the purchase of premiums, the diffusion of valuable agricultural, manufacturing and mechanical knowledge, or in such other way as shall, in the opinion of the board be calculated to promote and encourage the important objects above specified.

HISTORY: CL 1857, 1689;—CL 1871, 2165;—How. 2300;—CL 1897, 5949;—CL 1915, 7826;—CL 1929, 10213;—CL 1948, 453.103.

Sec. 4. (This was a repeal section.)

HISTORY: CL 1857, 1690;—CL 1871, 2166;—How. 2301;—CL 1915, 7827;—CL 1929, 10214;—Rep. 1947, p. 169, Act 129, Eff. Oct. 11.
ACT REPEALED: Act approved March 2, 1844.

453.105 County agricultural societies; membership.

Sec. 5. Any citizen of any county in which a society of the kind above named is or shall be organized shall have a right to become a member thereof by complying with the rules and regulations of said society.

HISTORY: CL 1857, 1691;—CL 1871, 2167;—How. 2302;—CL 1897, 5950;—CL 1915, 7828;—CL 1929, 10215;—CL 1948, 453.105.

Act 12, 1867, p. 15; Imd. Eff. Feb. 7.

AN ACT for the better promotion of the interests of agriculture, manufactures and the mechanic arts.

The People of the State of Michigan enact:

453.201 County agricultural societies; tax apportionment.

Sec. 1. That in any county in this state where the inhabitants thereof have organized and established more than 1 society for the encouragement and advancement of agriculture, manufactures, and the mechanic arts, in accordance with the provisions of section 1687 of the Compiled Laws, the board of supervisors of said county may apportion the amount raised by tax in said county, by the provisions of section 1687, 1688, and 1689, of the Compiled Laws, among each of said societies, as they may deem equitable and just.

HISTORY: CL 1871, 2180;—How. 2313;—CL 1897, 5951;—CL 1915, 7829;—CL 1929, 10216;—CL 1948, 453.201.
NOTE: Secs. 1687, 1688 and 1689, above referred to, are Compilers' §§ 453.101 to 453.103.

453.202 County agricultural societies; adjacent counties uniting; tax apportionment.

Sec. 2. When the inhabitants of parts of 2 or more counties lying adjacent to each other, have united in organizing and establishing a society for the encouragement and advancement of agriculture, manufactures, and the mechanic arts, in accordance with the provisions of section 1687 of the Compiled Laws, the board of supervisors of each of the said counties, may apportion to such society so much of the amount raised by

tax in their respective counties, by the provisions of sections 1687, 1688 and 1689 of the Compiled Laws, as they may deem equitable and just.

HISTORY: CL 1871, 2181;—How. 2314;—CL 1897, 5952;—CL 1915, 7830;—CL 1929, 10217;—CL 1948, 453.202.

NOTE: Secs. 1687, 1688 and 1689, above referred to, are Compilers' §§ 453.101 to 453.103.

Act 80, 1855, p. 150; Imd. Eff. Feb. 12.

AN ACT to authorize the formation of local agricultural and horticultural societies.
Am. 1965, p. 100, Act 69, Imd. Eff. Jun. 22.

The People of the State of Michigan enact:

453.231 County, township, city or village agricultural or horticultural societies; formation.

Sec. 1. Any 10 or more persons, inhabitants of this state, who shall desire to form an agricultural or horticultural society in any county, township, city or village, or in any 2 or more of them, being contiguous, in this state, may make, sign and acknowledge duplicate articles of association, before any officer authorized to take acknowledgments of deeds in this state, and file 1 of the same in the office of the director of agriculture, and the other in the office of the county clerk of the county in which the business of the society is to be conducted. The articles shall state the name by which such society shall be known in law, the particular business and objects of such society, the number of trustees, directors or managers, who shall manage the same; and the names of such directors, trustees or managers thereof for the first year of its existence.

HISTORY: CL 1857, 1692;—CL 1871, 2168;—Am. 1879, p. 39, Act 43, Imd. Eff. Apr. 19;—How. 2303;—CL 1897, 5953;—CL 1915, 7831;—CL 1929, 10218;—CL 1948, 453.231;—Am. 1965, p. 100, Act 69, Imd. Eff. Jun. 22.

CITED IN OTHER SECTIONS: Sections 453.231 to 453.240 are cited in § 453.282.

453.232 Local agricultural societies; body corporate, powers; real estate, purchase and holding, limitation.

Sec. 2. Upon filing such articles of association, the persons who have signed the same, and their associates and successors shall become a body corporate by the name stated in such articles. No 2 societies shall assume the same name. By that corporate name the signers of the articles and their successors may have succession and shall be persons in law capable of suing and being sued, and they and their successors may have and use a common seal, which they may alter and change at pleasure, and they and their successors, by their corporate name, shall be capable of purchasing and holding, taking and receiving, by gift, devise or otherwise, exempt from taxation, real estate for the purpose of their incorporation; and they may make all necessary bylaws for the management of such societies not inconsistent with the laws of this state or of the United States. A current copy of the bylaws shall be filed with the director of agriculture.

HISTORY: CL 1857, 1693;—Am. 1867, p. 124, Act 88, Imd. Eff. Mar. 23;—CL 1871, 2169;—Am. 1881, p. 271, Act 228, Imd. Eff. Jun. 7;—How. 2304;—Am. 1885, p. 41, Act 44, Eff. Sep. 19;—Am. 1889, p. 373, Act 251, Imd. Eff. Jul. 3;—CL 1897, 5954;—CL 1915, 7832;—CL 1929, 10219;—CL 1948, 453.232;—Am. 1949, p. 333, Act 251, Eff. Sep. 23;—Am. 1965, p. 101, Act 69, Imd. Eff. Jun. 22.

453.233 Local agricultural societies; stockholders.

Sec. 3. Any person who has attained the age of 21 years and shall pay into the treasury of the society, at such time and in such amount and manner as the bylaws shall direct, a sum of money not to exceed \$25.00, and subscribe to the articles of association shall be a stockholder or member therein and entitled to all the privileges and immunities thereof.

HISTORY: CL 1857, 1694;—CL 1871, 2170;—How. 2305;—CL 1897, 5955;—CL 1915, 7833;—CL 1929, 10220;—CL 1948, 453.233;—Am. 1965, p. 101, Act 69, Imd. Eff. Jun. 22.

453.234 Local agricultural societies; board of directors; officers; powers.

Sec. 4. A board of directors consisting of at least 5 members may be elected by the stockholders of the society at their annual meeting. Vacancies occurring on the board between annual meetings may be filled by the board. The bylaws or articles of association may provide that anyone of the board may hold office for 1, 2 or 3 years. The board of directors shall elect a president, a secretary and a treasurer, and any other officers, either from their own number or from the other stockholders as the articles of association or the bylaws may provide. Each of the officers and directors shall be entitled to 1 vote on questions coming before the board. A majority of the officers and directors shall constitute a quorum to transact business. Such officers and directors shall constitute a board of management of the affairs of the society. They shall manage the property and business of the society to best promote the interests of educational, agricultural, horticultural and mechanical arts; they may hold fairs and exhibitions and distribute premiums for the best and most meritorious animals or articles exhibited in the several departments, as shall be provided by their bylaws and regulations. A member of any regularly organized agricultural society must be enrolled and recorded at least 30 days prior to the annual meeting, to be able to vote at such meeting.

HISTORY: CL 1857, 1695;—Am. 1867, p. 125, Act 88, Imd. Eff. Mar. 23;—CL 1871, 2171;—How. 2306;—CL 1897, 5956;—CL 1915, 7834;—Am. 1923, p. 471, Act 298, Eff. Aug. 30;—CL 1929, 10221;—CL 1948, 453.234;—Am. 1956, p. 245, Act 133, Eff. Aug. 11;—Am. 1965, p. 101, Act 69, Imd. Eff. Jun. 22.

453.235 Repealed. 1965, p. 102, Act 69, Imd. Eff. Jun. 22.

Section limited number of agricultural societies in particular area but authorized contiguous counties, towns, or parts of towns to join to form district societies.

453.236 Local agricultural societies; sale of real estate, procedure.

Sec. 6. A society may sell, from time to time, the whole or any part of its real estate, when authorized by the society, at an annual meeting thereof, or at a special meeting thereof, called for that purpose, by a vote of a majority of the members of such society present at such meeting, and notice of the intention to vote on the question of the sale having been published in some newspaper published in the county, if there be 1 published, and if not, then in some newspaper published in an adjoining county, once a week for 3 succeeding weeks next preceding such annual or special meeting.

HISTORY: CL 1857, 1697;—CL 1871, 2173;—How. 2306;—CL 1897, 5958;—Am. 1909, p. 438, Act 253, Eff. Sep. 1;—CL 1915, 7836;—CL 1929, 10223;—CL 1948, 453.236;—Am. 1965, p. 101, Act 69, Imd. Eff. Jun. 22.

453.237 Repealed. 1965, p. 102, Act 69, Imd. Eff. Jun. 22.

Section provided for liability of stockholders in agricultural societies.

453.238 Local agricultural societies; report to director of agriculture, contents.

Sec. 8. The president, secretary or authorized agents of a society on or before the 90th day after the close of their event, shall make out and transmit to the director of agriculture at his office, a statement of the transactions of the society for the preceding year, and giving a full detail of the receipts and expenditures thereof, with a list of the premiums awarded, and to whom, and for what purpose.

HISTORY: CL 1857, 1699;—CL 1871, 2175;—How. 2310;—CL 1897, 5960;—CL 1915, 7838;—CL 1929, 10225;—CL 1948, 453.238;—Am. 1965, p. 101, Act 69, Imd. Eff. Jun. 22.

453.239 Repealed. 1965, p. 102, Act 69, Imd. Eff. Jun. 22.

Section made Act No. 80 of 1955 subject to sections 450.504-450.525.

453.240 Local agricultural societies; articles of association, amendment procedure, filing.

Sec. 10. It shall be lawful for any society organized under this act, upon a vote of 2/3 of the members present at any annual meeting, to alter or amend its articles of association or bylaws in any manner not inconsistent with the provisions of this act. Notice of the intended alteration or amendment shall be given at least 30 days prior to

the annual meeting of the society; and it shall be the duty of the secretary of any such society, in giving notice of any annual meeting, to specify the alterations or amendments to be brought before it. The alterations or amendments so made, shall be duly certified by the president and secretary of the society, and filed in the office of the director of agriculture, whereupon the alterations or amendments shall have the same force and effect as original articles of association.

HISTORY: Add. 1879, p. 39, Act 43, Imd. Eff. Apr. 19;—How. 2312;—CL 1897, 5962;—CL 1915, 7840;—CL 1929, 10227;—CL 1948, 453.240;—Am. 1965, p. 102, Act 69, Imd. Eff. Jun. 22.

Sec. 10 of the original act was an immediate effect clause.

Act 155, 1889, p. 173; Imd. Eff. Jun. 18.

AN ACT to enable any town, county or district agricultural or horticultural society to re-organize under the act approved February twelfth, 1855, entitled, "An act to authorize the formation of county and town agricultural societies" and the several acts amendatory thereof.

The People of the State of Michigan enact:

453.281 Local agricultural or horticultural societies; reorganization.

Sec. 1. That any town, county or district agricultural or horticultural society, heretofore organized under any general law of this state may reorganize under the act approved February twelfth, 1855, entitled "An act to authorize the formation of county and town agricultural societies" so as to become subject to the provisions of said act, and the several acts amendatory thereof, whenever the officers and directors of any such town, county or district agricultural or horticultural society shall make, sign, acknowledge and file duplicate articles of association as provided in said act, and the several acts amendatory thereof.

HISTORY: How. 2312a;—CL 1897, 5963;—CL 1915, 7841;—CL 1929, 10228;—CL 1948, 453.281.

NOTE: Act 80 of 1855, above referred to, is Compilers' §§ 453.231 to 453.240.

REORGANIZATION: When term of corporate existence has expired or is about to expire, see Compilers' §§ 453.292 to 453.294.

453.282 Local agricultural societies; officers; duplicate articles, contents; reorganization; body corporate.

Sec. 2. The officers and directors of any town, county or district agricultural or horticultural society shall be authorized by their names of office to make, sign, acknowledge, execute and file duplicate articles as provided in said act, and the several acts amendatory thereof, which articles shall, in addition to the requisites in said act and the several acts amendatory thereof, set forth that they are executed for the purpose of reorganizing said society according to the provisions of this act, and such articles shall be deemed sufficient when so made, signed, acknowledged, executed and filed, although the number of signers shall be less than 8, if they shall constitute a majority of such officers and directors: Provided, That when there are no surviving officers or directors qualified to act, or if a period of 5 years has intervened since the last election of officers of such society, any 10 or more citizens, real property owners in the county, and legally resident therein, may reorganize such society under the provisions of Act No. 80 of the Public Acts of 1855, as amended, being sections 453.231 to 453.240, inclusive, of the Compiled Laws of 1948, and under the same name as theretofore used, and for the same purposes as provided in section 4 of said Act No. 80 of the Public Acts of 1855, and said society shall become a body politic and corporate by the name

stated in its articles of association and subject to the provisions of section 2 of said Act No. 80 of the Public Acts of 1855, and shall succeed to all the rights and privileges of such prior society, and the property of said former society or societies shall vest in and become the property of the society so last reorganized.

HISTORY: How. 2312b;—CL 1897, 5964;—CL 1915, 7842;—CL 1929, 10229;—CL 1948, 453.282;—Am. 1953, p. 127, Act 125, Eff. Oct. 2.

453.283 Local agricultural society reorganization; rights and duties.

Sec. 3. That upon the making, signing, acknowledging, executing and filing of said articles of association such society shall without further action be deemed to all interests [intents] and purposes re-organized, and shall succeed to all the property and rights of action of the old society, and shall be liable for all debts, obligations and liabilities of the old society and every stockholder in the old society under and by virtue of the incorporating act and the by-laws thereof, shall be a stockholder to a like extent in the new society, and all rights of property and contract shall remain unimpaired, and the corporate identity of such society shall continue unchanged.

HISTORY: How. 2312c;—CL 1897, 5965;—CL 1915, 7843;—CL 1929, 10230;—CL 1948, 453.283.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

453.284 Local agricultural society reorganization; officers, directors.

Sec. 4. The officers and directors in office shall continue in office until the annual meeting for the election of officers next following such re-organization, and until new officers and directors shall be elected, and no other meeting or notice shall be necessary to complete such re-organization, Provided, That when new officers and directors shall be elected, they shall consist of the number of officers and directors required by such articles of re-organization.

HISTORY: How. 2312d;—CL 1897, 5966;—CL 1915, 7844;—CL 1929, 10231;—CL 1948, 453.284.

Act 106, 1893, p. 135; Imd. Eff. May 24.

AN ACT to enable any town, county or district agricultural society, heretofore organized under the laws of this state, whose term of corporate existence has expired, or is about to expire, by limitation, to re-organize for a further period, not exceeding 30 years, and to fix the duties and liabilities of such renewed agricultural corporations, associations or societies.

The People of the State of Michigan enact:

453.291 Local agricultural societies; renewal procedure.

Sec. 1. That it shall be lawful for any town, county or district agricultural corporation association or society organized under the laws of this state, whose term of corporate existence has expired or is about to expire, by limitation, to re-organize for a further period, not exceeding 30 years, at any regular or special meeting of its stockholders, if a stock company, or in case of no capital stock of its board of directors, trustees or managers, by a resolution adopted for that purpose, by a vote of 4/5 of its capital stock, or in case of no capital stock by a vote of 3/4 of its trustees, members, directors or managers, in favor of such resolution.

HISTORY: CL 1897, 5967;—CL 1915, 7845;—CL 1929, 10232;—CL 1948, 453.291.

AGRICULTURAL FAIR SOCIETIES: Excepted from the provisions of Act 327, 1931, see Compilers' § 450.3.

Reports, see Compilers' § 450.81.

453.292 Local agricultural societies; duplicate articles; officers' duty; filing.

Sec. 2. It shall be the duty of the proper officers of such association, corporation or society to make, sign and acknowledge duplicate copies of its charter or articles of association, as the same shall have been from time to time amended, to which shall be attached copies of the resolution adopted as provided in section 1 of this act, and of

the vote thereon, certified to by the person acting as secretary of such association, society or corporation, and verified by his oath; 1 copy of which shall be filed with the secretary of state in his office in the city of Lansing, and 1 copy shall be filed with the county clerk of the county where such society, corporation or association is located, and such copies shall be recorded in the respective offices at the expense of such society, association or corporation.

HISTORY: CL 1897, 5968;—CL 1915, 7846;—CL 1929, 10233;—CL 1948, 453.292.

453.293 Local agricultural societies; renewed corporate existence; rights, duties.

Sec. 3. The agricultural corporation, association or society so re-organized shall have a renewed corporate existence, from the time of the adoption of such resolution as provided in section 1 of this act, for the term specified in such resolution, not exceeding 30 years, and shall hold and own all the property, rights, interest and franchises of such corporation, association or society so renewed, and shall be liable to all its liabilities and obligations as fully as if the former term had not or did not, expire until the expiration of the term provided in such re-organization. And such corporation, association, or society shall have all the rights and privileges of a new corporation for the period of its renewed term as expressed in such renewed charter or articles of association, and as provided by the laws of this state applicable to this class of corporations.

HISTORY: CL 1897, 5969;—CL 1915, 7847;—CL 1929, 10234;—CL 1948, 453.293.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

453.294 Scope of act; limitation.

Sec. 4. The provisions of this act shall apply only to corporations, associations, or societies organized solely for agricultural purposes.

HISTORY: CL 1897, 5970;—CL 1915, 7848;—CL 1929, 10235;—CL 1948, 453.294.

Act 125, 1871, p. 195; Imd. Eff. Apr. 15.

AN ACT to provide for the incorporation of societies for the promotion of pomology, horticulture, and the kindred sciences and arts, in the state of Michigan.

The People of the State of Michigan enact:

453.301 Pomological, horticultural and agricultural societies; incorporators.

Sec. 1. That any 5 or more persons, and their successors, that may hereafter associate together for the purpose of promoting the interests of pomology, horticulture, agriculture and kindred sciences and arts, may become a body corporate, by complying with the requirements of this act.

HISTORY: CL 1871, 3170;—How. 2315;—CL 1897, 5976;—CL 1915, 7878;—CL 1929, 10236;—CL 1948, 453.301.

AGRICULTURAL AND HORTICULTURAL FAIR SOCIETIES: Excepted from the provisions of Act 327, 1931, see Compilers' § 450.3.

Reports. see Compilers' § 450.81.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' § 450.301 et seq.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.601.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

453.302 Pomological and horticultural societies; organization meeting, notice, regulations.

Sec. 2. The persons intending to become a body corporate for the above named purpose, shall publish a notice of their intention to meet for organization 3 successive

weeks in the newspaper published next nearest to the place where such meeting is to be held; said notice to state the object of the meeting, and when and where it will be held, and to be signed by at least 3 of the persons interested in establishing such organization said meeting to be open to the public.

HISTORY: CL 1871, 3171;—How. 2316;—CL 1897, 5977;—CL 1915, 7879;—CL 1929, 10237;—CL 1948, 453.302.

453.303 Pomological and horticultural societies; articles of association, contents.

Sec. 3. The articles of association, adopted at the meeting provided for in the preceding section shall specify First The names officers and objects of association; second the limit of property; third the limit of subscription of members; fourth the town, city, village, county, district, or extent of the territory in which the operation of the society may be carried on, or to which they are limited.

HISTORY: CL 1871, 3172;—How. 2317;—CL 1897, 5978;—CL 1915, 7880;—CL 1929, 10238;—CL 1948, 453.303.

453.304 Pomological and horticultural societies; articles, registration.

Sec. 4. The articles of association duly acknowledged by each stockholder, together with a certificate signed by the secretary, stating the amount of subscription paid in must be registered in the office where the association is located in a book kept for that purpose, and a copy of the same must be forwarded to the secretary of state.

HISTORY: CL 1871, 3173;—How. 2318;—CL 1897, 5979;—CL 1915, 7881;—CL 1929, 10239;—CL 1948, 453.304.

453.305 Pomological and horticultural societies; body corporate, powers; membership.

Sec. 5. On complying with the requirements of this act as above specified, the association so organized shall be a body corporate, and shall be capable of buying and selling real estate in the same manner as the agricultural societies of suing and being sued in any court of this state, may have a common seal and may alter or amend the same at pleasure; and be subject to the laws of the state applicable to agricultural societies; may make such by-laws and regulations not inconsistent with its articles or with this act, as may be found desirable to promote the efficiency of the organization; Provided That the by-laws shall not exclude any citizen of Michigan from membership of the association, attending the exhibitions or participating in its discussions, who shall subscribe and pay to the funds of the society such sum or sums annually as the by-laws of the association shall prescribe.

HISTORY: CL 1871, 3174;—How. 2319;—CL 1897, 5980;—CL 1915, 7882;—CL 1929, 10240;—CL 1948, 453.305.

GIFTS, GRANTS OR DEVICES: Indefiniteness, see Act 280 of 1915, being Compilers' §§ 554.351 to 554.353; probate contested when donee unnamed, see Act 207 of 1917, being Compilers' § 600.910 et seq., in perpetuity, restraint of alienation, see Act 373 of 1925, being Compilers' §§ 554.381 and 554.382.

SALE OF LAND: See Act 258 of 1925, being Compilers' §§ 554.401 to 554.404.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

453.306 State pomological and horticultural association; annual report, printing.

Sec. 6. Should a state association for the promotion of pomology, horticulture, agriculture, and kindred sciences and arts, be organized under this act, it shall be the duty of the secretary of said state society, to make and transmit to the secretary of state a report of the transactions of said society, including copies of papers read at its meetings, reports of exhibitions held and of facts collected by correspondence or otherwise, at the end of the month of December of each year said report of transactions to be printed in similar form and number of copies as the reports and transactions of the state board of agriculture and state agricultural society, under the direction of the secretary of state.

HISTORY: CL 1871, 3175;—How. 2320;—CL 1897, 5981;—CL 1915, 7883;—CL 1929, 10241;—CL 1948, 453.306.

AGRICULTURAL AND HORTICULTURAL FAIR SOCIETIES: See note under Sec. 1 of this act.

STATE HORTICULTURAL SOCIETY: Printing and distribution of annual report, see Compilers' § 24.8.

453.307 Local pomological and horticultural associations; annual reports to state association, contents.

Sec. 7. District or county, town, city, or village associations organized under this act, are hereby required to report through their secretary, in the month of November in each year, to the secretary of the state association, the proceedings of said society during the year, giving a statement of the facts elicited, and of the experience gained during the preceding year; such reports from district, county, town, city or village societies to be used as correspondence in compiling the report, of the state association, provided for in section 6.

HISTORY: CL 1871, 3176;—How. 2321;—CL 1897, 5982;—CL 1915, 7884;—CL 1929, 10242;—CL 1948, 453.307.

453.308 Pomological and horticultural associations; privileges and immunities.

Sec. 8. Associations incorporated under this act shall on compliance with the requirements thereof, be entitled to all the immunities, emoluments and privileges accorded by law to the agricultural societies of this state.

HISTORY: CL 1871, 3177;—How. 2322;—CL 1897, 5983;—CL 1915, 7885;—CL 1929, 10243;—CL 1948, 453.308.

Act 106, 1895, p. 217; Eff. Aug. 30.

AN ACT to legalize all acts of the Michigan state horticultural society, organized under Act No. 125 of the laws of Michigan of 1871, being "An act to provide for the incorporation of societies for the promotion of pomology, horticulture, and the kindred sciences and arts in the state of Michigan."

The People of the State of Michigan enact:

453.331 Michigan state horticultural society; legalization of acts.

Sec. 1. That all acts of the Michigan state horticultural society since its organization under and by virtue of Act No. 125 of the laws of Michigan of 1871, being "An act to provide for the incorporation of societies for the promotion of pomology, horticulture, and the kindred sciences and arts in the state of Michigan," with reference to acquiring property, and all things that said society may have done in and about its business, is hereby declared to be as legal and valid, as though its amended articles of association, by which the name of said society was changed had been regularly and properly filed with the secretary of state in accordance with the law.

HISTORY: CL 1915, 7886;—CL 1929, 10244;—CL 1948, 453.331.

NOTE: Act 125 of 1871, above referred to, is Compilers' §§ 453.301 to 453.308.

Act 188, 1921, p. 374; Eff. Aug. 18.

AN ACT to require the secretary of agricultural or other fair associations receiving aid from public funds to make, publish and file fiscal reports.

The People of the State of Michigan enact:

453.341 Agricultural fair associations; receipt of public funds; report, contents.

Sec. 1. Hereafter, when any association, organized for the purpose of holding agricultural or other fairs or exhibitions in this state, receives any grant of public money from the state, or any county, city, village or township, in aid of such fair or exhibition, it shall be the duty of the secretary of such society to make a report of the fiscal transactions of such society covering the fiscal year thereof including the receipts and ex-

penditures relating to the annual fair or exhibition. Such report shall show the revenues from all sources and the expenditures in such detail as will disclose the amount of all salaries, the amount of prize moneys disbursed, improvements made during the year, new equipment and property purchased, miscellaneous expenditures, and the balance of funds in the treasury of the society.

HISTORY: CL 1929, 10245;—CL 1948, 453.341.

REPORTS: See Compilers' § 450.81.

PREMIUMS: Distribution by state, see Compilers' §§ 285.125 and 285.126.

453.342 Agricultural fair associations; report, publication, filing.

Sec. 2. The secretary shall certify to such report under oath, and cause the same to be published in some newspaper published in the county where its fairs or exhibitions are held. A sworn copy of such report shall be filed with the county clerk of such county, and a further sworn copy thereof shall be forwarded to the department of agriculture at Lansing, Michigan, for filing on or before the fifteenth day of December of each year.

HISTORY: CL 1929, 10246;—CL 1948, 453.342.

453.343 Agricultural fair associations; failure to file report, false statements; penalties.

Sec. 3. In case of the neglect or refusal of the secretary of any such association to make, publish or file such report as herein required, each such secretary shall be liable to a penalty of 10 dollars for each such neglect or refusal, to be recovered by the prosecuting attorney of the county wherein such association holds its fairs, in the name of the state; and in addition to such penalty, no such association shall thereafter receive any public moneys for its support, and it shall be unlawful for any public officer to pay to such association so offending any such public moneys, during the continuance of such default in the compliance with this act. Any person making any false statement in any report required by this act shall be deemed guilty of perjury and shall be subject to the pains and penalties thereof.

HISTORY: CL 1929, 10247;—CL 1948, 453.343.

PERJURY: See Compilers' § 450.422 et seq.

PENALTY: Suit for, see (Jud. Act) Compilers' § 600.4805 et seq.

Act 8, 1862, p. 9; Imd. Eff. Jan. 15.

AN ACT to authorize agricultural and horticultural societies to issue bonds or other evidences of debt and to mortgage real estate for certain purposes.

The People of the State of Michigan enact:

453.351 Agricultural and horticultural societies; bonds and obligations, issuance.

Sec. 1. It shall and may be lawful for any agricultural or horticultural society, duly organized as a corporation, by virtue of any law of this state, by the vote of 2/3 of all the directors or other officers having the management of the affairs of such society, to issue bonds or other evidences of debt, bearing interest at a rate not exceeding 7 per centum per annum, and to secure the payment of the same by a mortgage or mortgages upon the real estate of such society, or any part thereof, whenever necessary for the purpose of paying the purchase money of permanent grounds, or for buildings, or improvements made or to be made thereon; or to secure any moneys, which have been borrowed to meet the obligations of said society.

HISTORY: CL 1871, 2178;—How. 2326;—CL 1897, 5974;—Am. 1913, p. 583, Act 306, Eff. Aug. 14;—CL 1915, 7852;—CL 1929, 10245;—CL 1948, 453.351.

CITED IN OTHER SECTIONS: The above section is cited in § 285.4.

453.352 Agricultural and horticultural societies; former mortgages, validity.

Sec. 2. Any mortgage which may have been heretofore executed by any such society under its corporate seal and under the hands of its president and secretary in accordance with any vote or by-laws of such society shall be valid and binding to all the intents and purposes in such mortgage expressed.

HISTORY: CL 1871, 2179;—How. 2327;—CL 1897, 5975;—CL 1915, 7853;—CL 1929, 10249;—CL 1948, 453.352.

CITED IN OTHER SECTIONS: The above section is cited in § 285.4.

Act 121, 1873, p. 168; Imd. Eff. Apr. 19.

AN ACT to enable agricultural and horticultural societies and horse fairs to extend a more perfect protection to their property and the property of exhibitors at fairs, and to allow the board of managers to appoint police for that purpose.

The People of the State of Michigan enact:

453.361 Agricultural, horticultural, industrial fair, exposition society or horse fair; policemen at exhibitions, appointment, powers and duties.

Sec. 1. That the board of managers, or executive committee of any agricultural, horticultural, industrial fair, exposition society or horse fair of this state, or any corporation organized under the laws of this state to hold any exposition or industrial fair is hereby authorized to appoint as many citizens of this state policemen as shall be necessary for their exhibition, whose duty it shall be to preserve order within and around the grounds of said society or fair; to protect their property within said grounds; to eject all persons who shall be improperly within the grounds of said society, or who shall be guilty of disorderly conduct, or who shall refuse to pay the fee, or observe the rules prescribed by the society or fair. Said policemen shall have the same power during the time said exhibition shall continue that a constable may have by law in serving criminal process and making arrests, and in addition, may arrest any person for the commission of any offense mentioned in section 2 of this act.

HISTORY: How. 2323;—Am. 1889, p. 411, Act 270, Imd. Eff. July 5;—CL 1897, 5971;—CL 1915, 7849;—CL 1929, 10250;—CL 1948, 453.361.

453.362 Fair grounds; property, injury or destruction, penalty.

Sec. 2. Any person who shall willfully injure or destroy the property of exhibitors, visitors, or lessees on the fair ground, or shall hinder or obstruct the officers and police in the discharge of their duties, or shall wrongfully or maliciously gain admission to the fair ground contrary to the rules of said society, or fair, or without paying the established fees during any fair of such society, shall be deemed guilty of a misdemeanor, and upon conviction shall be subject to a fine of not less than 1 or more than 25 dollars, or imprisonment not exceeding 30 days, or such fine and imprisonment both, at the discretion of the court before whom the offender may be tried.

HISTORY: How. 2324;—CL 1897, 5972;—CL 1915, 7850;—CL 1929, 10251;—CL 1948, 453.362.

Act 220, 1861, p. 468; Eff. Jun. 15.

AN ACT vesting with police powers, marshals and their deputies at state and county fairs.

The People of the State of Michigan enact:

453.371 Fair grounds; marshals and deputies, police powers.

Sec. 1. That all persons duly appointed or chosen as marshals, deputy marshals, or policemen, by the proper officers of any of the agricultural or horticultural societies of this state and designated by appropriate badges, shall, as such marshals and policemen during the days of the fairs or exhibitions held by any of said societies, be vested with the police powers of special constables in the township, village or city in which such fairs or exhibitions are held.

HISTORY: CL 1871, 2177;—Am. 1879, p. 154, Act 162, Eff. Aug. 30;—How. 2325;—CL 1897, 5973;—CL 1915, 7851;—CL 1929, 10252;—CL 1948, 453.371.

Act 100, 1895, p. 209; Imd. Eff. Apr. 26.

AN ACT to incorporate the Michigan dairymen's association.

The People of the State of Michigan enact:

453.401 Michigan dairymen's association; incorporation.

Sec. 1. That a corporation may be organized under the provisions of this act for the purpose of securing the co-operation of dairymen and to promote the social, moral and business interests of its members.

HISTORY: CL 1897, 5984;—CL 1915, 7887;—CL 1929, 10253;—CL 1948, 453.401.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.601.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

453.402 Dairymen's association; incorporators; articles of association, filing.

Sec. 2. Any 5 or more persons who are at present members of the Michigan dairymen's association, who may desire to become incorporated for the purposes set forth in section 1, may execute under their hands and acknowledge before some person within this state authorized to take acknowledgment of deeds, 1 or more duplicate articles of agreement, as hereinafter specified, 1 copy whereof shall be filed and recorded in the office of the secretary of state, and upon the execution and acknowledgment of such articles, the signers thereof and those who may thereafter become associated with them, shall become a body politic and corporate for the purposes set forth in said articles.

HISTORY: CL 1897, 5985;—CL 1915, 7888;—CL 1929, 10254;—CL 1948, 453.402.

453.403 Dairymen's association; articles, contents.

Sec. 3. The articles of such association shall contain:

First, The names of the persons associating and the places of their residence;

Second, The name of such association and the place of its business office, which shall be at the place of residence of the secretary;

Third, The object and purposes of such association, which shall be to secure the co-operation of dairymen and to promote the social, moral and business interests of its members, and the period for which it is incorporated, not exceeding 30 years;

Fourth, The number of directors and regular officers and the time of holding its annual meeting: Provided, however, That such association may, in its articles of association, or by-laws, provide for and appoint other meetings thereof, than the annual meeting, to be held when and where the association may from time to time designate and appoint;

Fifth, The terms and conditions of membership therein.

HISTORY: CL 1897, 5986;—CL 1915, 7889;—CL 1929, 10255;—CL 1948, 453.403.

453.404 Dairymen's association; constitution, by-laws, rules.

Sec. 4. Said corporation shall have full power and authority to make and establish a constitution, by-laws, rules and regulations, not in conflict with the laws of this state, and to alter and amend the same.

HISTORY: CL 1897, 5987;—CL 1915, 7890;—CL 1929, 10256;—CL 1948, 453.404.

453.405 Dairymen's association; executive committee and officers, selection, residence.

Sec. 5. The affairs of said corporation shall be managed by the executive committee and officers of said association, to be chosen for such period and in such manner as the by-laws of such association shall provide, and who shall hold their offices until their successors are chosen and qualified. The officers shall be chosen in conformity to the by-laws of such association, adopted and changed by the members as the articles or by-laws may prescribe, not inconsistent with said articles of association. All officers and members, except honorary members of such association, shall be residents of the state of Michigan.

HISTORY: CL 1897, 5988;—CL 1915, 7891;—CL 1929, 10257;—CL 1948, 453.405.

453.406 Dairymen's association; powers; funds, investment and use.

Sec. 6. Said corporation may sue or be sued, take by gift, purchase or devise, property, exclusive of that actually used and necessary for the transaction of its business, to an amount not to exceed 10,000 dollars, and it shall be lawful to invest the same upon mortgage or in or by loan on bonds, of any city, county, state, or in government securities, or deposited at some bank, or with any broker in this state, upon such bank or broker giving sufficient security for the repayment thereof: Provided, That any such proposition may in its articles of agreement specify the kind of securities in which its funds shall be invested, and that no part of its funds shall be invested in any securities other than those named in its articles, or when the securities shall not be specified in the articles of agreement, then such funds shall only be invested in such securities as shall be specified in this act: And provided further, That said articles of association shall specify the use to which said moneys and income thereof shall be appropriated, and the same shall be applied exclusively to such purpose and to no other.

HISTORY: CL 1897, 5989;—CL 1915, 7892;—CL 1929, 10258;—CL 1948, 453.406.

GIFTS, GRANTS OR DEVISES: Indefiniteness, see Act 280 of 1915, being Compilers' §§ 554.351 to 554.353; probate contested when donee unnamed, see Act 207 of 1917, being Compilers' §§ 720.51 to 720.53; in perpetuity, restraint of alienation, see Act 373 of 1925, being Compilers' §§ 554.353 to 554.382.

SALE OF LANDS: See Act 258 of 1925, being Compilers' §§ 554.401 to 554.404.

Act 263, 1909, p. 446; Imd. Eff. Jun. 2.

AN ACT to authorize the Michigan dairymen's association to hold an annual meeting and such auxiliary meetings as may be determined by the association, and making an appropriation therefor.

The People of the State of Michigan enact:

453.451 Dairymen's association; meetings, rules, agents.

Sec. 1. The Michigan dairymen's association is hereby authorized to hold 1 annual meeting and as many auxiliary meetings each year, and at such place or places, as may be decided upon by said association, for the dissemination of knowledge pertaining to dairying and dairy products among the people of the state, and said association shall formulate such rules and regulations as it may deem proper to carry on the work con-

templated in this act, and it may employ an agent or agents to perform the duties in connection therewith as it may deem best.

HISTORY: CL 1915, 7893;—CL 1929, 10259;—CL 1948, 453.451.

FORMER ACTS: Act 289 of 1907, which repealed Act 146 of 1899.

Act 249 of 1895, authorizing the Michigan dairymen's association to hold state institutes and providing an appropriation therefor is largely superseded by this act and is obsolete.

453.452 Dairymen's association; current expenses, payment.

Sec. 2. For the purposes mentioned in the preceding section the said Michigan dairymen's association may use such sums as it shall deem proper, not exceeding 300 dollars, for the necessary current expenses of the Michigan dairymen's association each year. All of which the state treasurer shall pay to the said association on the warrants of the auditor general from time to time as its vouchers for the same shall be exhibited and approved.

HISTORY: CL 1915, 7894;—CL 1929, 10260;—CL 1948, 453.452.

Sec. 3. (This was a tax clause section.)

HISTORY: CL 1915, 7895;—Rep. 1945, p. 411, Act 267, Imd. Eff. May 25.

Act 41, 1887, p. 37; Imd. Eff. Mar. 21.

AN ACT to provide for the publication of the proceedings of the Michigan dairymen's association.

The People of the State of Michigan enact:

453.461 Dairymen's association; annual report to secretary of state; proceedings, publication and distribution.

Sec. 1. That it shall be the duty of the secretary of the Michigan dairymen's association to make and transmit to the secretary of state, a report of the annual meeting and transactions of said association, including copies of papers read at such meetings, and of facts collected relating to the objects of the association immediately after said meeting, and the secretary of state shall cause to be printed 3,000 copies of said report printed in similar form as the reports of the state agricultural society, and forwarded to the secretary of said Michigan dairymen's association for distribution.

HISTORY: How. 2331a;—CL 1897, 5990;—CL 1915, 7896;—CL 1929, 10261;—CL 1948, 453.461.

CHAPTER 454. TRADE AND LABOR ASSOCIATIONS

MECHANICS' ASSOCIATION

Act 188 of 1857

- 454.1 Mechanics' associations; incorporation, purposes.
- 454.2 Mechanics' associations; articles of association, execution, filing, recording; body corporate.
- 454.3 Mechanics' associations; articles, contents.
- 454.4 Mechanics' associations; governing law.
- 454.5 Mechanics' associations; trustees, powers, selection, terms, quorum; treasurer; by-laws.
- 454.6 Mechanics' associations; property, limitations.
- 454.7 Mechanics' associations; funds, use; payment; building erection, cost; gifts, use, investments.
- 454.8 Mechanics' association; annual report, contents; neglect, penalty.
- 454.9 Mechanics' association; consolidation, procedure; new corporation, powers.
- 454.10 Mechanics' association; consolidation agreement, contents, execution, filing, record; debts; creditors.
- 454.11 Mechanics' associations; libraries, maintenance and regulation.

MECHANICS' ASSOCIATIONS

Act 167 of 1869

- 454.51 Trades' unions; incorporation as mechanics' associations, governing law.
- 454.52 Trades' unions; constitution or articles in lieu of agreement; trustees and officers, election.
- 454.53 Trades' unions; new corporation; vesting of rights; recovery.
- 454.54 Trades' unions; alternate provisions.

LABOR ASSOCIATIONS

Act 13 of 1897

- 454.71 Labor associations; incorporation.
- 454.72 Labor associations; incorporators; articles of association, execution, contents.
- 454.73 Labor associations; articles, filing, recording, use.
- 454.74 Labor associations; powers.
- 454.75 Labor associations; stock, liability of stockholders.
- 454.76 Labor associations; new membership; stock; board of trustees, election.
- 454.77 Labor associations; board of trustees, powers; officers, appointment.

ARBEITER BUNDS

Act 42 of 1887

- 454.101 Arbeiter bunds; incorporators.
- 454.102 Arbeiter bunds; articles of association, member executing.
- 454.103 Arbeiter bunds; articles, acknowledgment, execution, contents.
- 454.104 Arbeiter bunds; articles, filing; body corporate, powers; property limitation; officers, appointment.
- 454.105 Arbeiter bunds; convention of delegates, powers; meeting, time, place; delegates, selection.
- 454.106 Arbeiter bunds; articles, certified copy as prima facie evidence.

SOCIETIES TO PROMOTE TRADE AND LABOR

Act 145 of 1885

- 454.151 Society for promotion of trade and labor; incorporation; articles of association, execution; body politic.
- 454.152 Trade promotion societies; corporate name, powers.
- 454.153 Trade promotion societies; articles, contents.
- 454.154 Trade promotion societies; by-laws, contents, enforcement.
- 454.155 Trade promotion societies; officers; members; board of trustees.
- 454.156 Trade promotion societies; board of trustees, powers, quorum.
- 454.157 Trade promotion societies; existing societies, incorporation under act.
- 454.158 Trade promotion societies; existing societies, constitution or articles in lieu of articles of incorporation.
- 454.159 Trade promotion societies; new corporation, rights, recovery.

BUILDERS' AND TRADERS' EXCHANGES

Act 28 of 1891

- 454.201 Builders' and traders' exchanges; incorporation, purposes.
- 454.202 Builders' and traders' exchanges; articles of association, execution, filing, recording; body corporate.
- 454.203 Builders' and traders' exchanges; articles, contents.
- 454.204 Builders' and traders' exchanges; corporate powers; property limitation.
- 454.205 Builders' and traders' exchanges; committees of reference and arbitration; committees of appeal.

Act 188, 1857, p. 468; Imd. Eff. Feb. 17.

AN ACT to provide for the incorporation of mechanics' associations.

The People of the State of Michigan enact:

454.1 Mechanics' associations; incorporation, purposes.

Sec. 1. That associations may be formed and incorporated for the purposes of promoting the mechanic arts in this state, for the relief of distressed mechanics whether members of any such association or otherwise and for such other charitable purposes as may be deemed proper by such association connected with the mechanical and architectural arts.

HISTORY: CL 1857, 1788;—CL 1871, 2795;—How. 3924;—CL 1897, 7423;—CL 1915, 9795;—CL 1929, 10262;—CL 1948, 454.1.

LABOR: In general, see Compilers' § 418.201 et seq.

SECRET INDUSTRIAL SOCIETIES: See Compilers' § 457.151 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

INSURANCE CODE: Labor organizations or societies which limit their membership to any 1 occupation or religious denomination excepted from provisions of Ch. IV of Pt. III of Act 256 of 1917, see Compilers' §§ 500.128 and 500.8094.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.1 et seq.

NAMES AND EMBLEMS: For protection of, see Compilers' § 430.1 et seq.

454.2 Mechanics' associations; articles of association, execution, filing, recording; body corporate.

Sec. 2. That any 6 or more persons residents of this state desirous to become incorporated for the above named objects may execute under their hands and acknowledge before some officer of this state having authority to take the acknowledgment of deeds articles of agreement as hereinafter specified 1 copy whereof verified by the affidavit of 2 or more of the trustees shall be filed and recorded in the office of the secretary of state and another verified in the same manner in the office of the county clerk of the county in which their place of business shall be; and upon the execution of such articles of agreement, the acknowledgment thereof and the filing of such copies as aforesaid the parties signing the same and those who may thereafter become associated with them shall become a body politic and corporate for the purpose aforesaid.

HISTORY: CL 1857, 1789;—CL 1871, 2796;—How. 3925;—CL 1897, 7424;—CL 1915, 9796;—CL 1929, 10263;—CL 1948, 454.2.

454.3 Mechanics' associations; articles, contents.

Sec. 3. Such articles of association shall contain,

First, The names of the persons associating in the first instance and their places of residence,

Second, The name of such corporation and the place where its office for the transaction of business is established, and the period for which it is incorporated, not exceeding 30 years,

Third, The purposes for which it is incorporated, mentioned in the first section of this act,

Fourth, The number of trustees and regular officers and the time of holding its annual meetings,

Fifth, The terms and conditions of membership therein.

HISTORY: CL 1857, 1790;—CL 1871, 2797;—How. 3926;—CL 1897, 7425;—CL 1915, 9797;—CL 1929, 10264;—CL 1948, 454.3.

454.4 Mechanics' associations; governing law.

Sec. 4. Every association formed under this act shall have all the rights, powers and privileges granted by, and shall be subject to all the provisions of chapter number 55, in title number 10 of the Revised Statutes so far as the same are not repugnant to the constitution or to this act.

HISTORY: CL 1857, 1791;—CL 1871, 2798;—How. 3927;—CL 1897, 7426;—CL 1915, 9798;—CL 1929, 10265;—CL 1948, 454.4.

NOTE: Ch. 55, Title 10 of R.S. 1846, above referred to, is Compilers' §§ 450.504 to 450.529. See Act 327, 1931, being Compilers' § 450.1 et seq.

454.5 Mechanics' associations; trustees, powers, selection, terms, quorum; treasurer; by-laws.

Sec. 5. The affairs of such association shall be managed by not less than 5, nor more than 9 trustees to be chosen by the members thereof and to hold office for 1 year and

until their successors shall be chosen; a treasurer shall be appointed from the number of trustees, and the other regular officers shall be members of the association. A majority of the trustees shall be a quorum to transact business, and they may adopt such by-laws not repugnant to this act or to such articles of association as they may see fit and change the same at pleasure.

HISTORY: CL 1857, 1792;—CL 1871, 2799;—How. 3928;—CL 1897, 7427;—CL 1915, 9799;—CL 1929, 10266;—CL 1948, 454.5.

454.6 Mechanics' associations; property, limitations.

Sec. 6. No association shall hold any real estate hereafter acquired, for a longer period than 10 years, except such real estate as shall be actually occupied by it in the exercise of its franchises.

HISTORY: CL 1857, 1793;—CL 1871, 2800;—Am. 1873, p. 82, Act 70, Imd. Eff. April 3;—How. 3929;—CL 1897, 7428;—CL 1915, 9800;—CL 1929, 10267;—CL 1948, 454.6.

454.7 Mechanics' associations; funds, use; payment; building erection, cost; gifts, use, investments.

Sec. 7. The funds received by such association shall be used in the first instance, or shall be invested, and the income thereof used, after paying necessary expenses, exclusively for the purposes, or some of them, mentioned in the articles of association. (This provision, however, shall not be construed to prevent any association organized under this act from using any of its funds to erect, on the real estate occupied or to be occupied by it, as mentioned in the preceding section, such building as the association may deem proper, and rent such portions thereof as may not be required for its own purposes. When the association shall not desire to use its funds on hand, or shall have no funds, or not sufficient for the erection and furnishing of said building, it may procure the necessary money by loan, from any person or persons whether members of the association or otherwise, and secure the same by mortgage or mortgages upon any of its real estate; which mortgage or mortgages shall first be authorized by a resolution of the association, duly entered in its proceedings, and shall be executed in the name of the association, and officially signed by at least a majority of its trustees.) Any association organized under this act may take by gift, subscription, or devise, money to an amount not exceeding 50,000 dollars at any 1 time; and it shall be lawful to use said money for the purposes aforesaid, or to invest the same upon mortgage, or by loan in railroad stocks or bonds, or any city, county, state, or government securities; but no loan shall be made to any trustee or officer of such association: Provided, That any such association may, in its articles of agreement, designate the kinds of securities in which its funds may be invested, in which case no part of its funds shall be invested in any securities other than named in its articles.

HISTORY: CL 1857, 1794;—CL 1871, 2801;—Am. 1873, p. 82, Act 70, Imd. Eff. April 3;—How. 3930;—CL 1897, 7429;—CL 1915, 9801;—CL 1929, 10268;—CL 1948, 454.7.

GIFTS, GRANTS OR DEVISES: Indefiniteness, see Act 280 of 1915, being Compilers' §§ 554.351 to 554.353; probate contested when done unnamed, see Act 207 of 1917, being Compilers' §§ 720.51 to 720.53; in perpetuity, restraint of alienation, see Act 373 of 1925, being Compilers' §§ 554.381 and 554.382.

SALE OF LAND: See Act 258 of 1925, being Compilers' §§ 554.401 to 554.404.

454.8 Mechanics' association; annual report, contents; neglect, penalty.

Sec. 8. Any such association whenever required by the attorney general or the legislature shall report to him or them under the oath of at least 2 of its trustees a full and true statement of its condition and affairs; and for any willful neglect to make such report within a reasonable time after the same is so required the association shall be liable to pay to the people of this state a fine of 50 dollars; or if the attorney general shall so elect or be instructed by the governor, he may proceed against such association by information, to forfeit its charter for such neglect.

HISTORY: CL 1857, 1795;—CL 1871, 2802;—How. 3931;—CL 1897, 7430;—CL 1915, 9802;—CL 1929, 10269;—CL 1948, 454.8.

PENALTY: Suit for, see (Jud. Act) Compilers' § 600.4805 et seq.

454.9 Mechanics' association; consolidation, procedure; new corporation, powers.

Sec. 9. Any association or society now incorporated for any of the above purposes or hereafter to become incorporated under this act may become consolidated with any one created by virtue of this act into a single corporation which may be done by the vote or resolution of a majority of the members, of each at a meeting called for that purpose a copy of which vote or resolution signed by the presiding officer and secretary of such meeting and verified by their affidavit shall be filed in the office of the secretary of state and another signed and verified in like manner, shall be filed in the office of the county clerk of the county where their place of business is, And upon such filing and an agreement entered into and copies thereof filed as hereinafter provided said corporations shall thereby become 1 association under this act to be called and known by such name as shall be given it in said agreement but subject to the provisions of this act and entitled to the same franchises and privileges as if it had been formed without such consolidation.

HISTORY: CL 1857, 1798;—CL 1871, 2803;—How. 3932;—CL 1897, 7431;—CL 1915, 9803;—CL 1929, 10270;—CL 1948, 454.9.

454.10 Mechanics' association; consolidation agreement, contents, execution, filing, record; debts; creditors.

Sec. 10. Such agreement shall contain—

First, The terms and conditions of such consolidation and the disposition of the corporate property of each.

Second, The name of the association thereby formed the place where its office for the transaction of business is established and the period for which it is incorporated not exceeding 30 years.

Third, The purposes set forth in the first section of this act.

Fourth, The number of trustees and regular officers, and the time of holding its annual meetings,

Fifth, The terms and conditions of membership therein. Which agreement shall be executed and acknowledged, and copies thereof signed verified filed and recorded as provided in the first section of this act; Provided however, That for the purposes of paying and enforcing the payment of its debts and liabilities and the protection of all the rights of creditors and claimants the members and the property of each such association shall be subject to the same remedies as if such consolidation had not taken place.

HISTORY: CL 1857, 1797;—CL 1871, 2804;—How. 3933;—CL 1897, 7432;—CL 1915, 9804;—CL 1929, 10271;—CL 1948, 454.10.

EXTENSION OF CORPORATE LIFE: See Compilers' § 450.64.

454.11 Mechanics' associations; libraries, maintenance and regulation.

Sec. 11. All societies or associations organized as aforesaid, shall have the right to keep and maintain libraries and make all needful by-laws for the good government and regulation of the same.

HISTORY: CL 1857, 1798;—CL 1871, 2805;—How. 3934;—CL 1897, 7433;—CL 1915, 9805;—CL 1929, 10272;—CL 1948, 454.11.

Act 167, 1869, p. 323; Imd. Eff. Apr. 5.

AN ACT to authorize the incorporation of trades unions as mechanics associations under the provisions of Chapter 62 of the Compiled Laws.

The People of the State of Michigan enact:

454.51 Trades' unions; incorporation as mechanics' associations, governing law.

Sec. 1. That any association of trades unions in this state, actually existing and conducting its operations under a constitution or articles of association, may become a body corporate and politic for the general purposes contemplated by Chapter 62 of the Compiled Laws of this state, being "An act to provide for the incorporation of mechanics' associations," approved February 17, 1857, upon filing a copy of their constitution, or articles of association, verified by the oath of 1 or more of the executive officers of such association, in the office of the secretary of state, and a like verified copy in the office of the county clerk of the county where such association is situated. All such associations becoming corporations as above provided, shall be subject to the provisions of the said act of 1857, except as otherwise in this act provided.

HISTORY: CL 1871, 2816;—How. 3945;—CL 1897, 7447;—CL 1915, 9819;—CL 1929, 10273;—CL 1948, 454.51.

NOTE: Ch. 62 of CL 1857, above referred to, is Compilers' §§ 454.1 to 454.11.

454.52 Trades' unions; constitution or articles in lieu of agreement; trustees and officers, election.

Sec. 2. The constitution or articles of association under which any such association may be organized, may stand in lieu of the articles of agreement required to be executed by section 2 of said act of 1857; and such constitution or articles of association may provide for the election of the trustees and other officers of such association annually or semi-annually, as the case may be; Provided, That nothing herein contained shall be so construed as to legalize any provision that may be contained in any such constitution or articles of association which is repugnant to the laws of this state, or to public justice.

HISTORY: CL 1871, 2817;—How. 3946;—CL 1897, 7448;—CL 1915, 9820;—CL 1929, 10274;—CL 1948, 454.52.

454.53 Trades' unions; new corporation; vesting of rights; recovery.

Sec. 3. All moneys, property or rights in action, equitably belonging to any association at the time the same may or shall become incorporated under the provisions of this act, shall rest [vest] in the corporation so formed, and may be recovered by such corporation in [an] action in assumpsit or on the case, from any person unlawfully withholding the same.

HISTORY: CL 1871, 2818;—How. 3947;—CL 1897, 7449;—CL 1915, 9821;—CL 1929, 10275;—CL 1948, 454.53.

454.54 Trades' unions; alternate provisions.

Sec. 4. Any corporation that may be formed under the provisions of this act, may be exempted from the operation of the provisions of section 5 of the aforesaid act of 1857, and may choose its officers, and conduct its operations in such manner as may be prescribed by its constitution or articles of association, subject to the restrictions contained in the proviso to section 2 of this act.

HISTORY: CL 1871, 2819;—How. 3948;—CL 1897, 7450;—CL 1915, 9822;—CL 1929, 10276;—CL 1948, 454.54.

NOTE: Sec. 5, above referred to, is Compilers' § 454.5.

Act 13, 1897, p. 15; Imd. Eff. Feb. 18.

AN ACT to provide for the incorporation of labor associations.

The People of the State of Michigan enact:

454.71 Labor associations; incorporation.

Sec. 1. That labor associations may be incorporated under the provisions of this act.

HISTORY: CL 1897, 7434;—CL 1915, 9806;—CL 1929, 10277;—CL 1948, 454.71.
FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' § 450.301 et seq.
CHANGE IN NAME: See Compilers' § 450.1 et seq.
GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

454.72 Labor associations; incorporators; articles of association, execution, contents.

Sec. 2. Any 10 or more residents of this state, who are members of any chartered body, or of different chartered bodies, which body or bodies receive their charter from the American Federation of Labor, or from any international labor organization issuing charters under authority from the American Federation of Labor, may make and execute articles of association under their hands and seals, which said articles of association shall be acknowledged before some officer of this state having authority to take acknowledgments of deeds, and shall set forth:

First, The names of the persons associating in the first instance, their places of residence and the name and location of the labor organization or organizations to which they severally belong.

Second, The corporate name by which such association shall be known in the law.

Third, The purposes of the association, which shall be to provide a building or buildings to be used in the interests of organized labor, and the period for which such association is incorporated, not exceeding 30 years.

HISTORY: CL 1897, 7435;—CL 1915, 9807;—CL 1929, 10278;—CL 1948, 454.72.

454.73 Labor associations; articles, filing, recording, use.

Sec. 3. A copy of said articles of association shall be filed with the county clerk of the county within which such corporation shall be formed and shall be recorded by such clerk in a book to be kept in his office for that purpose, and thereupon the persons who shall have signed said articles of association, their associates and successors, shall be a body corporate by the name expressed in such articles of association. A copy of such articles of association, under the seal of the county clerk in whose office said record is kept, and certified by him, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such association.

HISTORY: CL 1897, 7436;—CL 1915, 9808;—CL 1929, 10279;—CL 1948, 454.73.

454.74 Labor associations; powers.

Sec. 4. Every corporation organized under the provisions of this act may take, receive, purchase and hold in its corporate capacity and for its corporate purposes, real and personal property, and the same or any part thereof demise, sell, convey, use and dispose of at pleasure; and may erect and own suitable building or buildings to be used in whole or in part for meetings of labor organizations or for any other purpose in the interests of labor organizations, and may borrow money, and for that purpose may issue its bonds and mortgage its property to secure the payment of said bonds.

HISTORY: CL 1897, 7437;—CL 1915, 9809;—CL 1929, 10280;—CL 1948, 454.74.

454.75 Labor associations; stock, liability of stockholders.

Sec. 5. Every such corporation shall have full power and authority to provide by its by-laws for the issuing of certificates or shares of stock and for the manner in which the same shall be held and represented. All stockholders of every corporation formed under this act, shall be limited in their liability to creditors of any such corporation, to an amount equal to the amount unpaid on their said stock.

HISTORY: CL 1897, 7438;—CL 1915, 9810;—CL 1929, 10281;—CL 1948, 454.75.
CONTRIBUTION: See Compilers' § 450.519.

454.76 Labor associations; new membership; stock; board of trustees, election.

Sec. 6. Every such corporation shall have power to provide by its by-laws for succession to its original membership and for new membership, and, after it is organized, may admit to membership and sell stock to members of labor organizations recognized by the American Federation of Labor as being eligible, under its laws, rules and regulations, to receive charters from the said American Federation of Labor, and shall also have power to provide by its by-laws for election from its membership, of a board of trustees and to fix the number and term of office of such trustees.

HISTORY: CL 1897, 7439;—CL 1915, 9811;—Am. 1919, p. 580, Act 321, Eff. Aug. 14;—CL 1929, 10282;—CL 1948, 454.76.

454.77 Labor associations; board of trustees, powers; officers, appointment.

Sec. 7. The management and control of the business, affairs and property of such corporation shall be vested in said board of trustees, and said board shall have power to borrow any money, and cause to be made and issued any bonds and mortgages authorized by section 4 of this act. Said trustees shall appoint from their number a president, secretary and treasurer, who shall perform the duties of their respective offices in accordance with the rules and regulations prescribed by the board of trustees.

HISTORY: CL 1897, 7440;—CL 1915, 9812;—CL 1929, 10283;—CL 1948, 454.77.

Act 42, 1887, p. 38; Imd. Eff. Mar. 21.

AN ACT to provide for the incorporation of Arbeiter Bunds.

The People of the State of Michigan enact:

454.101 Arbeiter bunds; incorporators.

Sec. 1. That any number, not less than 15, of workingmen's aid societies, otherwise called Arbeiter Unterstuetzungs Vereine, which have been duly incorporated under the laws of Michigan, may unite or form a union or bund, and become incorporated under the provisions of this act.

HISTORY: How. 3934j;—CL 1897, 7441;—CL 1915, 9813;—CL 1929, 10284;—CL 1948, 454.101.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.1 et seq.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

454.102 Arbeiter bunds; articles of association, member executing.

Sec. 2. Any such societies, not less than 15, desiring to form an incorporated union or bund under this act, shall delegate 1 of their members, by appropriate resolution, to be entered in the records of such societies, to act in executing articles of association under this act.

HISTORY: How. 3834k;—CL 1897, 7442;—CL 1915, 9814;—CL 1929, 10285;—CL 1948, 454.102.

454.103 Arbeiter bunds; articles, acknowledgment, execution, contents.

Sec. 3. Such delegates may, in behalf of their respective societies, make and execute under their hands and seals, articles of association, which articles of association shall be acknowledged before some officer of the state having authority to take acknowledgments of deeds, and shall set forth:

First, The names of the societies associating in the first instance, and their respective locations and the names of the delegates acting on behalf of such societies.

Second, The corporate name by which such association shall be known in the law.

Third, The object and purpose of such association, which shall be the general welfare of the members of the societies forming such association, and the extending to

them, and their families, in case of death, such material aid as may be fixed from time to time by the constitution and by-laws of the association.

Fourth, The period for which such bund is incorporated, not exceeding 30 years;

Fifth, The time and place where the first convention of such bund shall be held.

HISTORY: How. 3934-l;—CL 1897, 7443;—CL 1915, 9815;—CL 1929, 10286;—CL 1948, 454.103.

454.104 Arbeiter bunds; articles, filing; body corporate, powers; property limitation; officers, appointment.

Sec. 4. Such articles of association shall be filed with the secretary of state, and thereupon such association shall be a body politic and corporate by the name expressed in such articles of association, capable of taking, holding, and disposing of real and personal property, of suing and being sued, and of having a common seal which may be altered or changed at their pleasure: Provided, That the value of such real estate shall not exceed 10,000 dollars. Such corporation shall have full power to adopt a constitution, and to make and establish rules, regulations and by-laws for regulating and governing all the affairs and business of said corporation, and for the admission and expulsion of members, and to designate, elect or appoint from among the members of the societies forming and belonging to such corporation, such officers, and under such name and style, and with such duties as the constitution and by-laws of such corporation may from time to time prescribe. The constitution and by-laws of such corporation may be amended from time to time in such manner as may be provided by such corporation.

HISTORY: How. 3934m;—CL 1897, 7444;—CL 1915, 9816;—CL 1929, 10287;—CL 1948, 454.104.

454.105 Arbeiter bunds; convention of delegates, powers; meeting, time, place; delegates, selection.

Sec. 5. The affairs of such corporation shall be controlled by a convention of delegates, which shall meet at least once in every 2 years in some suitable place in this state. Such delegates shall be appointed or elected by the respective societies forming such corporation, and the number of delegates which each society is entitled to send to such convention shall be determined by the constitution and by-laws of such association. The place of holding the first convention shall be designated by the delegates signing the articles of association under this act, and each convention held thereafter, before final adjournment, shall name the place of holding the next convention. The time of holding the same shall be specified by the constitution and by-laws of such association.

HISTORY: How. 3934n;—CL 1897, 7445;—CL 1915, 9817;—CL 1929, 10288;—CL 1948, 454.105.

454.106 Arbeiter bunds; articles, certified copy as prima facie evidence.

Sec. 6. A copy of the records of such articles of association, under the seal of the state, duly certified according to law, shall be received as prima facie evidence in all courts of this state, of the existence and due incorporation of such union or bund.

HISTORY: How. 3934o;—CL 1897, 7446;—CL 1915, 9818;—CL 1929, 10289;—CL 1948, 454.106.

Act 145, 1885, p. 163; Eff. Sep. 19.

AN ACT to provide for the incorporation of societies to promote the interests of trade and labor.

The People of the State of Michigan enact:

454.151 Society for promotion of trade and labor; incorporation; articles of association, execution; body politic.

Sec. 1. That any number of persons not less than 5, may associate themselves together and become a body corporate and politic for the improvement of their several social and material interests, the regulation of their wages, the laws and conditions of their employment, the protection of their joint and individual rights in the prosecution of their trades or industrial avocations, the collection and payment of funds for the benefit of sick, disabled, or unemployed members, the securing of benefits to the families of deceased members, and for such other and further objects of material benefit and protection as are germane to the purposes of this act. The persons so associating shall execute articles of association as hereinafter provided, sign and acknowledge the same before some officer duly authorized by the laws of this state to take acknowledgments of deeds, and upon the execution and acknowledgment of said articles of association aforesaid, the said association shall become a body politic for the purposes set forth in said articles of agreement.

HISTORY: How. 3804a;—CL 1897, 7451;—CL 1915, 9823;—CL 1929, 10290;—CL 1948, 454.151.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.1 et seq.

454.152 Trade promotion societies; corporate name, powers.

Sec. 2. Every association formed under the provisions of this act, shall have a corporate name, and may sue and be sued, plead and be impleaded, prosecute and defend in all courts of this state; shall hold, pay, sell, assign and lease such real, personal or mixed property as shall be required for its corporate purposes.

HISTORY: How. 3804b;—CL 1897, 7452;—CL 1915, 9824;—CL 1929, 10291;—CL 1948, 454.152.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

454.153 Trade promotion societies; articles, contents.

Sec. 3. The articles of association shall state:

First, The names of persons associating in the first instance with their places of residence;

Second, The purposes of the association, conforming with the provisions of this act;

Third, The corporate name and period of incorporation, not to exceed a period of 30 years;

Fourth, The terms, conditions, and qualifications of membership in the corporation;

Fifth, The officers and committees created, with the names of officers and members of committees first selected, the terms of such officers and members, and the time of holding an annual meeting.

HISTORY: How. 3804c;—CL 1897, 7453;—CL 1915, 9825;—CL 1929, 10292;—CL 1948, 454.153.

454.154 Trade promotion societies; by-laws, contents, enforcement.

Sec. 4. Every association incorporated under this act shall have power to make all needful by-laws for its government and enforce the same by the usual penalties and forfeitures; may thereby establish a uniform system of dues, assessments or benefits to be levied upon members, prescribe the duties of officers, require bonds of the same for the faithful discharge of their duties.

HISTORY: How. 3804d;—CL 1897, 7454;—CL 1915, 9826;—CL 1929, 10293;—CL 1948, 454.154.

454.155 Trade promotion societies; officers; members; board of trustees.

Sec. 5. The officers of the association shall consist of a president, secretary, treasurer, and board of trustees of not less than 3 members of the association. The president, secretary, and treasurer shall be ex-officio members of said board of trustees.

HISTORY: How. 3804e;—CL 1897, 7455;—CL 1915, 9827;—CL 1929, 10294;—CL 1948, 454.155.

454.156 Trade promotion societies; board of trustees, powers, quorum.

Sec. 6. The board of trustees shall be the executive board of such association, and shall be charged with the general management of its affairs. Said board shall adopt by-laws for the association, and change the same at pleasure: Provided, That the by-law for the election of the members of said board of trustees and their terms of office shall be of no effect until the same is ratified by a majority vote of the members of the association. A majority of said board of trustees shall be a quorum for the transaction of business.

HISTORY: How. 3934f;—CL 1897, 7456;—CL 1915, 9828;—CL 1929, 10295;—CL 1948, 454.156.

454.157 Trade promotion societies; existing societies, incorporation under act.

Sec. 7. All societies, unions or associations of tradesmen or laborers actually existing and conducting their affairs under a constitution or articles of association, may become a body corporate and politic, for the general purposes of this act, upon filing a copy of their constitution or articles of the association, society or union, verified by the oath of 1 of the executive officers of such society, association or union in the office of the secretary of state, and a like verified copy in the office of the county clerk of the county where such association, society or union is formed. All societies, unions and associations, becoming corporations as above provided, shall be subject to the provisions of this act.

HISTORY: How. 3934g;—CL 1897, 7457;—CL 1915, 9829;—CL 1929, 10296;—CL 1948, 454.157.

454.158 Trade promotion societies; existing societies, constitution or articles in lieu of articles of incorporation.

Sec. 8. The constitution or articles of association of the society, union, or association referred to in the preceding section of this act when filed as therein provided, shall stand in lieu of the articles of incorporation required to be executed under this act and such constitution or articles of association may provide for the election of the trustees and other officers required by this act, naming the officers to act as the first incumbents: Provided; That nothing in this section contained shall be construed so as to legalize any provisions that may be contained in said constitution or articles of association, repugnant to the general laws of this state or to public justice.

HISTORY: How. 3934h;—CL 1897, 7458;—CL 1915, 9830;—CL 1929, 10297;—CL 1948, 454.158.

454.159 Trade promotion societies; new corporation, rights, recovery.

Sec. 9. All moneys, properties, or rights in action, equitably belonging to any society, union, or association at the time the same shall become incorporated under the provisions of this act, shall vest in the corporation so formed, and may be recovered by such corporation in an action of assumpsit, or on the case from any person unlawfully withholding the same.

HISTORY: How. 3934i;—CL 1897, 7459;—CL 1915, 9831;—CL 1929, 10298;—CL 1948, 454.159.

Act 28, 1891, p. 26; Imd. Eff. Apr. 15.

AN ACT to provide for the organization and incorporation of builder's and builders and traders exchanges.

The People of the State of Michigan enact:

454.201 Builders' and traders' exchanges; incorporation, purposes.

Sec. 1. That any number of persons, not less than 3, may associate themselves together and become incorporated as a builders or a builders and traders exchange for the purpose of providing and regulating suitable rooms or places of meeting; to pro-

mote mechanical and industrial interests, to inculcate just and equitable principles of trade, to establish and maintain uniformity in commercial usages, by rules and regulations; to acquire, preserve and disseminate valuable business information; to adjust differences and settle disputes between members, or between members and others; and for other purposes conducive to the interests of members thereof.

HISTORY: CL 1897, 7460;—CL 1915, 9832;—CL 1929, 10299;—CL 1948, 454.201.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.1 et seq.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

454.202 Builders' and traders' exchanges; articles of association, execution, filing, recording; body corporate.

Sec. 2. The incorporators shall sign and acknowledge before some person authorized to take the acknowledgment of deeds, duplicate articles of association, of which 1 copy shall be filed and recorded in the office of the secretary of state, and a record shall also be made of such articles in the office of the clerk of the county in which such exchange is located; and upon the filing and recording of such articles, duly executed and acknowledged as aforesaid, the said incorporators and those who may thereafter become associated with them shall become a body politic and corporate for the purposes set forth in said articles.

HISTORY: CL 1897, 7461;—CL 1915, 9833;—CL 1929, 10300;—CL 1948, 454.202.

ACKNOWLEDGMENT OF DEEDS: Persons authorized to take, see Compilers' § 565.8.

454.203 Builders' and traders' exchanges; articles, contents.

Sec. 3. The articles of association shall contain:

First, The names of the persons associating in the first instance and their places of residence;

Second, The name of such corporation, and the place where its office for the transaction of business is located, and the period for which it is incorporated, not exceeding 30 years;

Third, Definitely and distinctly the purposes for which the corporation is formed;

Fourth, The number of its directors, if any, and regular officers and the time and place of holding its annual meeting;

Fifth, The terms and conditions of membership therein.

HISTORY: CL 1897, 7462;—CL 1915, 9834;—CL 1929, 10301;—CL 1948, 454.203.

454.204 Builders' and traders' exchanges; corporate powers; property limitation.

Sec. 4. Said corporation by the name adopted by said articles shall have succession and power to sue and be sued and to adopt and use a corporate seal which it may alter and change at pleasure; may receive and hold property and effects, real and personal, by gift, devise or purchase, and may sell, mortgage or otherwise dispose of the same; may make all needful rules, regulations and by-laws for the management of its affairs, and prescribing the terms and conditions under and upon which members may be received into or expelled from said corporation, and may revise and alter the same from time to time as therein shall be provided; and may impose fines upon any of its members for breach of its rules, regulations, or by-laws, but no fine shall exceed 25 dollars: Provided, That no corporation hereby created shall, at any 1 time, hold real estate the value of which shall exceed 100,000 dollars.

HISTORY: CL 1897, 7463;—CL 1915, 9835;—CL 1929, 10302;—CL 1948, 454.204.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and CCR 105.

454.205 Builders' and traders' exchanges; committees of reference and arbitration; committees of appeal.

Sec. 5. Said corporation may constitute and appoint committees of reference and arbitration, and committees of appeals, who shall be governed by such rules and regula-

tions as may be prescribed in the by-laws for the settlement and adjustment of such matters of difference as may be voluntarily submitted for arbitration by members or others.

HISTORY: CL 1897, 7464;—CL 1915, 9636;—CL 1929, 10303;—CL 1948, 454.205.

LABOR DISPUTES: Settlement by mediation, see Compilers' § 423.1 et seq.

CHAPTER 455. SUMMER RESORT AND PARK ASSOCIATIONS

SUMMER RESORT AND ASSEMBLY ASSOCIATIONS
Act 230 of 1897

- 455.1 Summer resort and park associations; incorporation, purpose.
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- 455.5 Certificates of stock; signing, sealing, right to vote.
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- 455.15 Capital stock; subscriptions, payment; suit; sale, procedure; disposition of proceeds; purchaser, rights.
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SUMMER RESORT AND ASSEMBLY ASSOCIATIONS
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SUMMER RESORT AND ASSEMBLY ASSOCIATIONS
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- 455.91 Articles of incorporation; amendment.
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- 455.101 Suburban homestead, villa park and summer resort associations; incorporation; purposes; corporate life; trustees, number, election.
 - 455.102 Certificate; acknowledgment, contents, recording, filing.
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SUMMER RESORT OWNERS
Act 137 of 1929

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 455.217 Public utilities; corporate authority.
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 455.220 Corporate term of existence; expiration; cessation of jurisdiction.</p> <p style="text-align: center;">EXTENSION OF CORPORATE LIFE
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Act 55 of 1911</p> <p>455.281 Reorganization of certain corporations; procedure, evidence, franchise fee.
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Act 161 of 1911</p> <p>455.301 Parks, playgrounds, drives and boulevards; incorporation, purpose.
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Act 230, 1897, p. 297; Imd. Eff. Jun. 4.

AN ACT to provide for the formation of corporations for the purpose of owning, maintaining and improving lands and other property kept for the purposes of summer resorts or for ornament, recreation or amusement, and to repeal all laws or parts of laws in conflict herewith.

The People of the State of Michigan enact:

455.1 Summer resort and park associations; incorporation, purpose.

Sec. 1. That any number of persons, not less than 5, desiring to form a corporation for the purpose of owning, maintaining and improving lands and other property for the purposes of a summer resort or a park for ornament, recreation or amusement, in any city, village or township of this state, or of any adjoining state, may, by articles or agreement in writing, under their hands and seals, associate for such purpose under the name to be assumed by them in their articles of association: Provided, That no 2 corporations shall assume the same name.

HISTORY: CL 1897, 7618;—Am. 1899, p. 43, Act 30, Imd. Eff. March 30;—CL 1915, 10034;—CL 1929, 10304;—CL 1945, 455.1.

SUMMER RESORT ASSOCIATIONS: Specifically excepted from the provisions of Act 327, 1931, see Compilers' § 450.3.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

REPORTS: See Compilers' § 450.81.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.1 et seq.

RAILROAD CROSSING: Duty of railroad to construct and maintain, across right of way to summer resort, when requested by owners or occupants, see Compilers' § 466.15.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

455.2 Articles of association; signing, acknowledgment, contents.

Sec. 2. Such articles of association shall be signed by the persons associating in the first instance, and be duly acknowledged before some officer of this state, authorized by the laws of this state to take acknowledgment of deeds, and shall set forth:

First, The name by which the corporation shall be known in the law;

Second, Definitely and distinctly the purposes for which the corporation is formed;

Third, The amount of the capital stock, which shall in no case be more than 100,000 dollars, and the number of shares thereof which shall be of the par value of 25 dollars;

Fourth, The names of the stockholders; their respective residences, and the number of shares held by each;

Fifth, The city, village or township where the office of the corporation shall be located;

Sixth, The term of existence of such corporation which shall not exceed 30 years;

Seventh, The number of directors of the corporation.

HISTORY: CL 1897, 7619;—CL 1915, 10035;—CL 1929, 10305;—CL 1948, 455.2.

EXTENSION OF CORPORATE LIFE: See Act 12 of 1901, being Compilers' §§ 455.251 and 455.252.

455.3 Articles of association; filing, recording; body corporate, powers; amendment, filing, recording.

Sec. 3. The articles of association shall be filed in the office of the secretary of state, and a duplicate of said articles shall be filed and recorded at length in the office of the county clerk in the county where the lands of such corporation are located, and also in the county where the office of the corporation is located, and thereupon all persons who shall have subscribed the same, and all persons who shall from time to time become stockholders in such corporation, shall be a body politic and corporate, by the name specified in such articles, and by such name they and their successors shall have succession and in their corporate name be capable in law of owning, holding or purchasing and disposing of, in such manner as a majority of the stockholders may direct, any real or personal property or estate whatever, not exceeding 700 acres of land and personal property not exceeding in value the sum of 200,000 dollars, and in connection therewith may own, maintain, control and operate, a hotel, club house or other buildings for the entertainment, comfort or convenience of the stockholders of said corporation, and they shall be capable of suing and being sued in all courts of law or equity in this state, and may have a common seal, and may alter and change the same at pleasure. Such corporation may alter or amend its articles of association at any regular meeting of the stockholders, or at any special meeting called for that purpose, by a vote of not less than 2/3 of all the shares of the capital stock of said corporation. Such corporation shall cause any such amendment or amendments to be certified by its president and secretary, and filed and recorded in the same manner as in the case of the original articles of association, and when so filed and recorded such amendments shall become a part of the articles of association.

HISTORY: CL 1897, 7620;—Am. 1903, p. 103, Act 77, Eff. Sept. 17;—CL 1915, 10036;—CL 1929, 10306;—CL 1948, 455.3.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

455.4 Articles of association; certified copy, use as evidence.

Sec. 4. A copy of any articles of association filed and duly recorded in the office of the secretary of state duly certified and a copy of any articles of association duly filed and recorded in any county clerk's office in pursuance of this act and certified by the county clerk under his hand and seal, to be a true copy thereof, and the whole of such articles of association shall be in all courts and places prima facie evidence of the due incorporation of such company, and of the facts therein stated.

HISTORY: CL 1897, 7621;—CL 1915, 10037;—CL 1929, 10307;—CL 1948, 455.4.

455.5 Certificates of stock; signing, sealing, right to vote.

Sec. 5. All certificates for capital stock shall be signed by the president and secretary of the company, and sealed with the corporate seal. Each stockholder shall be entitled to cast 1 vote for each and every share he shall own of the capital stock of such company, at any and all meetings of stockholders of said corporation for whatsoever purpose the same may be held, and may vote or perform any act by his or her attorney or proxy duly authorized in writing for that purpose at any meeting at which such stockholder may vote or act if present in person, which power of attorney or proxy shall be filed with the secretary of said company.

HISTORY: CL 1897, 7622;—CL 1915, 10038;—CL 1929, 10308;—CL 1948, 455.5.

455.6 Annual meeting; notice, failure to hold.

Sec. 6. Every such corporation shall hold its annual meeting of stockholders between the first Monday of February and the last day of August of each year as its by-laws may provide. Notice of the time and place of such meeting shall be given by the secretary by causing the same to be published in some paper published and circulated in the county where the principal office of such corporation is located, at least once in each week successively for 4 weeks prior to the time fixed for such meeting: Provided, That such notice may be given personally, in writing, or by mailing the same to each stockholder, addressed to him at his place of residence shown on the books of said company, in which case no publication shall be necessary: And provided further, That if, for any reason, such annual meeting is not held, the corporation shall not for that reason be dissolved.

HISTORY: CL 1897, 7623;—CL 1915, 10039;—CL 1929, 10309;—CL 1948, 455.6.

455.7 Annual report; stockholders, contents; perjury.

Sec. 7. At each annual meeting such corporation shall make a report to the stockholders, signed by a majority of the board of directors, verified by the oath of the president and secretary of said corporation, containing:

First, The amount of capital actually paid in;

Second, The amount invested in real estate, with a general description of the same;

Third, The amount of personal estate, with a general description thereof;

Fourth, The amount of their debts and credits as near as may be;

Fifth, A general condensed statement of their business and financial condition;

Sixth, The name of each stockholder and his residence and the number of shares held by him as appears by the books of said corporation at the date of such report; and if any person shall knowingly swear or affirm falsely in said report, he shall be deemed guilty of perjury, and punished accordingly.

HISTORY: CL 1897, 7624;—CL 1915, 10040;—CL 1929, 10310;—CL 1948, 455.7.

PERJURY: See Compilers' § 750.422 et seq.

455.8 First meeting; notice.

Sec. 8. When any corporation shall be formed under the provisions of this act, any 2 of those associated may call the first meeting of such corporations, at such time and place as they may appoint, giving notice as is provided in section 6 of this act: Provided, That such notice shall not be necessary when all of those associated shall by writing entered in the minutes of such meeting waive such notice and consent to act at such meeting.

HISTORY: CL 1897, 7625;—CL 1915, 10041;—CL 1929, 10311;—CL 1948, 455.8.

455.9 Board of directors; qualifications, election, terms, vacancy; stock, ceasing ownership; quorum.

Sec. 9. The board of directors shall consist of not less than 3 nor more than 9 members as the articles of association shall determine, who shall be stockholders of the cor-

poration. The full number of said board of directors shall be elected at the first meeting of such corporation and shall be divided into 3 equal classes; the first class shall hold their office for 1 year; the second class for 2 years and the third class for 3 years, and at each annual meeting thereafter, 1/3 of the total number of directors shall be elected who shall hold their office for 3 years and until their successors shall be elected. At any such election, a majority of the votes cast shall be sufficient to elect. Whenever a vacancy shall happen in the board of directors, such vacancy shall be filled by the remaining directors, such appointee to hold office until the next annual meeting, at which meeting there shall be elected by the stockholders a director to fill the unexpired term. If any director shall cease to own any stock of said corporation, he shall cease to be a director. A majority of the directors shall be a quorum for the transaction of business.

HISTORY: CL 1897, 7826;—CL 1915, 10042;—CL 1929, 10312;—CL 1948, 455.9.

455.10 Board of directors; powers.

Sec. 10. The board of directors shall have the management and control of the stock, business, finances, rights and interests, buildings and all property, real and personal, of the corporation, and shall have jurisdiction over the lands of the corporation and all streets, alleys, and highways passing through and over the same, or which said corporation may cause to be constructed, laid out or maintained therein, and the water within and in front of said lands and premises. The board of directors shall in no case in any 1 year, authorize any expenditure or incur any liability on behalf of such corporation to exceed 1,000 dollars unless authorized by a majority of all the shares of stock by said corporation in a meeting duly assembled: Provided, That in the county of Emmet the board of directors may authorize any expenditure or incur any liability on behalf of such corporation to an amount not exceeding 5,000 dollars in any 1 year.

HISTORY: CL 1897, 7827;—Am. 1905, p. 112, Act 83, Imd. Eff. May 3;—CL 1915, 10043;—CL 1929, 10313;—CL 1948, 455.10.

455.11 Board of directors; officers and employees, selection, removal, terms.

Sec. 11. The directors shall choose from their number, by ballot or otherwise, a president, secretary, and treasurer, and the latter 2 offices may be held by the same person, and shall have power to appoint and employ such other subordinate officers, agents, servants or employees as the by-laws of the corporation shall designate, or such as shall be necessary to the proper accomplishment of the purposes of the corporation, and such board of directors shall have the power to remove such president or other officer of such corporation, or agents, or employees, for cause, and appoint others in their places; such officers shall be elected annually and shall hold their offices for 1 year, and until their successors shall be elected.

HISTORY: CL 1897, 7828;—CL 1915, 10044;—CL 1929, 10314;—CL 1948, 455.11.

455.12 By-laws and rules; amendment.

Sec. 12. The stockholders shall have the power to make such reasonable by-laws not inconsistent with the laws of this state, or of the United States, as they shall deem proper for the management, control and disposition of the property, affairs and concerns of said corporation and may by such by-laws provide that the water within and in front of the lands and premises of such corporation shall be kept in a good sanitary condition, and by such by-laws, empower the board of directors of such corporation to prohibit any persons from carrying on the business of carrying goods, baggage or passengers on the lands of the association or the highways, streets or alleys thereof without a license from said board of directors first being had; to provide for the protection of the property of such corporation and occupants of its lands and premises from loss or damage by fire; to protect the occupants of its grounds from contagious diseases and to remove therefrom any and all persons afflicted with any such disease; to pre-

vent and prohibit on its grounds vice and immorality, and the selling of any spirituous or fermented liquors; to prohibit and abate all nuisances; to compel persons occupying any part of its said lands and premises to keep the same in good sanitary condition and to regulate the erection of buildings on the lots assigned and leased to the stockholders, and may provide that the capital stock of such corporation shall not be transferred without the consent of the board of directors first being had; and may provide rules and regulations for the management, control and maintenance of any hotel, club house or other buildings for entertainment, comfort or convenience of said corporation and its stockholders, and may regulate and determine the persons and number thereof which may be entertained or cared for at such hotel, club house or other building. All such by-laws, rules and regulations may be altered or amended by the stockholders in a meeting assembled at their will and pleasure.

HISTORY: CL 1897, 7629;—CL 1915, 10045;—CL 1929, 10315;—CL 1948, 455.12.

455.13 Books; inspection; stock, transfer.

Sec. 13. It shall be the duty of the directors of any such corporation to cause proper books to be kept by the secretary and treasurer, containing the names of all persons who are stockholders, together with their places of residence, and wherein shall be entered all matters and things pertaining to the affairs and business of said corporation, and just and true books of account; and the books of said corporation containing their business accounts shall at all reasonable times be open for the inspection of any of the stockholders: And provided, That no transfer of the certificate of the stock of such corporation shall be valid without the name being duly entered of the person to whom transferred on the books of the corporation, and the rules and by-laws of such corporation relating thereto being complied with.

HISTORY: CL 1897, 7630;—CL 1915, 10046;—CL 1929, 10316;—CL 1948, 455.13.

455.14 Capital stock; deemed personal property, transfer; lien on stock, enforcement; subscriptions; shares, issuance.

Sec. 14. The stock of every such corporation shall be deemed personal property, and may be transferred as shall be prescribed by this act and by the by-laws of the corporation, and such corporation shall at all times have a lien upon all the stock or property of its members invested therein, for all debts due from them to such corporation, which lien may be enforced by a sale of such stock under the provisions of section 15 of this act. The directors of any such company may from time to time receive subscriptions to stock in said company until the whole amount of the stock of the association shall be subscribed, but no certificate of shares in any such company shall be issued until the whole amount of the shares mentioned in such certificate shall have been paid in full to the company.

HISTORY: CL 1897, 7631;—CL 1915, 10047;—CL 1929, 10317;—CL 1948, 455.14.

455.15 Capital stock; subscriptions, payment; suit; sale, procedure; disposition of proceeds; purchaser, rights.

Sec. 15. The directors may require the subscribers to the capital stock of the corporation to pay the amount by them respectively subscribed, in such manner and in such installments as they may deem proper. If any stockholder shall neglect or refuse to pay any installment as required by a resolution of the board of directors, the said corporation may sue for the same in any proper action for that purpose, or so much of the stock of such delinquent stockholder as may be necessary to pay such installment so due may be sold by the directors at public auction at the office of the corporation, giving at least 30 days' notice of such sale in some newspaper published in the county where said office is located if there is a newspaper published in such county; if not, then in some newspaper published in some adjoining county; and in case of the sale of said stock, the proceeds thereof shall first be applied in payment of the installment

called for and the expenses of the sale and the residue, if any, shall be returned to the delinquent stockholder. Such sale shall entitle the purchaser to all the rights of a stockholder to the extent of the shares so purchased.

HISTORY: CL 1897, 7632;—CL 1915, 10048;—CL 1929, 10318;—CL 1948, 455.15.

455.16 Annual dues; levy, use, payment.

Sec. 16. It shall be lawful for the board of directors to provide for annual dues to be levied upon each share of stock which shall be paid by the holder thereof in such an amount and under such rules and regulations as shall be provided by the by-laws of such corporation, such annual dues and all sums realized thereby to be used for the purpose of paying the expenses attending the care, management and control of the grounds and property kept, occupied or used for the purposes set forth in the articles of association. The payment of such annual dues may be enforced by said corporation by some proper action at law, or by a sale of the shares of stock against which the same is assessed in the manner provided in section 15 of the act for the collection of installments of subscriptions to the capital stock.

HISTORY: CL 1897, 7633;—Am. 1909, p. 696, Act 296, Eff. Sept. 1;—CL 1915, 10049;—CL 1929, 10319;—CL 1948, 455.16.

455.17 Stockholders' liability; subrogation; contribution.

Sec. 17. The stockholders of all corporations formed under this act shall be jointly, severally and individually liable for all labor and services performed for such corporation, which said liability, founded on this statute [statute], may be enforced by a suit at law in an action of assumpsit, at any time after an execution in favor of the plaintiff shall be duly returned unsatisfied in whole or in part against said corporation: Provided, always, That if any or several of said stockholders shall, by any such proceedings, be compelled to pay any such sum to creditors, he or they may recover the same in full of the corporation, or may compel the stockholders jointly or severally, or any number of them, to contribute ratably to re-imburse him or them, in any action at law or in chancery.

HISTORY: CL 1897, 7634;—CL 1915, 10050;—CL 1929, 10320;—CL 1948, 455.17.

455.18 Annual report; contents, filing.

Sec. 18. All corporations formed under the provisions of this act shall annually, between the months of March and the end of the succeeding August, make a report which shall state the amount of the capital stock actually paid in and the amount of money borrowed if any, which report shall be signed by a majority of the directors and verified by the oath of the president or secretary and be filed in the office of the clerk of the county where its articles are filed and in the office of the secretary of state.

HISTORY: CL 1897, 7635;—CL 1915, 10051;—CL 1929, 10321;—CL 1948, 455.18.

ANNUAL REPORT: See Compilers' § 450.81.

Sec. 19.

HISTORY: CL 1897, 7636;—Rep. 1915, p. 480, Act 314, Eff. Jan. 1, 1916, see Compilers' § 681.1. This section related to service of process and is merged in Sec. 29 of Ch. XIII of the Jud. Act (1915).

455.20 Stockholders; map or plat of land; record; use as evidence; street, public places.

Sec. 20. If the by-laws of any such corporation shall provide that the stockholders shall be entitled to select a lot on the lands of said corporation for the purpose of building thereon, it shall be the duty of the directors to cause the lands of said company to be surveyed and platted by a civil engineer, surveyor or other competent per-

son, and to cause a true map or plat thereof to be made. Such map or plat shall in every case be made on a scale not less than 200 feet to an inch, on sheets of good muslin backed paper 18 inches by 24 inches in size. There shall be written upon the paper on which said map or plat shall be made, a full and detailed description of the land embraced in said map or plat, showing the township and range in which such land is situated, and the sections and parts of sections platted and containing the name of the corporation which is the proprietor thereof, and of the engineer, surveyor or person making said map or plat with the date on which the same is made. The same shall be signed by such corporation by its president and secretary, and the engineer, surveyor or person making the same, and shall be witnessed and acknowledged by such proprietor in the same manner as deeds conveying lands are required to be witnessed and acknowledged. The sections and parts of sections platted shall also be designated by the lines drawn upon such map or plat with appropriate letters and figures, and in case of a subdivision of lots or blocks of a previous survey, the outlines of the original or previous lots or blocks so subdivided shall be designated by lines drawn upon such map or plat and shall be marked with appropriate letters and figures. There shall also be on such map or plat, a plain designation of the cardinal points and a correct scale.

The map or plat shall be recorded in the office of the register of deeds of the county in which the land platted is situated. For the purpose of such recording, the said proprietor shall cause to be made by a civil engineer, surveyor or other competent person on the same scale and on paper of the same size and quality as that on which the original map or plat is drawn, an exact duplicate of said map or plat with the detailed description, signatures, witnesses and acknowledgment as above specified. When such map or plat shall conform or shall be made to conform in all respects to requirements of this act, the register and said engineer, surveyor or person who made the same shall each carefully compare said copy with said original map or plat, and if correct, or when made correct, it shall be certified by the said register and said engineer, surveyor or person who made the same, who shall certify that they have carefully compared the same with said map or plat and that it is an exact copy thereof and the whole of such original map or plat. The said register shall then securely fasten the said copy in the book provided by the laws of this state for the recording of town plats, and such copy so fastened in said book, shall be held and taken to be a record of the said map or plat with a like effect as if the said map or plat had been actually transcribed by said register in a book in his office, but in no case shall any such map or plat be recorded until it shall be made to conform to all the requirements of this act. The register shall certify on such map or plat when it was recorded as aforesaid with reference to the book or page where recorded, and shall note in such record, the time when made, and keep an index thereof the same as required by the laws of this state relating to township plats. The original map or plat with a certificate of record endorsed thereon, the record thereof made as aforesaid, or a properly certified transcript of such record shall be received in all courts of this state as prima facie evidence of the making and recording of such map or plat in conformity with the provisions of this act. For all service by this act required to be performed by a register of deeds in respect to any such map or plat brought into his office for record, said register shall be entitled to receive the sum of 2 dollars which shall be paid by the proprietor of the ground platted: Provided, That the making and recording of said plat in the manner aforesaid shall not operate or be construed to dedicate or surrender to the public in any manner whatsoever or any part or portion of the lands so platted: And provided further, That all streets, avenues, alleys, parks or public places laid out and designated on such plat, shall be and remain at all times for the common use, benefit and advantage of all of the stockholders of such company, and shall not be changed, vacated or altered except on a vote of 4/5 of the shares of stock of said corporation at a meeting duly called for that purpose.

HISTORY: CL 1897, 7837;—CL 1915, 10052;—CL 1929, 10322;—CL 1945, 455.20.

455.21 Stockholders; map or plat of land; ownership, sale; dissolution, disposition of lots; parks and walks dedicated to public use.

Sec. 21. Whenever any such corporation shall cause to be platted any part or portion of its lands in the manner prescribed in the foregoing section of this act, it may by its by-laws, provide the manner in which the lot or lots may be assigned, allotted or confirmed to its several stockholders, and the terms and conditions upon which the same shall be held by them: Provided, That any such lot or lots so assigned allotted or confirmed to such stockholders shall be deemed and considered as appurtenant and attached to a certain share or shares of capital stock in such corporation, which shall be designated at the time of such assignment, allotment or confirmation, and any assignment, transfer or other disposition of such capital stock shall be held to carry with it, the right to such lot or lots so appurtenant or attached to the same; and it shall not be lawful for such stockholder to in any manner whatsoever, sell, assign, transfer or dispose of any right, title, claim or interest he may have or acquire in any lot or lots assigned, allotted or confirmed under such by-laws and regulations, separated or detached from the share or shares of capital stock to which it shall be appurtenant or attached. In case such corporation should for any reason be dissolved [dissolved] or wound up by any court of competent jurisdiction, by reason of the termination of its charter or otherwise, each stockholder to whom a lot or lots have been assigned, allotted or confirmed, shall be entitled to receive the same in fee upon complying with such terms and conditions as may be imposed by the court having jurisdiction of the winding up of such corporation and all parks, roads or walks shown upon the plat of the property of such corporation recorded as aforesaid, shall be and become dedicated to the public use as parks, roads and walks in the same manner and to the same extent as parks, roads and drives are or may be so dedicated within the limits of cities, towns or villages in this state.

HISTORY: CL 1897, 7638;—CL 1915, 10053;—CL 1929, 10323;—CL 1948, 455.21.

455.22 Repeal; saving clause; provisions governing act.

Sec. 22. Act No. 151 of the session laws of 1869, entitled "An act to provide for the formation of joint stock companies for the purpose of owning and maintaining skating parks or rinks and parks kept for ornament, recreation and amusement," approved April fifth, 1869, and Act No. 164 of the session laws of 1889, entitled "An act to authorize the formation of corporations for the purpose of owning and improving summer resorts," approved June 19, 1889, and all acts amendatory and supplemental to said acts or either of them are hereby repealed. But the repeal of the foregoing acts shall not dissolve any corporation formed or existing under them and all corporations of the nature of corporations authorized to be organized under this act now organized and existing under said several acts in this section mentioned, or either of them, and all corporations which have attempted to organize and are now doing business under said acts or either of them, shall be deemed and taken to be organizations under this act and all rights, obligations and liabilities contracted, acquired or incurred by any such corporations thereunder, shall continue of the same force and effect as though such acts or laws had not been repealed, and all such corporations from and after taking effect of this act, shall be subject to all the provisions hereof as fully as though such corporation had been organized hereunder, and such corporations may continue to carry on the business specified in the articles of association under the provisions of this act as lawfully as if said acts mentioned in this section were not repealed.

HISTORY: CL 1897, 7638n;—CL 1915, 10054;—CL 1929, 10324;—CL 1948, 455.22.

NOTE: Act 151 of 1869, above referred to, is How. 4824-4842; Act 164 of 1889 is How. 3983g4-3983h5.

455.23 Special dues; purpose, time, enforcement.

Sec. 23. It shall be lawful for the stockholders at a special meeting called for that

purpose by a vote of a majority of all the capital stock, to authorize the board of directors to provide for special dues additional to those provided for in section 16, not exceeding 25 dollars per share in any 1 year, and such special dues shall be used only for the purpose of paying any existing indebtedness of said corporation or for improving and bettering the lands and property of said corporation or for improving the sanitary condition thereof, providing protection from loss or damage by fire or water, or erecting, purchasing or maintaining any hotel, club house or other building for the entertainment, comfort or convenience of said corporation and its stockholders, and any resolution adopted by said stockholders' meeting for such purpose shall determine the purpose for which such special dues shall be expended and the period of time during which they may be levied. The payment of dues authorized under the provisions of this section may be enforced by said corporation in the same manner as is provided in section 16 for the enforcement of the annual dues.

HISTORY: Add. 1903, p. 150, Act 127, Imd. Eff. May 20;—Am. 1909, p. 696, Act 296, Eff. Sept. 1;—CL 1915, 10055;—CL 1929, 10325;—CL 1948, 455.23.

455.24 Associate members; terms; stock, disposition.

Sec. 24. It shall be lawful for the stockholders of any such corporation, either at the time the articles shall be executed, or at any subsequent period, by a vote of 2/3 of the capital stock, to provide the terms upon which persons may become associate members of the organization, with or without being stockholders therein, and also to provide for the limitation upon sale or other disposition of such stock and for the custody of the certificates thereof.

HISTORY: Add. 1903, p. 150, Act 127, Imd. Eff. May 20;—CL 1915, 10056;—CL 1929, 10326;—CL 1948, 455.24.

Act 39, 1889, p. 38; Imd. Eff. Mar. 29.

AN ACT to authorize the formation of corporations for the purchase and improvement of grounds to be occupied for summer homes, for camp-meetings, for meetings of assemblies or associations and societies organized for intellectual and scientific culture and for the promotion of the cause of religion and morality, or for any or all of such purposes.

The People of the State of Michigan enact:

455.51 Summer resort and assembly associations; incorporation, purpose.

Sec. 1. That any number of persons not less than 10, who may desire to form an association for the purchase and improvement of lands to be occupied for summer homes, for camp-meetings, for meetings and assemblies of associations and societies organized for scientific or intellectual culture and for the promotion of religion and morality, or any or all such purposes, may, with their associates, successors and assigns, become a body politic and corporate under any name by them assumed in their articles of incorporation, in the manner herein provided.

HISTORY: How. 3983d-6;—CL 1897, 7639;—CL 1915, 10062;—CL 1929, 10327;—CL 1948, 455.51.

SUMMER RESORT ASSOCIATION: Excepted from the provisions of Act 327, 1931, see Compilers' § 450.3.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

REPORTS: See Compilers' § 450.81.

AMENDMENT OF ARTICLES: See Act 134 of 1905, being Compilers' 455.91.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.1 et seq.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

455.52 Articles of association; capital stock; reorganization.

Sec. 2. The persons so associating shall sign articles of association which shall state:

First, The corporate name of the association;

Second, The names and residences of the persons thus associating;

Third, The purpose or purposes of such association;

Fourth, The number of trustees to manage the business of the association and their terms of office, also the names of trustees for the first year or until the annual meeting of the association;

Fifth, The county in which its real estate shall be situate and its meetings held;

Sixth, The term of its existence, which shall not exceed 30 years;

Seventh, They may also state therein the qualifications of persons eligible to the office of trustee and the terms and conditions of membership, and such other provisions for the management of the business, and the disposition of the real and personal property of the association, as they may desire, not inconsistent with the provisions of this act and the laws of this state. [The persons so associating may, by a majority vote, provide for capital stock, in which case the articles of association shall state the amount thereof, which shall not exceed 50,000 dollars, in shares of 25 dollars each. Any corporation or association heretofore organized under any other law of this state, for the purposes named in this act, may, by a majority vote of the stock represented at any annual meeting thereof, re-organize under the provisions of this act.]

HISTORY: How. 3983d-7;—Am. 1897, p. 44, Act 39, Imd. Eff. March 28;—CL 1897, 7640;—CL 1915, 10063;—CL 1929, 10328;—CL 1948, 455.52.

AMENDMENT OF ARTICLES: See Act 134 of 1905, being Compilers' § 455.91.

EXTENSION OF CORPORATE LIFE: See Act 12 of 1901, being Compilers' §§ 455.251 and 455.252.

455.53 Articles; execution; record.

Sec. 3. The execution of such articles of association shall be acknowledged by the persons signing the same before some officer authorized to take the acknowledgment of deeds. Such articles shall thereupon be recorded in the office of the county clerk of the county in which the real estate of the association is situated, and the county clerk, after making such record, shall certify upon such articles the date and place of record thereof and return the same to the association.

HISTORY: How. 3983d-8;—CL 1897, 7641;—CL 1915, 10064;—CL 1929, 10329;—CL 1948, 455.53.

455.54 Body corporate; property; powers.

Sec. 4. Upon compliance with the foregoing provisions of this act, the persons so associating, their successors and assigns, shall become and be a body politic and corporate by the name assumed in their articles of association, and shall have and possess all the general powers and privileges and be subject to all the liabilities of a corporation. Such corporation may have a common seal; sue and be sued in all the courts of this state; may take and acquire by purchase, devise or gift, hold and possess within the county in which such articles of association are recorded, such real and personal property as it may desire for the purposes mentioned in its articles of association: Provided, always, It shall not at any time own or hold to exceed 350 acres of land. The trustees of such association, when thereunto authorized by a majority vote of the members of such association voting thereon at any annual meeting, or any special meeting called expressly for that purpose, or by a general by-law adopted and recorded, may sell, give, grant and convey or lease said lands or any part or portion thereof to such parties and upon such terms and subject to such provisions, reservations and restrictions as they may deem advisable.

HISTORY: How. 3983d-9;—CL 1897, 7642;—CL 1915, 10065;—CL 1929, 10330;—CL 1948, 455.54.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

455.55 Corporation; powers.

Sec. 5. Such corporation may improve and ornament its lands, erect and maintain churches, houses of worship, and other buildings thereon for its own use, or for the use and occupation of assemblies, societies and people who may desire the same, and may

hold meetings, employ speakers and lecturers for the promotion of intellectual and scientific culture, religion and morals, and may also lease portions of its lands to societies organized for the promotion of like purposes. It may cause its lands to be drained, construct docks necessary and convenient upon the banks or shores of any stream, bay or lake upon which its lands border, and may make such provision as may be necessary for supplying its grounds and the people thereon with water and for sanitary and fire purposes.

HISTORY: How. 3983e;—CL 1897, 7643;—CL 1915, 10066;—CL 1929, 10331;—CL 1948, 455.55.

455.56 Annual meeting; place; board of trustees, report, powers.

Sec. 6. The annual meeting of such association shall be held at some suitable place on its grounds at such time as shall be fixed by the board of trustees, and may adjourn from day to day as may be necessary for the transaction of its business. At the first annual meeting the entire number of the board of trustees shall be elected, and at each annual meeting thereafter there shall be elected such number of trustees as shall be necessary to fill the places of trustees whose term of office then expires, and all vacancies in such board. Such election shall be by ballot, and any person receiving a majority of all the votes cast shall be elected. Any and all business of the association may be considered and acted upon at such meeting, and such instructions given to the board of trustees as may be determined upon. If, for any reason, the annual meeting of the association shall not be held at the time fixed therefor, the board of trustees shall, within 60 days thereafter, call a special meeting of the association, at a time fixed by it for that purpose, and notify each member of the association thereof by mailing a notice addressed to him or her to his or her place of residence, if known; and such special meeting, when so called and held, shall have the same powers as the annual meeting would have had if held at the time fixed therefor. At any meeting of the association each member thereof shall be entitled to 1 vote. The trustees shall make to such annual meeting a report, in writing, of their doings and of the management of the business of the association, the condition of its property, concerns, and its assets and liabilities, and such other matters as to them shall seem proper.

HISTORY: How. 3983e-1;—CL 1897, 7644;—CL 1915, 10067;—CL 1929, 10332;—CL 1948, 455.56.

455.57 Board of trustees; quorum, vacancy; election of officers, terms.

Sec. 7. Such trustees shall be known and designated as the board of trustees. They shall elect a president, vice-president, a secretary and a treasurer from their members, who shall hold their offices for 1 year and until their successors shall be elected. They shall discharge the usual duties attached to such offices and such other duties as may be prescribed by the by-laws or general directions of the association. Two-thirds of the members of the board shall constitute a quorum for the transaction of business, and any vacancy in the board may be filled by the board, and the trustee or trustees so appointed shall hold office until the next annual meeting of the association.

HISTORY: How. 3983e;—CL 1897, 7645;—CL 1915, 10068;—CL 1929, 10333;—CL 1948, 455.57.

455.58 Board of trustees; powers; annual meeting; streets, control.

Sec. 8. The board of trustees shall have the management and control of the business, finances, rights, interests, buildings and all property, real and personal, of the association, and shall represent the association with full power and authority to act for it in all things whatsoever, subject only to the provisions of this act and the by-laws of the association and any special directions that may be given in regard thereto by a vote of any annual meeting. It shall fix the time for holding the annual meeting of the association and all special meetings thereof. Such board shall have jurisdiction over the lands of the association, the streets and highways passing through or over the same and the water within or in front thereof, and all buildings thereon, whether leased or not; to keep all such lands and premises of the association and the water within or in front

thereof in good sanitary condition; to preserve the purity of the waters of all streams, springs, bays or lakes within or bordering upon said lands; to license such number of drays as may be thought desirable upon such terms and conditions as the board shall determine; and to prohibit any person from carrying on the business of carrying goods, trunks, baggage or commodities on the lands of the association or the highways, streets or alleys thereon without such license first being had; to provide for protection from loss or damage from fire and to protect the occupants of its grounds from contagious diseases; to remove therefrom any and all persons afflicted with any such disease; to prevent and prohibit on its grounds vice and immorality; to prohibit all disorderly assemblies and conduct, all gaming and disorderly houses, all billiard tables, bowling alleys, fraudulent and gaming devices, the selling or giving away any spirituous or fermented liquors; to prohibit and abate all nuisances and all slaughter houses, meat markets, butcher shops, glue factories, and all such other offensive houses and places as the board of trustees may deem necessary for the health, comfort and convenience of the occupants upon such lands; to prohibit immoderate driving or riding upon said premises or the streets and highways lying along or across the same; to prevent the running at large of any dog or other animal; to compel persons occupying any part of said premises to keep the same in good sanitary condition and the streets, sidewalks and highways in front thereof free from dirt and obstruction and in good repair; to fix the place or places where and the time when persons may bathe in the waters within or in front of its land and regulate the same in the interests of decency and good morals; to prohibit all boating upon any of its said waters on Sunday to and from the lands of the association; and they may also prohibit or consent to the erection and maintenance of stables and horse barns upon said grounds: Provided always, That the right of the public to control, repair and use all such highways and streets as are now or may hereafter be used and necessary for the public travel through or across said grounds shall not be affected hereby: And further provided, That the public shall not be liable for the condition, safety or repair of such streets, alleys or highways, as may be laid out and used under the authority of said association. The board may also prohibit or consent to the holding of meetings or assemblies for religious or other purposes upon its grounds, and may fix and determine the terms and conditions upon which hotels and boarding houses may be kept thereon.

HISTORY: How. 3983e-3;—Am. 1895, p. 236, Act 116, Imd. Eff. May 4;—CL 1897, 7646;—CL 1915, 10069;—CL 1929, 10334;—CL 1948, 455.58.

455.59 Board of trustees; by-laws and orders, amendment, rescission.

Sec. 9. Such board of trustees may from time to time make such orders and by-laws relating to the matters hereinbefore specified and to the business and property of the association as shall seem proper, and may amend the same from time to time, provided always that the same may be amended or rescinded by a majority vote at any annual meeting of the association.

HISTORY: How. 3983e-4;—Am. 1895, p. 237, Act 116, Imd. Eff. May 4;—CL 1897, 7647;—CL 1915, 10070;—CL 1929, 10335;—CL 1948, 455.59.

455.60 Violation of by-laws; penalty.

Sec. 10. Any person who shall violate any of such by-laws made as in said last section provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding 25 dollars or imprisonment in the county jail not to exceed 30 days, or by both such fine and imprisonment in the discretion of the court, which fine shall go to the same fund as other fines for misdemeanor in the township where such association lands may be located.

HISTORY: How. 3983e-5;—Am. 1895, p. 237, Act 116, Imd. Eff. May 4;—CL 1897, 7648;—CL 1915, 10071;—CL 1929, 10336;—CL 1948, 455.60.

455.61 Marshal; appointment by board of trustees, compensation, duties, removal, powers, responsibility.

Sec. 11. The board of trustees may, for the preservation of peace and good order, appoint a marshal, whose duties and compensation shall be fixed by such board in and by a by-law passed and approved as hereinbefore provided for the adoption and approval of its by-laws; he shall have all the powers conferred upon, and the duties required of, constables elected under the general laws of this state, for the preservation of peace and good order upon the grounds of the association; and said association shall in its corporate capacity be held responsible to the public and parties interested for his official conduct in lieu of other bonds or security therefor; he may be removed at any time by a 2/3 vote of the trustees, with or without cause. In all cases where any fees or expense shall be due to or incurred by him in the discharge of his duties in any matter that would be an offense against the general laws of the state, his fees and charges shall be regulated and paid in the same manner as other constables, but in all matters under the by-laws or regulations of the association, provision shall be made therein for his payment by the association.

HISTORY: How. 3983e-6;—CL 1897, 7649;—CL 1915, 10072;—CL 1929, 10337;—CL 1948, 455.61.

455.62 Marshal; authority over persons arrested.

Sec. 12. The marshal shall have authority to take any person arrested, before some justice of the peace or police magistrate of the township in which the association lands are situated, to be dealt with according to law.

HISTORY: How. 3983e-7;—CL 1897, 7650;—CL 1915, 10073;—CL 1929, 10338;—CL 1948, 455.62.

455.63 Property; injury or destruction, penalty.

Sec. 13. Any person who shall willfully destroy, injure or remove any statuary, fence, fountain, hydrant, building or other structure placed on the grounds of the association, any dock, landing, quay or boat house thereon, or boat upon the waters upon which such lands are located, the property of any association incorporated under this act, or of any individual member thereof, or who shall willfully cut or injure any tree, shrub or plant upon such grounds, or shall deposit in any spring, stream, reservoir or water pipe, or water upon or within such grounds or in front thereof, any filth or impurity, or who shall in any way injure any water pipe, lock or reservoir for the storage or passage of water along or upon such grounds, or any sewer or drain, shall be deemed guilty of a misdemeanor, and shall be liable, on conviction thereof, to a fine not exceeding 25 dollars, or imprisonment in the county jail not exceeding 30 days, or by both such fine and imprisonment, in the discretion of the court.

HISTORY: How. 3983e-8;—Am. 1895, p. 237, Act 116, Imd. Eff. May 4;—CL 1897, 7651;—CL 1915, 10074;—CL 1929, 10339;—CL 1948, 455.63.

455.64 Property; taxation, exemption.

Sec. 14. The property of such corporation shall be subject to taxation, except all houses of public worship, and also all school buildings used exclusively for school purposes, and the lot upon which they stand, and the furniture therein, which shall be exempt therefrom.

HISTORY: How. 3983e-9;—CL 1897, 7652;—CL 1915, 10075;—CL 1929, 10340;—CL 1948, 455.64.

TAXATION: See Compilers' § 211.1 et seq.

455.65 Property; disposition; conflict of powers and duties.

Sec. 15. Every corporation organized under the provisions of this act, may, at any time within 2 years next preceding the time fixed for the termination of its existence, make such disposition of its property, real and personal, as a 2/3 majority of the members present and voting at an annual meeting, may, by vote, direct: And provided, That, at the time of organization or whenever during the existence of any such corporation the lands of such association shall be embraced within the corporate limits of

any city or village that then the powers and obligations herein conferred upon such association and its officers, partaking of a public or municipal nature, so far as the same shall conflict or interfere with the powers and duties of such city or village, those of said association, shall to that extent, be suspended, and the provisions of this act are and shall be limited in their operation in that regard.

HISTORY: How. 3983f;—CL 1897, 7653;—CL 1915, 10076;—CL 1929, 10341;—CL 1948, 455.65.

455.66 Assessment of association.

Sec. 16. Whenever the board of trustees of any such association shall serve upon the assessing officer of the township, city or village in which its real estate is situated a notice in writing, signed by its secretary and under its corporate seal, requesting that all of the cottages and buildings owned by its lessees, situate upon the lands of the association, and not exempt from taxation as hereinbefore provided, be assessed to the association as a part of its real estate, the same as if owned by it, then and thereafter all such real estate and cottages, and buildings thereon, shall be assessed to such association as real estate and taxes paid thereon, by the association the same as if in fact the owner thereof, and no lease had been made.

HISTORY: Add. 1901, p. 87, Act 57, Imd. Eff. April 11;—CL 1915, 10077;—CL 1929, 10342;—CL 1948, 455.66.

455.67 Assessment; collection from members.

Sec. 17. Whenever the real estate of any such association and the cottages and buildings thereon shall be assessed to the association and taxes paid as provided in the last preceding section, the association may assess, levy and collect from its several lessees, owners of cottages and buildings, such fair and just proportion of the taxes thus levied and paid as the value of such cottages and buildings shall bear to the total valuation of such real estate assessed in the manner aforesaid, such assessment and levy to be made in the manner hereinafter provided, and the amount to be paid by any such owner or lessee when so fixed and determined shall constitute and be a debt against such owner of and a lien upon the cottage or building thus assessed, payable with interest as hereinafter provided, and the association may enforce the payment thereof in the same manner as in the case of non-payment of rent or non-performance of any condition in the lease under which said lessee holds, and no transfer or assignment of any such lease shall be valid until such assessment or tax is paid.

HISTORY: Add. 1901, p. 87, Act 57, Imd. Eff. April 11;—CL 1915, 10078;—CL 1929, 10343;—CL 1948, 455.67.

455.68 Board of assessors; election, terms, vacancy.

Sec. 18. There shall be elected at each annual meeting of the association, or at some special meeting thereof called for that purpose, 3 assessors, members of the association, to be known and called the board of assessors, who shall hold their office until the next annual meeting. In case of a vacancy in such board, caused by death, resignation, failure to accept office, or otherwise, the board of trustees may fill such vacancy by the appointment of some suitable member of the association, who shall hold the office until the next annual meeting.

HISTORY: Add. 1901, p. 87, Act 57, Imd. Eff. April 11;—CL 1915, 10079;—CL 1929, 10344;—CL 1948, 455.68.

455.69 Board of assessors; members, assessment; trustees, report; interest; fees.

Sec. 19. It shall be the duty of such board of assessors and they are hereby authorized and empowered, to ascertain the amount of all taxes paid by the association, as herein contemplated, as soon as practicable after the payment thereof, and thereupon to fix and determine on the basis aforesaid the sum or sums of money to be paid to the association by each of the owners of such cottages or buildings as his, her, or their just proportion of taxes paid by the association, and shall report to the board of trustees such determination and finding in writing, and the sum or sums of money thus fixed and determined, as shown by said report, shall be final and conclusive upon all parties,

and shall constitute an indebtedness and lien as aforesaid payable from the date of filing of such report with the collection fees allowed township treasurers for the collection of taxes. To all taxes unpaid on the first day of March next after their assessment, there shall be added interest and collection fees at the same rate as provided by law for the non-payment of taxes on and after said date.

HISTORY: Add. 1901, p. 88, Act 57, Imd. Eff. April 11;—CL 1915, 10080;—Am. 1929, p. 549, Act 218, Eff. Aug. 28;—CL 1929, 10345,—CL 1948, 455.69.

455.70 Board of assessors; report; board of trustees, additions and corrections.

Sec. 20. The board of trustees may correct any error or mistake in such report in the name of any owner or lessee of any such cottage or building, or of the description of the premises upon which the same is situated, and insert therein the right name and description of any such premises, and may also insert therein any cottage or building liable to be assessed as herein contemplated which does not appear in such report with apt description thereof, and assess and determine the just and fair amount that should be paid by the owner thereof, and the amount thus determined shall constitute a debt against the owner of such cottage or building and a lien thereon, and have the same force and effect as if made by said board of assessors and embraced in their report.

HISTORY: Add. 1901, p. 88, Act 57, Imd. Eff. April 11;—CL 1915, 10081;—CL 1929, 10346;—CL 1948, 455.70.

455.71 Board of assessors; report, majority rule.

Sec. 21. The finding and determination and report of a majority of the members of the board of assessors, as set forth in their report, shall have the same force and effect as if the same had been made and the report signed by the entire board.

HISTORY: Add. 1901, p. 88, Act 57, Imd. Eff. April 11;—CL 1915, 10082;—CL 1929, 10347;—CL 1948, 455.71.

455.72 Highway assessments; expenditure.

Sec. 22. All moneys assessed, levied and paid upon the property of such association for highway purposes, including labor tax or assessment, shall be expended and laid out upon the highways and streets upon or running across the lands of the association at such time and times, at such place and places, and in such manner as shall be directed by the board of trustees, or by the association's superintendent of the grounds: Provided always, That such expenditure shall not in any manner do away with, lessen or abridge the jurisdiction and control of the association or its trustees over or upon such streets and highways hereinbefore granted.

HISTORY: Add. 1901, p. 88, Act 57, Imd. Eff. April 11;—CL 1915, 10083;—CL 1929, 10348;—CL 1948, 455.72.

Act 134, 1905, p. 184; Imd. Eff. May 23.

AN ACT to authorize any corporation organized under Act No. 39 of the Public Acts of 1889, of this state, entitled "An act to authorize the formation of corporations for the purchase and improvement of grounds to be occupied for summer homes, for camp meetings, for meetings of assemblies or associations and societies organized for intellectual and scientific culture and for the promotion of the cause of religion and morality, or for any or all such purposes," to amend its articles of incorporation.

The People of the State of Michigan enact:

455.91 Articles of incorporation; amendment.

Sec. 1. That any corporation organized under Act No. 39 of the Public Acts of 1889 of this state, entitled "An act to authorize the formation of corporations for the purchase and improvement of grounds to be occupied for summer homes, for camp meetings, for meetings of assemblies or associations and societies organized for intellectual and scientific culture and for the promotion of the cause of religion and morality, or

for any or all such purposes," may alter and amend its articles of incorporation or association at any annual meeting of the members of the association, by a resolution adopted by a 2/3 vote of all members present and voting thereon, and such amendment shall be certified by the president and secretary under the seal of the corporation and recorded in the same manner as the original articles of incorporation: Provided always, That no such amendment shall change the general purpose for which such corporation was formed.

HISTORY: CL 1915, 10084;—CL 1929, 10349;—CL 1948, 455.91.

NOTE: Act 39 of 1889, above referred to, is Compilers' §§ 455.51 to 455.72.

Act 69, 1887, p. 72; Imd. Eff. Apr. 15.

AN ACT to authorize the incorporation of suburban homestead, villa park and summer resort associations.

The People of the State of Michigan enact:

455.101 Suburban homestead, villa park and summer resort associations; incorporation; purposes; corporate life; trustees, number, election.

Sec. 1. That any number of persons not less than 5 who shall desire to form an association for the purpose of purchasing, holding, improving and disposing of lands or lots for suburban homesteads or residences, or for a villa park or summer resort, may meet at such time and place as they or a majority of them may agree, and appoint a chairman and secretary by vote of a majority of the persons present at the meeting, and proceed to form an association by determining on a corporate name, by which the association shall be known, and the period for which it is incorporated, not exceeding 30 years, the number of trustees to manage the concerns of the association, which number shall not be less than 3 nor more than 13, and the day in each year upon which the future annual elections of trustees shall be held, and thereupon may proceed to elect by ballot the number of trustees so determined upon, and the trustees so elected shall hold their offices for 1 year, and until their successors are elected and qualified.

HISTORY: How. 3983f-1;—CL 1897, 7654;—CL 1915, 10085;—CL 1929, 10350;—CL 1948, 455.101.

SUMMER RESORT ASSOCIATIONS: Excepted from the provisions of Act 327, 1931, see Compilers' § 450.3.

REPORTS: See Compilers' § 450.81.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

EXTENSION OF CORPORATE LIFE: See Act 12 of 1901, being Compilers' §§ 455.251 and 455.252.

CHANGE IN NAME: See Compilers' § 450.1 et seq.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

455.102 Certificate; acknowledgment, contents, recording, filing.

Sec. 2. The chairman and secretary of the meeting shall within 10 days after such meeting make a written certificate and sign their names thereto, and acknowledge the same before an officer authorized to take acknowledgments of conveyances; which certificate shall state the names and residences of the associates who attended such meeting; the corporate name of the association determined upon by the majority of the persons who met, the number of trustees fixed on to manage the concerns of the association; the names of trustees chosen at the meeting and the day fixed on for the annual election of trustees, which certificate shall be recorded in the clerk's office of the county in which the property of the association to be acquired as hereinafter provided is situated, in a book to be provided for such purpose, and a duplicate thereof filed in the office of the secretary of state.

HISTORY: How. 3983f-2;—CL 1897, 7655;—CL 1915, 10086;—CL 1929, 10351;—CL 1948, 455.102.

455.103 Corporate powers; articles, certified copy as evidence; trustees, powers.

Sec. 3. When a [the] certificate shall have been recorded and filed as aforesaid, the association mentioned therein shall be deemed legally incorporated and shall have and possess the general powers and privileges, and be subject to the liabilities of a corporation. Such association may adopt a common seal, and may sue and be sued in and by its corporate name, in the courts of this state and of the United States, and a certified copy of its articles of association shall be prima facie evidence in all courts and proceedings of the organization of such association. The affairs and property of such association shall be managed by the trustees, who may make all necessary by-laws, rules and regulations for such purpose, subject to the ratification of a majority of the lot owners, and who shall annually appoint from among their own number a president and vice-president, and also appoint a secretary and treasurer from members of the association other than the trustees, if deemed expedient so to do, said officers to hold their places for such term, and under such conditions and requirements as the by-laws of the association may provide.

HISTORY: How. 3983f-3;—CL 1897, 7656;—CL 1915, 10067;—CL 1929, 10352;—CL 1948, 455.103.
SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

455.104 Property; acquisition, use, disposition.

Sec. 4. Any association incorporated under this act may take by purchase, devise or gift, and hold within the county in which the certificate of its incorporation is recorded, not exceeding 320 acres of land to be held and possessed by it, for the purposes mentioned in the first section of this act. The trustees may sell and convey or lease the said lands, or any portion thereof, for such price, and upon such terms as they may deem advisable, and subject to such conditions and restrictions, as may be imposed upon the same, by rules and regulations to be adopted by them, and inserted in, or annexed to conveyances of the same. Any such association may hold personal property to an amount not exceeding 20,000 dollars, besides sums of money that may arise from the sale of lots or plots of land as hereinbefore provided.

HISTORY: How. 3983f-4;—CL 1897, 7657;—CL 1915, 10068;—CL 1929, 10353;—CL 1948, 455.104.

455.105 Trustees; election, vacancy.

Sec. 5. The annual election of trustees shall be held on the day prescribed in the certificate of incorporation, and at such hour and place as the trustees shall direct, notice of which election shall be given by publication for 4 successive weeks in some paper published in the county in which the real estate of such association is situated. And if there be no paper printed in such county, then such notice shall be published as aforesaid, in some newspaper printed in the city of Lansing in this state. The trustees chosen at any election subsequent to the first, shall hold their offices for 1 year and until their successors are elected and qualified. The election shall be by ballot, and every person of full age, the owner or holder of 1 or more lots or plots, purchased from the association or its grantees as hereinbefore provided, or the owner or holder of a sufficient number of shares as provided in the seventh section of this act, to entitle such person to vote according to the terms of the agreement authorized by said section, or if there are more than 1 owner or holder of any such shares, or of any such lot or plot, then such 1 of them as the majority of joint owners or holders shall designate to represent such shares or such lots or plots, may, either in person or by proxy, cast 1 vote for each 1, or other number of shares as authorized and specified in said agreement, and 1 vote for each lot or plot by them owned or held as aforesaid, and the persons receiving a majority of all the votes given at such election, shall be declared duly elected as trustees to succeed those whose term of office expires: Provided, That in all elections after the first, the trustees shall be chosen from among the owners of lots or plots. Va-

cancies in the office of trustee [trustees] or of president or vice-president may be filled in such manner as shall be prescribed by the by-laws of the association.

HISTORY: How. 3983f-5;—CL 1897, 7658;—CL 1915, 10069;—CL 1929, 10354;—CL 1948, 455.105.

455.106 Lots and plots; proceeds of sale, disposition.

Sec. 6. At least 60 per cent of the proceeds of all sales of lots and plots shall first be appropriated to the payment of the purchase money of the lands acquired by the association, until the purchase money shall be paid, and the residue thereof, as also the proceeds of all sales thereafter made, shall be applied to the payment of the assessments and taxes against the lands of the association, and to the preserving, improving and embellishing such lands and the roads, avenues and walks thereon and leading thereto, and also to the erection of docks or landings where said lands may be situate upon any lake or river, and for quays or breakwaters, necessary to the preservation of such lands from the encroachment of the waters of such lakes or rivers, or for the construction of steam or other yachts for ferriage or pleasure purposes, and to defraying the incidental expenses of the association: Provided, That any proceeds remaining after the payments aforesaid, and after providing in a reasonable manner for expenses and improvements to be thereafter incurred and made, may, upon the vote of 2/3 of the trustees in favor thereof, be distributed among the owners of lots purchased from the association or to the grantees thereof; such distribution to be made proportionately among such lot owners according to the sums originally paid for the lots or plots so owned or held by them to the association.

HISTORY: How. 3983f-6;—CL 1897, 7659;—CL 1915, 10069;—CL 1929, 10355;—CL 1948, 455.106.

455.107 Lots and plots; purchase agreement.

Sec. 7. Associations formed under the provisions of this act may agree with the person or persons from whom its lands, or any part thereof may be purchased, to pay for such lands, as the purchase price thereof, any specified part or portion of the proceeds of all sales of lots and plots made from such lands, in which case the part or portion of such proceeds so agreed upon, shall be first appropriated and applied to the payment of the purchase money of the lands so acquired, and the residue thereof shall be applied and distributed in all respects as provided in the last preceding section in respect to the residue of proceeds therein mentioned. The part or portion of the proceeds constituting the purchase price of the lands, may be divided into as many equal shares as may be agreed upon between the association and the person or persons from whom the said lands are purchased; and the said shares shall entitle the owners thereof to such number of votes at any election for trustees of the association, and shall be transferable on the books of the association, in such manner as shall also be agreed upon between the said parties. In all cases where lands shall be purchased and agreed to be paid for in the manner herein provided, the price for lots or plots specified in the agreement between the association and the person or persons from whom the said lands are purchased, shall not be changed without the written consent of a majority in interest of such persons, their heirs, representatives and assigns.

HISTORY: How. 3983f-7;—CL 1897, 7660;—CL 1915, 10061;—CL 1929, 10356;—CL 1948, 455.107.

455.108 Lots and plots; plot prerequisite to sale.

Sec. 8. Before proceeding to sell any lots or plots as hereinbefore provided, the trustees of the association shall cause to be made and filed, as required by the provisions of acts relating to the making, recording and vacating of plats, a plat of the grounds belonging to said association, which shall indicate by numbers all lots or plots intended to be sold, and all parks, park lots or reserves of any character intended for common use, by letter or name. Such map shall also show by name all roadways or avenues laid out upon the grounds of the association, but such roadways and avenues shall in all respects, be deemed private ways, and only open to the public upon such

conditions and restrictions and under such rules and regulations as the trustees shall prescribe.

HISTORY: How. 3983f-8;—CL 1897, 7661;—CL 1915, 10092;—Am. 1929, p. 240, Act 100, Eff. Aug. 28;—CL 1929, 10357;—CL 1948, 455.108.

PLATS: See Act 288 of 1967, being Compilers' § 560.101 et seq.

455.109 Lots and plots; tax assessment; sale for taxes, association as purchaser.

Sec. 9. All lots or plots sold shall be assessed and taxed to the owners and holders thereof, and sold in default of the payment of taxes, in like manner as provided by law for the taxation and sale of other real estate; and in case of any such sale the trustees of the association may purchase such lots or plots upon the same terms and conditions, and with like effect as in case of individual or other bidders.

HISTORY: How. 3983f-9;—CL 1897, 7662;—CL 1915, 10093;—CL 1929, 10358;—CL 1948, 455.109.

TAXATION: See Compilers' § 211.1 et seq.

455.110 Annual report to lot owners; special election, trustees, appointment, term.

Sec. 10. The trustees at each annual election shall make a report to the lot owners of their doings and of the management and condition of the property and concerns of the association. If the annual election shall not be held on the day fixed in the certificate of incorporation, the trustees shall have power to appoint another day not more than 60 days thereafter, and shall give public notice of the time and place as hereinbefore provided for the regular annual meeting for the election of trustees, and at such time the election may be held with like effect as if holden on the day fixed on in the certificate of incorporation. The term of office of the trustees chosen at such special election shall expire at the same time as they would have done in case said trustees had been elected on the day fixed by the certificate of incorporation.

HISTORY: How. 3983g;—CL 1897, 7663;—CL 1915, 10094;—CL 1929, 10359;—CL 1948, 455.110.

455.111 Property; injury, penalty; trespass action.

Sec. 11. Any person who shall willfully destroy, injure or remove any statuary, fence, fountain, building or other structure placed on the grounds, or any dock, landing, quay, boat house, or boat upon the waters upon which said grounds are located, the property of any association incorporated under this act, or of any individual member thereof, or who shall willfully cut or injure any trees, shrub or plant within the said grounds, shall be deemed guilty of a misdemeanor, and shall be liable on conviction thereof to a fine not exceeding 25 dollars, or in default of fine to imprisonment in the county jail for a period not exceeding 30 days, action for the enforcement of such penalty to be brought in the name of the people of the state of Michigan upon the complaint of the trustees of the association or an individual member thereof; and such offender shall also be liable in an action of trespass to be brought in the name of such association for all damages caused by such unlawful act or acts.

HISTORY: How. 3983g-1;—CL 1897, 7664;—CL 1915, 10095;—CL 1929, 10360;—CL 1948, 455.111.

455.112 Property; acceptance of gift, devise or bequest; holding.

Sec. 12. Any association incorporated under this act may take by gift, devise or bequest, and hold any property real or personal in trust, to apply the income thereof, under the direction of the trustees of the association, for the improvement or embellishment of the ground or water-front of the association, or the erection, repair or preservation of any statuary, fountain, fence, buildings, docks, quays and landings erected or to be erected upon the same, or in planting trees, shrubs and flowers in the

grounds of the association, or for the improvement or embellishment of such grounds in any other manner or form consistent with the design or purposes of the association, and as specified in such gift, devise or bequest.

HISTORY: How. 3983g-2;—CL 1897, 7665;—CL 1915, 10096;—CL 1929, 10361;—CL 1948, 455.112.

455.113 Repeal or amendment of act; dissolution; effect.

Sec. 13. This act may at any time be altered, amended or repealed, but such alteration, amendment or repeal shall not affect the rights of property of associations organized under it, nor of the individual members thereof, nor shall the dissolution of any such association take away or impair any remedy given for or against such corporation, its members or officers, for any liability which shall have been previously incurred.

HISTORY: How. 3983g-3;—CL 1897, 7666;—CL 1915, 10097;—CL 1929, 10362;—CL 1948, 455.113.

Act 137, 1929, p. 321; Eff. Aug. 28.

AN ACT to authorize the formation of corporations by summer resort owners; to buy, improve, sell and lease lands; to exercise certain police powers over the lands owned by said corporation and within its jurisdiction, and to provide penalties for the violation of by-laws established under police powers.

The People of the State of Michigan enact:

455.201 Summer resort owners; incorporation, purpose.

Sec. 1. That any number of freeholders, not less than 10, who may desire to form a summer resort owners corporation for the better welfare of said community and for the purchase and improvement of lands to be occupied for summer homes and summer resort purposes, may, with their associates and successors, become a body politic and corporate, under any name by them assumed in their articles of incorporation, in the manner herein provided.

HISTORY: CL 1929, 10363;—CL 1948, 455.201.

SUMMER RESORT ASSOCIATION: Specifically excepted from the provisions of Act 327, 1931, see Compilers' § 450.3.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

REPORTS: See Compilers' § 450.81.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.1 et seq.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

455.202 Articles of association; contents.

Sec. 2. The persons so associating shall subscribe and verify articles of association stating:

First: The corporate name chosen;

Second: The names and residences of the persons thus associating;

Third: A legal description of the land owned by each of such persons and to be subject to the jurisdiction of the corporations;

Fourth: The purposes of such corporation;

Fifth: The number of trustees to manage the affairs of said corporation, their terms of office, the names of the trustees for the first year or until the annual meeting of the corporation;

Sixth: The county in which its real estate shall be situate and its meetings held;

Seventh: The term of its existence, which shall not exceed 30 years;

Eighth: The persons so associating may provide for capital stock, in which case the articles of association shall state the amount thereof, which shall not exceed 50,000 dollars in total par value. The names, residences and number of shares subscribed by each, if any, at the time of the execution of the said articles of association.

HISTORY: CL 1929, 10364;—CL 1948, 455.202.

EXTENSION OF CORPORATE LIFE: See Act 12 of 1901, being Compilers' §§ 455.251 and 455.252.

455.203 Articles; execution, recording.

Sec. 3. The execution of such articles of association shall be acknowledged by the persons signing the same before some officer authorized to take the acknowledgment of deeds. Such articles shall thereupon be recorded in the office of the secretary of state and in the office of the county clerk of the county in which the real estate is situated. For the purpose of payment of all fees to the state, such corporation shall be classed as non-profit.

HISTORY: CL 1929, 10365;—CL 1948, 455.203.

455.204 Corporate powers and liabilities; property ownership, limitation.

Sec. 4. On compliance with the foregoing provisions of this act, the persons so associating, their successors and assigns, shall become and be a body politic and corporate, under the name assumed in their articles of association and shall have and possess all the general powers and privileges and be subject to all the liabilities of a municipal corporation and become the local governing body. Such corporation may acquire by purchase, devise or gift such real and personal property as it may desire for the purposes mentioned in its articles of association: Provided always, It shall not at any time own to exceed 320 acres of land, but this proviso shall not be construed to limit the area of its jurisdiction to exercise the police powers herein conferred over lands of members.

HISTORY: CL 1929, 10366;—Am. 1939, p. 245, Act 133, Imd. Eff. May 23;—CL 1948, 455.204.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

455.205 Property; sale and disposition, proceedings.

Sec. 5. The trustees of such corporation, when thereunto authorized, by majority vote of the members of such corporation voting thereon at any annual meeting, or any special meeting called expressly for that purpose, by a general by-law, adopted and recorded, may sell, mortgage, give, grant, convey and lease said lands or any part or portion thereof, upon such terms and subject to such reservations and restrictions as may be deemed advisable.

HISTORY: CL 1929, 10367;—CL 1948, 455.205.

455.206 Membership; eligibility; corporate jurisdiction as to property of nonmembers; election.

Sec. 6. Persons eligible to membership in said corporation, at any and all times, must be freeholders of land in the county of its organization and such land must be contiguous to the resort community in which the corporation is organized: Provided, however, It shall not be necessary that the lands of all members shall join, but it shall be sufficient if such lands are reasonably adjacent to the resort community, so as to be benefited by membership therein, and the trustees of the corporation, when lawfully authorized by the corporation, shall be judges as to whether the lands of such proposed members are sufficiently identified with the common interests of the other lands embraced within said corporate jurisdiction, to make proposed members eligible: And provided further, That the land of no owner that does not voluntarily join such corporation can be compelled to come under the jurisdiction of the corporation until after a body politic and corporate has been incorporated under this act in the territory to be affected and has continued to function as such for a period of 2 years. Thereafter an election may be called by the board of trustees or board of directors within the territory to be affected for the purpose of determining whether the entire territory comprising the subdivisions or parts of subdivisions affected should become entirely incorporated.

HISTORY: CL 1929, 10368;—Am. 1939, p. 245, Act 133, Imd. Eff. May 23;—CL 1948, 455.206.

455.206a Election and registration; notice.

Sec. 6a. For the foregoing purpose the said board of trustees or board of directors shall cause a notice of such election and notice of registration to be published in 4 succeeding issues of some newspaper printed within the county in which such territory is situated and having circulation within the affected territory, for 4 weeks immediately preceding such election. If no newspaper be published in such county, then such notice shall be published in a newspaper published in an adjacent county.

HISTORY: Add. 1939, p. 246, Act 133, Imd. Eff. May 23;—CL 1948, 455.206a.

455.206b Registration board; appointment, duties.

Sec. 6b. The board of trustees or board of directors shall cause a 3 man board of registration to be appointed who shall establish a set of registration books to be opened and shall register therein all of the qualified voters of such territory who shall apply for registration between the hours of 9 o'clock a.m. and 7 o'clock p.m. during the week prior to such election and at such other times prior to election day as such registration board may permit.

HISTORY: Add. 1939, p. 246, Act 133, Imd. Eff. May 23;—CL 1948, 455.206b.

455.206c Election; voters, eligibility.

Sec. 6c. For the purpose of such election all freeholders who have resided week-ends in the territory to be affected for a period 1 month prior to such election and who are qualified voters in any voting precinct of the state of Michigan at general elections, are qualified voters for the purpose of this act.

HISTORY: Add. 1939, p. 246, Act 133, Imd. Eff. May 23;—CL 1948, 455.206c.

455.206d Election board; polls, hours open.

Sec. 6d. The board of trustees or board of directors of such summer resort incorporation shall appoint an election board of 5 members who shall keep the polls open from 7 o'clock a.m. until 8 o'clock p.m. and permit all registered qualified voters to vote upon the proposition submitted.

HISTORY: Add. 1939, p. 246, Act 133, Imd. Eff. May 23;—CL 1948, 455.206d.

455.206e Election; adoption of resolution, record.

Sec. 6e. If a majority of the said qualified voters of the entire territory comprised in the territorial description contained in the notice of election shall vote in favor of the incorporation under this act, then the said board of trustees or directors shall declare the entire territory so affected to be incorporated under this act, and shall file with the county clerk and record with the register of deeds of the county wherein the territory is situated copies of the notice of election, and the resolution of the board of directors or board of trustees declaring the election carried and thereafter such territory shall all become so incorporated.

HISTORY: Add. 1939, p. 246, Act 133, Imd. Eff. May 23;—CL 1948, 455.206e.

455.207 Members; grant of authority, procedure.

Sec. 7. Members admitted to said corporation at its organization and afterwards, shall file with the secretary of said corporation a writing, subscribed, witnessed and acknowledged, in accordance with the requirements of deeds, which writing shall grant to the corporation the right to exercise all jurisdiction, conferred by this act, over the lands owned by members of said corporation. Such grant of authority to the corporation shall be duly recorded in the office of the register of deeds of the county.

HISTORY: CL 1929, 10369;—CL 1948, 455.207.

455.208 Annual meeting; trustees, election, report.

Sec. 8. The annual meeting of such association shall be held in its own county between June first and August thirty-first of each year, at such time and place as may be fixed by the board of trustees and such meeting may adjourn from day to day as may

be necessary for the transaction of its business. At each annual meeting there shall be elected such number of trustees as shall be necessary to fill the places of trustees whose terms of office then expire, and all vacancies on such board. Such election shall be by ballot and choice of trustees shall be by a majority of all votes cast. Members may vote in person or by proxy filed with the secretary. Each member shall be entitled to 1 vote. Husbands and wives, owning property by entireties, shall each be entitled to 1 vote. Membership shall terminate upon the alienation of the property of a member. At each annual meeting the trustees shall make a report, in writing, of the management of the business of the corporation, the condition of its property, its assets and liabilities, and upon such other matters as may be proper and of general interest to the members.

HISTORY: CL 1929, 10370.—CL 1948, 455.208.

455.209 Board of trustees; officers, quorum, vacancy.

Sec. 9. Immediately following the election of trustees, the trustees so chosen shall elect a president, vice-president, secretary and treasurer from their members, who shall hold their offices for 1 year and until their successors shall be elected and qualified. They shall discharge the usual duties of such offices and such other duties as may be prescribed by the by-laws and orders of the corporation. Two-thirds of the members of the board shall constitute a quorum for the transaction of business, and any vacancy in the board may be filled by the remaining members, and the appointee shall hold office until the next annual meeting of the corporation.

HISTORY: CL 1929, 10371.—CL 1948, 455.209.

455.210 Board of trustees; powers.

Sec. 10. The board of trustees shall have the management and control of all the business and all the property, real and personal, of the corporation and shall represent the corporation, with full power of authority to act for it in all things legal whatsoever, and subject only to restrictions or limitations imposed by the by-laws of the corporation and any special restriction or limitation imposed by a vote of the members at any annual or regularly called special meeting. The time and manner of special meeting shall be provided for in the by-laws.

HISTORY: CL 1929, 10372.—CL 1948, 455.210.

455.211 Corporate jurisdiction; liability for condition of streets.

Sec. 11. Such corporation, through its properly delegated officers, shall have jurisdiction over the lands owned by the corporation and over the lands owned by the members of said corporation for the exercise of the police powers herein conferred. The corporation shall have jurisdiction over the streets and highways passing through or over such lands: Provided always, That the right of the public to control, repair and use all such highways and streets as are necessary for the public travel through or across said lands, shall not be affected hereby: And provided further, That the public shall not be liable for the condition, safety or repair of such streets, alleys or highways as may be laid out and used on the authority of said corporation.

HISTORY: CL 1929, 10373.—CL 1948, 455.211.

455.212 By-laws; enactment, authority of board of trustees.

Sec. 12. The board of trustees shall have the authority to enact by-laws, subject to repeal or modification by the members at any regular or special meeting, calculated and designed to carry into effect the following jurisdiction over the lands owned by the corporation and its members, viz.: To keep all such lands in good sanitary condition; to preserve the purity of the water of all streams, springs, bays or lakes within or bordering upon said lands; to protect all occupants from contagious diseases and to remove from said lands any and all persons afflicted with contagious diseases; to prevent and prohibit all forms of vice and immorality; to prevent and prohibit all disorderly as-

semblies, disorderly conduct, games of chance, gaming and disorderly houses; to regulate billiard and pool rooms, bowling alleys, dance halls and bath houses; to prohibit and abate all nuisances; to regulate meat markets, butcher shops and such other places of business as may become offensive to the health and comfort of the members and occupants of such lands; to regulate the speed of vehicles over its streets and alleys and make general traffic regulations thereon; to prevent the roaming at large of any dog or any other animal; to compel persons occupying any part of said lands to keep the same in good sanitary condition and the abutting streets and highways and sidewalks free from dirt and obstruction and in good repair.

HISTORY: CL 1929, 10374;—CL 1948, 455.212.

455.213 By-laws; effective date, posting.

Sec. 13. All by-laws, so established by the corporation, shall take effect 10 days after passage and each of said by-laws shall be posted conspicuously in 3 public places within the jurisdictional area of said corporation, at least 5 days before the time of taking effect and proof of such posting shall be made by an officer of the corporation and entered on the records of said corporation. Complete and accurate copies of all by-laws shall be kept, at the office of the corporation, for public inspection.

HISTORY: CL 1929, 10375;—CL 1948, 455.213.

455.214 By-laws; violation, penalty.

Sec. 14. Any person who shall violate any of such by-laws shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not exceeding 25 dollars or imprisonment in the county jail not to exceed 30 days or by both such fine and imprisonment in the discretion of the court, which fine shall be distributed to the same fund as other misdemeanor fines in the township where such lands may be located.

HISTORY: CL 1929, 10376;—CL 1948, 455.214.

455.215 Marshal; powers, compensation, removal.

Sec. 15. The board of trustees may appoint a marshal, whose duties shall be to enforce the by-laws of said corporation. Said marshal shall have the authority of a deputy sheriff in maintaining peace and order and the enforcement of law on the lands under the jurisdiction of the corporation, and in addition thereto shall be vested with authority to make arrests, in accordance with law, for the violation of the by-laws of said corporation. Compensation of said marshal shall be fixed and paid by said corporation and the said corporation shall alone be responsible for his acts; he may be removed at any time by a majority vote of the trustees, with or without cause; in the discharge of his duties in respect to any matter that is an offense against the general laws of the state, his fees and charges shall be regulated and paid in the same manner as other officers.

HISTORY: CL 1929, 10377;—CL 1948, 455.215.

455.216 Marshal; authority as to persons arrested.

Sec. 16. The marshal shall have authority to take any person arrested before a justice of the peace or police magistrate of the township in which the lands of the corporation are situated, to be there dealt with according to law.

HISTORY: CL 1929, 10378;—CL 1948, 455.216.

455.217 Public utilities; corporate authority.

Sec. 17. The corporation shall have authority to provide a water system for its members and occupants, a sewage system, fire protection and electric light service.

HISTORY: CL 1929, 10379;—CL 1948, 455.217.

455.218 Lands owned by corporation; annexation to city.

Sec. 18. Lands owned by the said corporation and its members may not be annexed to any city or village without the consent of a 2/3 majority of the members of said corporation, at a regular or special meeting.

HISTORY: CL 1929, 10380;—CL 1948, 455.218.

455.219 Members; dues and assessments.

Sec. 19. The corporation may assess annual dues and special assessments against its members, by a vote of a majority thereof, for the purpose of carrying into effect any of the powers herein contained and may prescribe the time and manner of payment and manner of collection, and in case of delinquencies, may provide that such dues and assessments shall become a lien upon the land of the delinquent member and may provide the manner and method of enforcing such lien.

HISTORY: CL 1929, 10381;—CL 1948, 455.219.

455.220 Corporate term of existence; expiration; cessation of jurisdiction.

Sec. 20. When a corporation, organized under this act, shall dissolve or its term of existence expires by limitation, all jurisdiction over streets, alleys and highways shall cease and the said streets, alleys and highways shall thereupon become dedicated to the use of the public, and in such case the lands of the members shall be cleared of all jurisdiction conferred by the provisions of this act.

HISTORY: CL 1929, 10382;—CL 1948, 455.220.

Act 12, 1901, p. 16; Imd. Eff. Feb. 26.

AN ACT to provide for an extension of the corporate life of summer resort associations, organized under the laws of the state, whose term of existence would otherwise expire, and to fix the duties and liabilities of such renewal corporations.

The People of the State of Michigan enact:

455.251 Corporate life; extension, procedure, evidence, franchise fee.

Sec. 1. It shall be lawful for any summer resort association, whose term is about to expire by limitation, at any time within 8 years next preceding the expiration of such term, by a vote of 2/3 of its capital stock, at any annual meeting, to direct the continuance of its corporate existence for such further term not exceeding 30 years from the expiration of the existing term, as may be expressed in a resolution for that purpose. The president and secretary of such stockholders' meeting shall make and sign duplicate copies of such resolution, and its passage shall be verified by the oath of such secretary attached to each of such duplicates. One of said copies shall be filed in the office of the secretary of state and 1 with the clerk of the county where the principal office of the corporation is located, and both shall be recorded at the expense of said corporation, and the copies so filed, or the record thereof or certified copies of either of such records, shall be prima facie evidence of the passage of such resolution and of the extension of said corporate life: Provided, That the franchise fee, which may be provided by law for new corporations, shall be paid before such term shall be extended.

HISTORY: CL 1915, 10060;—CL 1929, 10383;—CL 1948, 455.251.

EXTENSION OF CORPORATE LIFE: See Compilers' §§ 455.251, 455.252.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

455.252 Renewed corporations; time, liabilities, rights.

Sec. 2. The renewal term of such corporation shall begin from the expiration of the former term, and the corporation whose term has thus been renewed shall be the same corporation, and own all its property, and be subject to all its liabilities, have the same

stockholders and members and the same officers. The rights of all persons interested in said corporation shall continue as before such extension. The articles of association and by-laws shall continue the same until changed or amended by the corporation in the manner required by law.

HISTORY: CL 1915, 10061;—CL 1929, 10384;—CL 1948, 455.252.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

Act 55, 1911, p. 68; Eff. Aug. 1.

AN ACT to provide for the reorganization of corporations for owning, maintaining and improving lands and other property kept for the purposes of summer resorts or for ornament, recreation or amusement, the term of existence of which has heretofore expired or may hereafter expire by limitation, and for the renewal of the corporate term and to fix the rights, duties and liabilities of such renewed corporation.

The People of the State of Michigan enact:

455.281 Reorganization of certain corporations; procedure, evidence, franchise fee.

Sec. 1. It shall be lawful for any corporation heretofore or hereafter organized or existing under the laws of this state for the purpose of owning, maintaining and improving lands and other property kept for the purposes of summer resorts or for ornament, recreation or amusement, whose corporate term has expired, or shall expire by limitation, at a special meeting of its stockholders called for that purpose, by a vote of at least 4/5 of its capital stock, to direct the reorganization of such corporation and the renewal, continuance and extension of its corporate term for such further period not exceeding 30 years from the expiration of its former term as may be expressed in a resolution for that purpose. Such meeting may be called by order of the directors de facto of such corporation, in accordance with the by-laws of such corporation and the laws of this state applicable to such class of corporations whose term has not expired. It shall be lawful to embrace in the call for such meeting a notice for the election of directors of such reorganized and renewed corporation. Upon the adoption of such resolution by a vote in person or by proxy duly filed, of a majority of at least 4/5 of the capital stock it shall be the duty of the president and secretary of such stockholders' meeting to certify under oath duplicate copies of such resolution and its adoption by at least 4/5 of the capital stock of such corporation, which copies shall be filed and recorded at the expense of said corporation in the same public offices wherein articles of association of the same class of corporations are required to be filed and recorded by the laws of this state, and the copies so filed or a certified copy of either of such records shall be prima facie evidence of the facts therein recited. The franchise fee provided by law shall apply to and be paid by such corporations so reorganized and renewed.

HISTORY: CL 1915, 10057;—CL 1929, 10385;—CL 1948, 455.281.

SUMMER RESORT ASSOCIATIONS: Excepted from the provisions of Act 327, 1931, see Compilers' § 450.3.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

REPORTS: See Compilers' § 450.81.

455.282 Reorganized corporations; rights, obligations.

Sec. 2. Upon the filing of such duplicate certificates in said public offices, such corporation shall be deemed reorganized and its term renewed, continued and extended as of the time of the expiration of the former term thereof, and such reorganized and renewed corporation and as well the stockholders thereof shall have all the rights, powers, privileges and franchises and be seized and possessed of all of the property and of the same estate and interest therein, which said corporation and its stockhold-

ers or their assigns had or were seized or possessed of before the expiration of said corporate term, and as well all property acquired by or in the name of such corporation since the expiration of said corporate term in all respects without change, diminution or prejudice by reason of the expiration of said corporate term or lapse of time thereafter, as fully and absolutely as if said corporate term had not expired; and said reorganized and renewed corporation shall be subject to and liable for all of the debts, obligations and liabilities of such corporation in all respects as if said corporate term had not expired.

HISTORY: CL 1915, 10058;—CL 1929, 10386;—CL 1948, 455.282.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

455.283 Reorganized corporations; time limit.

Sec. 3. Any such corporation whose term has already expired may take advantage of this act at any time within 5 years of the date of such expiration, and any such corporation whose term shall hereafter expire may be so reorganized and renewed within 3 years of such expired term.

HISTORY: CL 1915, 10059;—CL 1929, 10387;—CL 1948, 455.283.

Act 161, 1911, p. 259; Eff. Aug. 1.

AN ACT to provide for the formation of corporations with power to acquire, control, own, maintain, improve and convey property for parks, playgrounds, drives and boulevards, and hold the same and the proceeds thereof in trust for municipalities and take private property therefor.

The People of the State of Michigan enact:

455.301 Parks, playgrounds, drives and boulevards; incorporation, purpose.

Sec. 1. Any number of persons, not less than 5, who shall desire to form a corporation for the purpose of acquiring, owning, controlling, maintaining and improving lands for the purposes of parks, playgrounds, drives and boulevards, or any 1 or more such purposes, and holding the same in trust for any 1 or more municipal corporations of this state, may, by articles of agreement in writing under their hands and seals, associate for such purposes under a name to be assumed by them in their articles of association: Provided, That no 2 corporations shall assume the same name.

HISTORY: CL 1915, 10130;—CL 1929, 10388;—CL 1948, 455.301.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.1 et seq.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

455.302 Articles of association; acknowledgment, contents.

Sec. 2. Such articles of association shall be signed by the persons associating in the first instance, and be duly acknowledged before some officer authorized by the laws of this state to take acknowledgment of deeds, and shall set forth:

- (1) The name by which the corporation shall be known in law;
- (2) The purpose or purposes for which the corporation is formed;
- (3) The city, village or township where the office of the corporation shall be located;
- (4) The municipality or municipalities for which the corporation is to hold property in trust;
- (5) The names of those incorporating and their respective residences;
- (6) The number of directors of the corporation.

HISTORY: CL 1915, 10131;—CL 1929, 10389;—CL 1948, 455.302.

455.303 Articles; recording.

Sec. 3. The articles of association shall be recorded in the office of the secretary of state, and in the office of the county clerk of the county where the office of such corporation is located.

HISTORY: CL 1915, 10132;—CL 1929, 10390;—CL 1948, 455.303.

455.304 Body corporate; powers.

Sec. 4. Upon the recording of such articles of association the persons who have signed and acknowledged the same, their associates and successors, shall thereupon become a body politic and corporate and shall have power:

- (1) To sue and be sued;
- (2) To appoint and employ such officers, managers and agents as the affairs of the corporation may require;
- (3) To make rules and by-laws for the regulation and management of its affairs, and alter and repeal the same;
- (4) To acquire, hold, sell and convey all real and personal property suitable or necessary for the transaction of the business of the corporation, and to do all things in relation thereto in the same manner and to the same extent as a natural person.

HISTORY: CL 1915, 10133;—CL 1929, 10391;—CL 1948, 455.304.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

455.305 Corporation; shares of stock; directors, election, terms, powers.

Sec. 5. The corporation shall not have any shares of stock or be for pecuniary profit. It shall have not less than 5 directors to be chosen annually from and by the members at the time and place fixed by the by-laws, they to hold office for 1 year and until their successors are elected. The directors shall manage the affairs of the corporation.

HISTORY: CL 1915, 10134;—CL 1929, 10392;—CL 1948, 455.305.

455.306 Membership; classes, eligibility, termination.

Sec. 6. There shall be 2 classes of members, life and annual. Any person may become a life member by paying to the corporation 100 dollars or more in cash, or donating property or services of that value, which the corporation is willing to accept. Any person over 21 years of age may become an annual member by the payment of 1 dollar or more; his membership to terminate if he fails to pay dues for any year of at least 1 dollar before the election of directors for the ensuing year.

HISTORY: CL 1915, 10135;—CL 1929, 10393;—CL 1948, 455.306.

455.307 Corporation; powers; condemnation.

Sec. 7. Corporations organized under this act shall have power to govern, manage, control, lay out and improve parks, playgrounds, boulevards and pleasure drives over which their powers and jurisdiction extend, and shall have the right to purchase and by voluntary grants, bequests and donations to receive, take, hold and use all such lands and other property as may be necessary for carrying out its purposes, and if the corporation shall at any time be unable to make a reasonable agreement with the owners of land needed as herein provided for the purchase thereof, or with any railroad company as to crossing its railroad, or with any municipal corporation as to crossing or changing highways, streets or streams, then in all such cases upon the vote of its board of directors, such corporation shall have the power to take such property, within the limits of the state constitution, as it may require in carrying out its purposes, and may bring suit therefor in any court of competent jurisdiction, and the laws of Michigan providing for the condemnation of lands for public use shall govern and be the rule of procedure so far as the same may be practicable and applicable thereto.

HISTORY: CL 1915, 10136;—CL 1929, 10394;—CL 1948, 455.307.

CONDEMNATION: See Compilers' § 213.1 et seq.

455.308 Municipal corporation; transfer of realty, revocation.

Sec. 8. Any municipal corporation, by vote of its governing body, may transfer to any such corporation in trust as hereinbefore provided, the management and control of any real property held by it, for the purpose of laying out, maintaining or carrying on parks, playgrounds, boulevards or pleasure drives, and may by like vote revoke the said transfer to such corporation and re-vest the management and control of said property in its own officers, at any time it shall be for the public benefit so to do.

HISTORY: CL 1915, 10137;—CL 1929, 10395;—CL 1948, 455.308.

455.309 Municipal corporation; aid.

Sec. 9. It shall be lawful for any such municipal corporation to appropriate, by a vote of its common council, or other governing body, to any such corporation, moneys for the uses and purposes of such corporation.

HISTORY: CL 1915, 10138;—CL 1929, 10396;—CL 1948, 455.309.

455.310 Lands held in trust; free access, tax exemption.

Sec. 10. All lands acquired by any corporation organized under this act or subject to its control and management shall be held in trust as aforesaid for public parks, playgrounds, boulevards and pleasure drives for the recreation, health, welfare and benefit of the public and shall be free to all persons, subject to such necessary and reasonable rules and regulations as shall, from time to time, be adopted for the well-ordering and government thereof. And all such lands and personal property so held in trust for such purposes shall be exempt from taxation.

HISTORY: CL 1915, 10139;—CL 1929, 10397;—CL 1948, 455.310.

GIFTS, GRANTS OR DEVISES: Indefiniteness, see Act 280 of 1915, being Compilers' §§ 554.351 to 554.353; probate contested when done unnamed, see Act 207 of 1917, being Compilers' §§ 720.51 to 720.53; in perpetuity, restraint of alienation, see Act 373 of 1925, being Compilers' §§ 554.381 and 554.382.

SALE OF LAND: See Act 258 of 1925, being Compilers' §§ 554.401 to 554.404.

455.311 Trustees; court appointment.

Sec. 11. If any corporation organized under this act shall at any time fail, from any cause, to perform the duties of trustee as herein provided, and by reason of such failure injury may result to any of the drives, parks, playgrounds, boulevards or other property held by such corporation as trustee, or shall make unreasonable rules and regulations regarding the same, or do other acts to the permanent injury of the public, then upon petition to the circuit court in chancery of the county in which said corporation shall be located of any 5 citizens and freeholders residing within said county, said court may, upon notice to such corporation, appoint a day for hearing said petition, and if upon such hearing it shall appear that damage has resulted to, or is likely to result to, the public or to any of the property held by such corporation, said court may appoint such number of trustees ad interim as shall be deemed necessary to protect the interests of the public in said trust, until such time as the disability of said corporation as trustee shall have been removed.

HISTORY: CL 1915, 10140;—CL 1929, 10398;—CL 1948, 455.311.

455.312 Vesting of property in municipality.

Sec. 12. If any such corporation fail at any time to have members and no trustees ad interim shall have been appointed, then until such time as the disability of such corporation as trustee shall have been removed, the title to the property thus held in trust shall vest in the municipality or municipalities for which the corporation has held the same in trust.

HISTORY: CL 1915, 10141;—CL 1929, 10399;—CL 1948, 455.312.

455.313 Construction of act.

Sec. 13. In all proceedings of suits that may arise or be brought in any of the courts of this state touching or concerning corporations under this act, all other acts or parts of acts inconsistent herewith shall be interpreted and construed in such manner as to

give full force and effect to all the provisions of this act and to all the rights and privileges hereby granted.

HISTORY: CL 1915, 10142;—CL 1929, 10400;—CL 1948, 455.313.

CHAPTER 456. CEMETERY ASSOCIATIONS

CEMETERY CORPORATIONS

Act 87 of 1855

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EXTENSION OF CORPORATE LIFE

Act 185 of 1929

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RURAL CEMETERIES

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456.501-456.514	Repealed.	456.541	Violation.
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		456.543	Effective date of act.

Act 87, 1855, p. 187; Imd. Eff. Feb. 12.

AN ACT relative to burying grounds.

The People of the State of Michigan enact:

456.1 Cemetery corporation; incorporators.

Sec. 1. That any 5 or more persons of lawful age, may organize themselves into a corporation, by such name as they shall adopt, for the purpose of acquiring land for a burial ground for the dead: to dispose of rights of burial therein, and to fence, improve, ornament and keep the same in suitable condition, in the manner hereinafter provided.

HISTORY: CL 1857, 1717;—CL 1871, 3373;—How. 4728;—CL 1897, 8362;—CL 1915, 11122;—CL 1929, 10401;—CL 1945, 456.1.

CEMETERIES: General provisions, see Compilers' § 128.1 et seq.

CEMETERY ASSOCIATIONS: Excepted from the provisions of Act 327, 1931, see Compilers' § 450.3.

REPORTS: See Compilers' § 450.81.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

TAX EXEMPTION: See Compilers' § 211.7 subd. 6.

SALE TO MUNICIPAL CORPORATION: See Act 10 of 1927, being Compilers' §§ 456.181 to 456.184.

EXTENSION OF EXISTENCE: See Compilers' §§ 456.51 to 456.52.

CHANGE IN NAME: See Compilers' § 450.1 et seq.

GIFTS, GRANTS OR DEVISES: For cemetery purposes, indefiniteness or uncertainty, see Compilers' §§ 554.351 to 554.353.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

CITED IN OTHER SECTIONS: Sections 456.1 to 456.36 are cited in §§ 456.530 and 600.2926a.

456.2 Cemetery corporation; acquisition of land, encumbrance, payment; lease, restriction.

Sec. 2. Such corporation shall have power to acquire and hold in fee, or for a term of years, so much land as may be necessary for their burying ground: Provided, That no land thus held shall be in any way encumbered by such corporation: And provided further, That the purchase [purchase] price thereof and interest thereon, or the rent reserved therefor, and the costs of fencing, improving and platting the same, shall be paid out of the funds first realized from the sale of rights of burial: And provided, further, That any lease of land to such corporations, shall contain a covenant on the part of the lessor, that the land thus leased shall never be used by him, his heirs or assigns, for any other than burial purposes; and that all rights of burial acquired under such corporation, shall remain unimpaired, although such lease may expire, or such corporation may forfeit the rights acquired under such lease by reason of non-compliance with the conditions thereof.

HISTORY: CL 1857, 1718;—Am. 1865, p. 577, Act 282, Imd. Eff. March 20;—CL 1871, 3374;—How. 4729;—CL 1897, 8363;—CL 1915, 11123;—CL 1929, 10402;—CL 1948, 456.2.

SALE OF LAND: See Act 258 of 1925, being Compilers' §§ 554.401 to 554.404.

456.3 Right of burial; definition.

Sec. 3. A right of burial under this act, shall be in respect to any corporation organized under this act the right to bury the dead in and upon a parcel of land of the size specified in the by-laws of any corporation organized under this act.

HISTORY: CL 1857, 1719;—CL 1871, 3375;—How. 4730;—CL 1897, 8364;—CL 1915, 11124;—CL 1929, 10403;—CL 1948, 456.3.

456.3a Right of burial; granting in tax delinquent lands prohibited.

Sec. 3a. No rights of burial shall at any time be granted or sold by such corporation upon any lands which are delinquent for taxes or special assessments.

HISTORY: Add. 1941, p. 245, Act 168, Eff. Jan. 10, 1943;—CL 1948, 456.3a.

456.4 Right of burial; disposal by member.

Sec. 4. Any member of any corporation organized under this act, wishing to dispose of any right of burial owned by him, shall procure for the purchaser a grant of such right from said corporation; and at the same time such member shall also relinquish to such corporation all claim he may have to such right of burial.

HISTORY: CL 1857, 1720;—CL 1871, 3376;—How. 4731;—CL 1897, 8365;—Am. 1903, p. 88, Act 65, Eff. Sept. 17;—CL 1915, 11125;—CL 1929, 10404;—CL 1948, 456.4.

456.5 Member; right to vote.

Sec. 5. Any person owning a right of burial in ground controlled by a corporation organized under this act, and having the right to use the same, shall be deemed a member of the corporation, and shall have the right to vote at all corporate meetings unless in arrears for assessments.

HISTORY: CL 1857, 1721;—Am. 1867, p. 137, Act 99, Imd. Eff. March 25;—CL 1871, 3377;—How. 4732;—CL 1897, 8366;—Am. 1903, p. 88, Act 65, Eff. Sept. 17;—CL 1915, 11126;—CL 1929, 10405;—CL 1948, 456.5.

456.6 Meeting to incorporate; calling.

Sec. 6. Upon application in writing of any 3 of the persons aforesaid to any justice of the peace of the county in which such burying ground is to be situated, he shall issue his warrant to either one of said applicants, directing him to call a meeting of the persons wishing to become incorporated, which warrant shall contain the substance of the application, and shall state the time and place of holding the meeting; and such meeting shall be called in obedience to such warrant, by posting up notice thereof containing the substance of the warrant in at least 2 public places in the township, city, or vil-

lage, in which such burying ground is to be situated at least 10 days before the time of holding such meeting.

HISTORY: CL 1857, 1722;—CL 1871, 3379;—How. 4733;—CL 1897, 8367;—CL 1915, 11127;—CL 1929, 10406;—CL 1948, 456.6.

456.7 Meeting to incorporate; affidavit of notice.

Sec. 7. The person to whom the aforesaid warrant is directed shall, after having called said meeting, attach to said warrant a copy of the notice accompanied by his affidavit showing that it is a true copy of the notice posted up by him, and also showing when and where such notices were posted, and the same shall be presented to such meeting and filed by the clerk elected thereat.

HISTORY: CL 1857, 1723;—CL 1871, 3380;—How. 4734;—CL 1897, 8368;—CL 1915, 11128;—CL 1929, 10407;—CL 1948, 456.7.

456.8 Board of trustees; election, terms.

Sec. 8. Any 7 or more persons who shall meet in pursuance of such notice may elect by ballot a board of trustees consisting of 9 members, 3 for 1 year, 3 for 2 years, and 3 for 3 years; and at each annual meeting thereafter 3 trustees shall be elected by ballot, who shall hold their office for 3 years and until their successors shall be elected and have filed their acceptance: Provided, That if any corporation now organized under this act shall have any trustees whose term of office shall not expire at the date of its next annual meeting, it shall then elect only such number of trustees as shall increase its board to 9 members. At any such election the 3 persons having the highest number of votes for trustees shall be deemed elected.

HISTORY: CL 1857, 1724;—CL 1871, 3381;—Am. 1873, p. 176, Act 128, Imd. Eff. April 22;—Am. 1881, p. 90, Act 105, Imd. Eff. April 22;—How. 4735;—CL 1897, 8369;—CL 1915, 11129;—CL 1929, 10408;—CL 1948, 456.8.

456.9 Officers; election; sexton or superintendent, appointment.

Sec. 9. The board of trustees shall meet within 10 days after each annual meeting, and elect from their own number a president, vice-president, clerk, and treasurer, and from time to time may appoint a sexton or superintendent of grounds, and such other officers as may be deemed necessary.

HISTORY: CL 1857, 1725;—CL 1871, 3382;—Am. 1873, p. 176, Act 128, Imd. Eff. April 22;—Am. 1881, p. 90, Act 105, Imd. Eff. April 22;—How. 4736;—CL 1897, 8370;—CL 1915, 11130;—CL 1929, 10409;—CL 1948, 456.9.

456.10 Officers; vacancies.

Sec. 10. A majority of the officers required to be chosen by ballot, in any corporation organized under this act, shall have power to fill any vacancy in office by appointment.

HISTORY: CL 1857, 1726;—CL 1871, 3383;—How. 4737;—CL 1897, 8371;—CL 1915, 11131;—CL 1929, 10410;—CL 1948, 456.10.

456.11 Officers; acceptance of office, bond.

Sec. 11. All persons elected or appointed to any office under any corporation organized under this act shall, within 10 days after such election or appointment, file with the clerk a written acceptance of the office together with a bond, if required, or said office will be vacant.

HISTORY: CL 1857, 1727;—CL 1871, 3384;—How. 4738;—CL 1897, 8372;—CL 1915, 11132;—CL 1929, 10411;—CL 1948, 456.11.

456.12 Officers; notice of election.

Sec. 12. Any person attending any meeting for the election of officers of any corporation organized under this act, and elected thereat, to any office, shall be deemed to have been duly notified of his election; the clerk of such corporation shall, within 2 days after the election of any person to office, who was not present at the election, notify such person of his election.

HISTORY: CL 1857, 1728;—CL 1871, 3385;—How. 4739;—CL 1897, 8373;—CL 1915, 11133;—CL 1929, 10412;—CL 1948, 456.12.

456.13 Treasurer; bond.

Sec. 13. The treasurer shall give a bond to the corporation, with sufficient sureties, to be approved by the president thereof, for the faithful discharge of his duties, which bond shall be filed with the clerk.

HISTORY: CL 1857, 1729;—CL 1871, 3386;—How. 4740;—CL 1897, 8374;—CL 1915, 11134;—CL 1929, 10413;—CL 1948, 456.13.

456.14 Officers; compensation.

Sec. 14. The president, clerk, treasurer and superintendent of grounds of any corporation organized under this act shall receive such a compensation for their services as shall be allowed by a majority of the members of the corporation present at a corporate meeting, and no more: Provided, That if the members neglect to fix such compensation, the same may be fixed, from time to time, by the board of trustees.

HISTORY: CL 1857, 1730;—CL 1871, 3387;—How. 4741;—Am. 1885, p. 120, Act 119, Imd. Eff. May 27;—CL 1897, 8375;—Am. 1903, p. 88, Act 65, Eff. Sept. 17;—CL 1915, 11135;—CL 1929, 10414;—CL 1948, 456.14.

456.15 By-laws, rules and regulations.

Sec. 15. The board of trustees of any corporation organized under this act, shall have the power, by a 2/3 vote of the members elect, to make all needful by-laws, rules, and regulations, not inconsistent with this act, that may be necessary to the proper management of the affairs of such corporation, and may by a like vote amend the same.

HISTORY: CL 1857, 1731;—CL 1871, 3388;—Am. 1881, p. 33, Act 39, Imd. Eff. March 18;—How. 4742;—CL 1897, 8376;—CL 1915, 11136;—CL 1929, 10415;—CL 1948, 456.15.

456.16 Certificate of organization; recording, fee.

Sec. 16. Within 1 week after the organization of any corporation organized under this act, the clerk shall make out a certificate of the organization of such corporation, specifying the corporate name thereof, the officers chosen at the first meeting; which certificate shall be signed by the president and clerk of such corporation, and forthwith record such certificate in the office of the clerk of the county in which such burying ground is or may be situated, in a book to be provided and kept by him for that purpose, who shall be entitled to receive 75 cents for recording the same.

HISTORY: CL 1857, 1732;—CL 1871, 3389;—How. 4743;—CL 1897, 8377;—CL 1915, 11137;—CL 1929, 10416;—CL 1948, 456.16.

456.17 Laying out of burial ground; maps and certificate, filing.

Sec. 17. Before any corporation organized under the provisions of this act shall issue certificates of rights of burial, they shall cause their burial ground to be laid out in such form as they may choose, and cause 2 maps thereof to be made, which maps shall accurately describe the land belonging to such burying ground, its boundaries and location, with the lots or subdivisions named or numbered thereon, and also their size, situation and extent, with the width extent, and location of all the streets, alleys or walks in such burying ground, which maps shall be prepared under the supervision and direction of the president and clerk of such corporation, and certified by them to be a correct map of their burying ground. One of the above maps shall be filed with the clerk of the corporation, and the other with the county clerk of the county in which such burying ground is situated, whereupon said clerk shall give said corporation a certificate under his hand and seal of office, showing that such map has been received and duly filed by him, which certificate shall be filed with the clerk of said corporation.

HISTORY: CL 1857, 1733;—CL 1871, 3390;—How. 4744;—CL 1897, 8378;—CL 1915, 11138;—CL 1929, 10417;—CL 1948, 456.17.

456.18 Actions and suits; common seal.

Sec. 18. All corporations organized under this act, shall be capable in their corporate name, of suing and being sued, appealing, prosecuting, and defending, to final judgment and execution, in any of the courts of this state or elsewhere, and to have a common seal which they may alter at pleasure.

HISTORY: CL 1857, 1734;—CL 1871, 3391;—How. 4745;—CL 1897, 8379; CL 1915, 11139;—CL 1929, 10418;—CL 1948, 456.18.
SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

456.19 Reincorporation under act; lot owners in public burying ground, incorporation; transfer of rights from municipalities.

Sec. 19. Any burying ground corporation heretofore organized under any law of this state, upon complying with the provisions of the preceding sections of this act, shall possess all the powers, and be subject to all the restrictions of corporations originally organized under this act; and the owners of lots in any public burying ground in this state may associate together and organize themselves into a corporation under the provisions of this act, whenever a majority of such owners shall take the proceedings provided by sections 5, 6, 7 and 8, and thereafter other owners may become members of such corporation by a vote of the board of officers of the corporation, on application to be admitted to membership. Cities, villages and towns may transfer to any corporation, organized under this act, all rights remaining to them in any public burying ground.

HISTORY: CL 1857, 1735;—Am. 1867, p. 137, Act 99, Eff. June 27;—CL 1871, 3392;—How. 4746;—CL 1897, 8380;—CL 1915, 11140;—CL 1929, 10419;—CL 1948, 456.19.

456.20 Saving clause.

Sec. 20. Any right that may have accrued to any member, stockholders or lot owner of any burial ground corporation, or public burying ground heretofore existing in this state, shall not be affected or impaired by reason of this act.

HISTORY: CL 1857, 1736;—Am. 1867, p. 137, Act 99, Eff. June 27;—CL 1871, 3393;—How. 4747;—CL 1897, 8381;—CL 1915, 11141;—CL 1929, 10420;—CL 1948, 456.20.

456.21 Vacation of burying ground; procedure.

Sec. 21. Whenever it may become necessary to vacate any burying ground, the property of any corporation organized under this act, such corporation may, by a majority of its members present at any corporate meeting, direct the president and clerk of such corporation to petition the circuit court for the county in which such burying ground is situated, for leave to vacate the same; and such circuit court may make such order in the premises as shall be just and proper: Provided, No final order shall be made within 6 months from the time of filing such petition, and without due proof of publication of notice of such petition, for 12 successive weeks, in such newspaper as may have been designated by said court for that purpose.

HISTORY: CL 1857, 1737;—CL 1871, 3394;—How. 4748;—CL 1897, 8382;—Am. 1903, p. 88, Act. 65, Eff. Sept 17;—CL 1915, 11142;—CL 1929, 10421;—CL 1948, 456.21.

VACATION: Also see Act 49 of 1895, being Compilers' §§ 128.31 to 128.36.

456.22 Forfeited right of burial; disposal.

Sec. 22. It shall be lawful for any corporation organized under this act, to dispose of that part of any forfeited right of burial, which has not been actually used as a repository of the dead, in like manner as if the same had never been granted.

HISTORY: CL 1857, 1738;—CL 1871, 3395;—How. 4749;—CL 1897, 8383;—CL 1915, 11143;—CL 1929, 10422;—CL 1948, 456.22.

456.23 Unused burial rights; sale on non-payment of assessment; reconveyance.

Sec. 23. Any corporation organized under this act may be authorized by the circuit or district court of the county, upon the like petition as is required in the twenty-first section of this act, and after 6 months from the filing of such petition, to redispense of unused burial rights on which assessment shall have remained unpaid for 7 years or

more: Provided, That if personal service is not made on the owner or owners of the burial right then the same procedure as is provided by law for substituted service in circuit courts shall be used.

At any time during the period of 2 years from, and after the entering of the order of termination and forfeiture, the owner of any burial space or spaces shall be entitled to a reconveyance to him by the board of trustees on the payment of the costs and expenses incurred in said proceeding, and not exceeding \$15.00 for the care and maintenance of such space or spaces. If such reconveyance is not sought and obtained during said 2 year period, then and thereupon the board of trustees shall be authorized and empowered to offer such spaces for sale in accordance with the rules and regulations of said board governing the sale of lots and spaces in the cemetery concerned. The proceeds derived therefrom shall be used to defray the expenses incurred in accordance with the provisions of this act.

HISTORY: CL 1857, 1739;—CL 1871, 3396;—How. 4750;—CL 1897, 8384;—CL 1915, 11144;—CL 1929, 10423;—Am. 1947, p. 214, Act 153, Eff. Oct. 11;—CL 1948, 456.23.

DISTRICT COURT: Const. (1850) XIX, 1 established a district court for the upper peninsula, which court was abolished by Act 150 of 1863.

456.24 Assessment; voting; notice of meeting.

Sec. 24. At any corporate meeting of the members, after notice as provided by its bylaws, those members present, when they deem it necessary, may vote an assessment upon the members of such corporation by a majority vote of the members present, which assessment shall be made by the board of trustees of such corporation, as near as may be in proportion to the value of the respective rights of burial owned by such members. Notice of a proposed assessment setting forth the date and place of meeting and the method of assessment and amount thereof shall be sent by certified mail to all known addresses of living members at least 30 days before date set for the meeting.

HISTORY: CL 1857, 1740;—Am. 1867, p. 137, Act 99, Eff. Jun. 27;—CL 1871, 3397;—How. 4751;—CL 1897, 8385;—Am. 1903, p. 88, Act 65, Eff. Sep. 17;—CL 1915, 11145;—CL 1929, 10424;—CL 1948, 456.24;—Am. 1958, p. 45, Act 41, Eff. Sep. 13.

456.25 Assessment; record.

Sec. 25. After an assessment has been made, as provided for in the next preceding section, such corporation shall cause a record to be made of such assessment, showing the day when the same is made, with a list of the names of all the members of such corporation, and the amount assessed to each member; a copy of the assessment shall be furnished by the clerk to the treasurer of such corporation.

HISTORY: CL 1857, 1741;—CL 1871, 3398;—How. 4752;—CL 1897, 8386;—Am. 1903, p. 88, Act 65, Eff. Sept. 17;—CL 1915, 11146;—CL 1929, 10425;—CL 1948, 456.25.

456.26 Assessment; notice; payment, enforcement.

Sec. 26. Within 1 month from the time of making any assessment, the clerk of the corporation making the same, shall cause public notice of the same to be given, in such manner as the board of trustees shall direct, directing each member of such corporation to pay his assessment to the treasurer of such corporation within 30 days from the date of such notice; and such assessment shall be, and hereby is declared, a personal liability against such member and the payment thereof may be enforced by action of debt or assumpsit in the name of such corporation.

HISTORY: CL 1857, 1742;—Am. 1867, p. 137, Act 99, Eff. June 27;—CL 1871, 3399;—How. 4753;—CL 1897, 8387;—Am. 1899, p. 336, Act 216, Eff. Sept. 23;—Am. 1903, p. 89, Act 65, Eff. Sept. 17;—CL 1915, 11147;—CL 1929, 10426;—CL 1948, 456.26.

456.27 Duties of officers defined by by-laws.

Sec. 27. The powers and duties of all officers holding office under any corporation organized under this act, shall be defined by the by-laws of such corporation, except so far as they are defined in this act.

HISTORY: CL 1857, 1743;—CL 1871, 3400;—How. 4754;—CL 1897, 8388;—CL 1915, 11148;—CL 1929, 10427;—CL 1948, 456.27.

456.28 Treasurer; duties.

Sec. 28. It shall be the duty of the treasurer of any corporation organized under this act, to receive and safely keep all moneys belonging to such corporation, and pay them out on the order of the clerk, countersigned by the president of such corporation.

HISTORY: CL 1857, 1744;—CL 1871, 3401;—How. 4755;—CL 1897, 8389;—CL 1915, 11149;—CL 1929, 10428;—CL 1948, 456.28.

456.29 Records of rights of burial; form.

Sec. 29. A record shall be kept by each corporation organized under this act, of the rights of burial disposed of by such corporation, in the following form:

No. The for , to them paid by , of
 right of burial in their grounds, and
embracing in reference to this map, , subject, nevertheless, to assessment
and forfeiture, as provided by law.

Dated, 18 .

Countersigned, _____, President.

Clerk.

HISTORY: CL 1857, 1745;—CL 1871, 3402;—How. 4756;—CL 1897, 8390;—CL 1915, 11150;—CL 1929, 10429;—CL 1948, 456.29.

456.30 Records of rights of burial; bound blanks, index.

Sec. 30. It shall be the duty of every corporation organized under this act, to procure a sufficient number of blanks of the form above prescribed, bound in convenient form, with an index in which shall be entered alphabetically the names of the purchasers of rights of burial in the grounds of such corporation.

HISTORY: CL 1857, 1746;—CL 1871, 3403;—How. 4757;—CL 1897, 8391;—CL 1915, 11151;—CL 1929, 10430;—CL 1948, 45630.

456.31 Price of lots or rights of burial.

Sec. 31. The price of lots or rights of burial in any grounds belonging to such corporation may be, from time to time, determined and fixed by a 2/3 vote of the board of trustees.

HISTORY: CL 1857, 1747;—CL 1871, 3404;—Am. 1881, p. 33, Act 39, Lmd. Eff. March 18;—How. 4758;—CL 1897, 8392;—CL 1915, 11152;—CL 1929, 10431;—CL 1948, 456.31.

456.32 Price of lots or rights of burial; payment receipt.

Sec. 32. Upon payment to the treasurer of any corporation organized under this act, the price of any right of burial determined as above, it shall be the duty of such treasurer to give to the purchaser a receipt therefor, which receipt shall accurately describe the premises on which payment has been made.

HISTORY: CL 1857, 1748;—CL 1871, 3405;—How. 4750;—CL 1897, 8393;—CL 1915, 11153;—CL 1929, 10432;—CL 1948, 45632.

456.33 Certificate of right of burial.

Sec. 33. Upon presenting to the clerk of any corporation organized under this act, a receipt from the treasurer thereof, in the form prescribed in the next preceding section of this act, it shall be the duty of such clerk to issue a certificate of right of burial, signed by such clerk and countersigned by the president of such corporation, in the form prescribed in the twenty-ninth section of this act.

HISTORY: CL 1857, 1749;—CL 1871, 3406;—How. 4760;—CL 1897, 8394;—CL 1915, 11154;—CL 1929, 10433;—CL 1948, 45633.

456.34 Potter's field.

Sec. 34. Any corporation organized under this act, shall have power to set off a part of their burial ground as a potter's field, and under proper regulations permit the dead to be buried therein.

HISTORY: CL 1857, 1750;—CL 1871, 3407;—How. 4761;—CL 1897, 8395;—CL 1915, 11155;—CL 1929, 10434;—CL 1948, 45634

456.35 Improvement or memorial fund; use; investment; corporate trustees; accounts.

Sec. 35. (1) The board of trustees of any corporation organized under this act shall provide for and establish an improvement or memorial fund, the income or proceeds from which shall be perpetually devoted:

First, To care for any assessments levied, to keeping clean and in good order the lots of the several contributors thereto, and any monuments on said contributors' lots in good repair; and,

Second, To improving and beautifying any portion of the grounds of such corporation, reserved from sale and set apart for ornamental purposes.

(2) Contributions, subscriptions or bequests to such fund, whether made by owners of lots, or rights of burial, or by other persons, shall be invested in such safe and productive securities as the said board of trustees shall determine, or deposited in the savings department of any state, national bank, or state or federally chartered savings and loan association and only the annual interest thereon shall be used for the purposes above prescribed.

(3) Any corporation organized under this act may also be named and constituted and may act as trustee of any gift, grant, bequest or conveyance of personal property, to said corporation, in trust for the perpetual care, maintenance and preservation of, and the planting and cultivation of trees, shrubs, flowers and plants upon any cemetery lot or lots, or part of the cemetery owned or held and maintained by said corporation, and the care, preservation, repair, upkeep and replacement of any monument, tomb, mausoleum, fence or other structure thereon, or for any or all the above purposes upon such terms and conditions as may be provided in the instrument or writing creating such trust, and no such trust shall be invalid because contravening any statute or rule of law forbidding accumulations of income, but shall be valid notwithstanding such statute or rule.

(4) On or before June 30 of each year an account of all proceeds received during the preceding calendar year from sales of interment rights, entombment rights or columbarium rights made after the effective date of this 1966 amendatory act, shall be filed with the state cemetery commission of the department of commerce, along with an account, certified to by the trustee or trustees, of all amounts deposited the calendar year previous, into the irrevocable endowment fund.

HISTORY: Add. 1881, p. 33, Act 39, Imd. Eff. Mar. 18;—How. 4762;—CL 1897, 8396;—CL 1915, 11156;—Am. 1917, p. 767, Act 308, Eff. Aug. 10;—CL 1929, 10435;—CL 1948, 456.35;—Am. 1966, p. 624, Act 338, Eff. Mar. 10, 1967.

456.35a Endowment care fund; creation; minimum requirements; administration; investment; prohibited use; legal remedies.

Sec. 35a. (1) The fund required to be set aside under section 35 for the purpose of keeping and maintaining the grounds of cemeteries established after the effective date of this 1966 amendatory act, or mausoleums which are not located in the confines of a dedicated cemetery and are established after the effective date of this 1966 amendatory act, shall be created by the deposit of \$25,000.00 into the fund before any sale of burial rights, entombment rights or columbarium rights is made.

(2) With respect to all cemeteries or mausoleums, whether established before or after the effective date of this 1966 act, the fund shall be added to by payment, perpetually, into the same each month of not less than 15% of all proceeds received during the previous month from the sales of burial rights, entombment rights or columbarium rights made after the effective date of this 1966 amendatory act. No total deposit for a single adult burial right sale or assignment shall be less than \$20.00. Notwithstanding the minimum amount required to be paid into such endowment fund from the proceeds of sales of lots or burial rights, as provided herein, any cemetery which

has an endowment fund of more than \$125,000.00 and exceeding \$10,000.00 per acre of the developed portion of such cemetery, may make application to the cemetery commission for a waiver of the 15% or \$20.00 minimum requirement. The cemetery commission shall take such testimony and make such investigation as it deems advisable pursuant to such application. If the cemetery commission determines that the applicant has an endowment fund of more than \$125,000.00 and exceeding \$10,000.00 per acre of the developed portion of such cemetery and that the income from such fund is sufficient to meet the then current cost of keeping the applicant's cemetery in good condition, it shall grant a waiver of the 15% and \$20.00 minimum requirement, and it shall grant such modifications with respect to contributions to such fund as it deems advisable.

(3) The endowment care fund may be administered by the board of directors itself, or by such trustees, individual or corporate, as it may select under the terms of a trust instrument or declaration. If it selects trustees to administer the fund, its liability shall be limited to reasonable care in the selection. Directors may serve as trustees if at least 2 members of the board are selected.

(4) The funds established under this section shall be invested subject to the provisions of sections 1 and 2 of Act No. 177 of the Public Acts of 1937, as amended, being sections 555.201 and 555.202 of the Compiled Laws of 1948, and the investment of any fund for endowment care heretofore or hereafter made which meets the requirements of said act is ratified and confirmed.

(5) No portion of the funds required to be set aside under section 35 shall be used directly or indirectly for salaries of the officers or directors of the cemetery association or corporation, only the earnings from such funds shall be used to keep the grounds and graves in good condition.

(6) In addition to all other remedies at law or in equity which any interested party may have, the attorney general and the circuit court of the county in which the cemetery is located shall have all the powers and jurisdiction granted to the attorney general and court as to trusts covered by Act No. 280 of the Public Acts of 1915, as amended, being sections 554.351 to 554.353 of the Compiled Laws of 1948. The remedies granted shall include all such endowment care fund trusts without regard to uncertainty or indefiniteness of the beneficiaries thereof.

HISTORY: Add. 1966, p. 624, Act 338, Eff. Mar. 10, 1967.

456.35b Endowment care fund; exemption from care fund requirements.

Sec. 35b. Earth interment cemeteries of 10 acres or less in size which are owned and operated exclusively by nonprofit entities existing prior to March 10, 1967 and in which burials have taken place prior to such date, shall be exempt from the care fund requirements of sections 35 and 35a, except that reports shall be made as required by such sections if the cemetery owners maintain care or memorial funds.

HISTORY: Add. 1968, p. 438, Act 254, Imd. Eff. Jul. 1.

456.36 Additional land; taxation; conveyance.

Sec. 36. Any corporation organized or to be organized under this act may own and hold land heretofore or hereafter acquired for additional burial grounds and such other land heretofore or hereafter acquired as may be needed for the convenient or proper operation of its burial grounds. Land heretofore or hereafter acquired by said corporation and not being a part of its burial grounds shall not be exempt from taxation. Any corporation organized under this act shall not convey any part or portions of

land owned by it if such land is part of the plan or design of the cemetery adopted and recorded as provided in section 17 of this act or secured for the purpose of becoming part of such plan or design unless at least \$5,000.00 for each acre so conveyed is allocated to the improvement or memorial fund provided for by section 35 of this act.

HISTORY: Add. 1897, p. 83, Act 75, Eff. Aug. 30;—CL 1897, 8397;—CL 1915, 11157;—CL 1929, 10436;—CL 1948, 456.36;—Am. 1964, p. 61, Act 53, Eff. Aug. 28.

Act 185, 1929, p. 497; Eff. Aug. 28.

AN ACT to provide for the extension in perpetuity or for a term of years, of the term of existence of corporations or associations, organized under Act No. 87 of acts of the legislature of the state of Michigan of 1855, approved February twelfth, 1855, entitled "An act relating to burying grounds," or under said act as amended, the corporate term of existence of which has heretofore expired, or may hereafter expire by limitation, and to fix the duties and liabilities of such renewed corporations or associations, and to repeal Act No. 154 of the Public Acts of 1893, being sections 11158 and 11159 of the Compiled Laws of 1915.

The People of the State of Michigan enact:

456.51 Extension of corporate life; reorganization or incorporation; articles or certified copy as evidence; powers and duties of corporation.

Sec. 1. It shall be lawful for any corporation or association organized under Act No. 87 of the legislature of the state of Michigan, entitled "An act relating to burying grounds," approved February twelfth, 1855, or under said act as amended, whose corporate term of existence has expired, or may hereafter expire by limitation, at a special meeting of the trustees de jure or de facto of said corporation or association, called for that purpose, to direct by resolution the continuance of its corporate existence in perpetuity or for such further term as they may determine, which resolution or direction shall express the date of the commencement and the termination of said extended term, if said extension be for a term of years. Such special meeting may be called by the president or clerk of the corporation or association, whose term of existence has not expired, or by either of the persons acting as president or clerk of the corporation or association, whose term of corporate existence has expired by limitation, and notice of such meeting shall be given to all the de jure or de facto trustees of said corporation or association at least 10 days prior to the date of such meeting by delivering to each of said trustees, personally, a written or printed notice of such meeting, or by leaving such notice at the residence of such trustee. The trustees de jure or de facto of any corporation or association, the same being either a de jure or a de facto corporation, organized under Act No. 87 of the legislature of the state of Michigan, approved February twelfth, 1855, or under said act as amended, and which corporation or association has heretofore acquired and held and still holds, or which may hereafter acquire and hold land conveyed or leased to it in its corporate name, may at such special meeting determine by resolution to reorganize such corporation, or association and thereby such reorganization shall take, assume and keep the name of such corporation or association as the same has before been known, and such reorganization of such corporation or association so directed and made shall be and remain a corporation with all powers, duties and obligations of a corporation or association newly made or incorporated under said act and its amendments. Upon the adoption of such resolution, which said resolution shall have the concurrence of 2/3 of such trustees in cases where the term of existence of such corporation shall not have expired, and of 4/5 of such trustees in case the term of existence thereof shall have expired, it shall be the duty of the de jure or de facto president and clerk of such corporation or association, together

with a sufficient number of the other trustees to constitute the number of trustees above required for the adoption of such resolution, to make, sign and acknowledge duplicate articles of reorganization or incorporation, in which shall be set forth the name, the object and the number and names of the trustees of the new organization, and which shall be the same as in the corporation or association to be reorganized and which shall set forth further that the purpose is to hold, keep and retain the corporate name and continue the corporate existence of the corporation in perpetuity or for a specified term when its pending term shall have expired, or in case the term of existence of such corporation or association has already expired, that the purpose is to organize anew and to take up, renew and continue the corporate existence of such corporation or association in perpetuity, or for a specified term to commence from the time of such expiration. One of such articles of reorganization shall be filed and recorded in a book kept for that purpose in the office of the county clerk of the county where such corporation or association is located, and the other to be kept by said corporation or association. Either of said duplicate articles of reorganization or a certified copy of the record of the same shall be prima facie evidence of the facts therein recited and of the validity and existence of the said corporation or association. The corporation or association so made, reorganized or renewed shall be a corporation to all intents and purposes, having all the powers, and being subject to all the restrictions of corporations originally organized under the said act or under said act as amended, and the same shall succeed to, own and hold all the property or rights of action held, owned and had by the corporation or association which is reorganized, prior to its renewal or reorganization, and shall be liable for all its debts, liabilities, and obligations as fully and completely as if it had not been reorganized and its corporate existence had been beyond any question, both de jure and de facto: Provided, however, That no greater or additional rights, powers or privileges shall be conferred by the continuance or reorganization of any corporation or association hereunder in perpetuity than would be conferred upon such corporation or association continued or reorganized for a term of years, it being the legislative intent in permitting organizations hereunder in perpetuity to relieve such corporations or associations from the necessity of continuing or reorganizing after a limited term of years but not to confer any other or additional vested right. The officers and trustees of the corporation or association renewed or reorganized shall hold and continue in their offices until their successors shall be duly elected or appointed and qualified.

HISTORY: CL 1929, 10437;—CL 1948, 456.51.

NOTE: Act 87 of 1855, above referred to, is Compilers' §§ 456.1 to 456.36.

FORMER ACT: Act 154 of 1893, being Compilers' §§ 456.51, 456.52.

456.52 Extension of corporate life; amendment of articles of reorganization, procedure; powers and duties of corporation.

Sec. 2. It shall be lawful for any corporation heretofore reorganized or hereafter reorganized under the provisions of this act, to amend its articles of reorganization from time to time as to the extension of the term of existence of such corporation, at a special meeting of the trustees of said corporation called for that purpose, to direct by resolution the extension of its corporate existence, which resolution shall express such extension to be in perpetuity or the date of the commencement and termination of said term. Such special meeting shall be called and notice thereof given in the same manner as is provided in section 1 of this act for the calling and giving of notice of the special meeting mentioned in said section. Upon the adoption of such resolution, which shall have the concurrence of 2/3 of such trustees, it shall be the duty of the president and clerk of such corporation or association, together with a sufficient number of the other trustees to make 2/3 of a full board of trustees, to make, sign and acknowledge in duplicate amended articles of reorganization, in which shall be set forth the name.

the object and the number and names of the trustees of the corporation; and which shall further set forth that the purpose of the reorganization is to hold, keep and retain the corporate name and continue the existence of the corporation in perpetuity or for a specified term when its pending term shall have expired. One of such duplicate articles of reorganization shall be filed in the office of the county clerk of the county where such corporation or association is located, and shall be recorded in a book kept for that purpose. The other duplicate shall be kept by said corporation or association. Either of said duplicate articles or a certified copy of the record of the same shall be prima facie evidence of the facts therein recited and of the validity and existence of said corporation or association. The corporation whose term of existence is so extended shall be a corporation to all intents and purposes, having all the powers and being subject to all the restrictions of corporations originally organized under said Act No. 87 or under said act as amended, and the same shall succeed to, own and hold all the property or rights of action held, owned or had by the corporation or association, whose term of existence is so extended, prior to the extension of its existence, and shall be liable for all its debts, liabilities and obligations.

HISTORY: CL 1929, 10438;—CL 1948, 456.52.

Sec. 3. (This was a repeal section.)

HISTORY: CL 1929, 10439;—Rep. 1945, p. 407, Act 267, Imd. Eff. May 25.

ACT REPEALED: Act 154, 1893, CL 1915, 11158-11159.

Act 12, 1869, p. 12; Imd. Eff. Feb. 19.

AN ACT to authorize and encourage the formation of corporations to establish rural cemeteries, and to provide for the care and maintenance thereof, and to provide for the revision and codification of the laws relating to cemeteries, mausoleums, crypts, vaults, crematoriums, and other means of disposing of the dead, and to make an appropriation therefor. Am. 1929, p. 545, Act 215, Eff. Aug. 28.

The People of the State of Michigan enact:

456.101 Cemetery corporations; incorporators, name.

Sec. 1. That any number of persons not less than 10, who shall by articles of agreement in writing, associate themselves according to the provisions of this act, under any name assumed by them, for the purpose of purchasing land for a cemetery in this state, and for fencing, laying out, improving, maintaining and establishing the same and who shall comply with sections 2 and 3 of this act, shall, with their successors and assigns, constitute a body politic or corporate, under the name assumed by them in their articles of association: Provided, however, That no 2 corporations shall assume the same name.

HISTORY: CL 1871, 3408;—How. 4763;—CL 1897, 8399;—CL 1915, 11160;—CL 1929, 10440;—CL 1948, 456.101.

CEMETERY ASSOCIATIONS: Excepted from the provisions of Act 327, 1931, see Compilers' § 450.3.

REPORTS: See Compilers' § 450.81.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

SALE TO MUNICIPAL CORPORATION: See Act 10 of 1927, being Compilers' §§ 456.181 to 456.184.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.1 et seq.

GIFTS, GRANTS OR DEVISES: For cemetery purposes, indefiniteness or uncertainty, see Compilers' §§ 554.351 to 554.353.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

CITED IN OTHER SECTIONS: Sections 456.101 to 456.119 are cited in §§ 456.530 and 600.2926a.

456.102 Articles; signing, acknowledgment, contents.

Sec. 2. The articles of agreement of every such association shall be signed by the persons associating in the first instance, and acknowledged before some person authorized by the laws of this state, to take the acknowledgment of deeds, and shall state—

1st The amount of land which it is proposed to purchase for such cemetery, and the town and county in which it is situated.—

2nd The amount of capital which it is estimated will be required to make such purchase, and to fence and improve the grounds, and the number of shares into which the same shall be divided.—

3rd The name by which such corporation shall be known.—

4th The number of persons who shall constitute the board of directors, being not less than 5 nor more than 13.—

5th The names of those who shall constitute the first board of directors, and the name of the first treasurer.—

6th The names of the subscribers to the articles of association, and the number of shares subscribed by each, towards the required capital.—

7th The term of duration of such corporation, which shall not exceed 30 years.

HISTORY: CL 1871, 3409;—How. 4764;—CL 1897, 8400;—CL 1915, 11161;—CL 1929, 10441;—CL 1948, 456.102.

456.103 Payment and subscription by subscribers; prerequisites to articles; affidavit, filing; copy filed with corporation and securities commission.

Sec. 3. The subscribers to such articles of association, shall at the time of subscription thereto, severally pay to the treasurer named therein at least 20 per cent of the amount subscribed by each, and when the whole amount of capital mentioned in said articles shall be subscribed and said portion thereof actually paid in, the directors shall cause a copy of their articles of association, together with an affidavit of such treasurer that 20 per cent of the amount of capital subscribed has actually been paid in, to be filed in the office of the county clerk of the county in which such association is formed, and shall file copies thereof with the corporation and securities commission.

HISTORY: CL 1871, 3410;—Am. 1875, p. 262, Act 219, Imd. Eff. May 3;—How. 4765;—CL 1897, 8401;—CL 1915, 11162;—CL 1929, 10442;—CL 1948, 456.103;—Am. 1953, p. 201, Act 167, Eff. Oct. 2.

456.104 Annual meeting; election of board of directors; right to vote; special meetings.

Sec. 4. The annual meeting of every such corporation shall be held on the second Monday of May in each year, unless some other day shall be fixed by the by-laws thereof, and in such case, it shall be held upon the day so fixed. Such meeting shall elect a board of directors, who shall serve for the ensuing year, and until their successors shall be chosen, and transact such other business of the corporation, as may properly come before it. At such meeting the owners of scrip, hereinafter provided for, shall have the right to vote, either in person or by proxy, in proportion to the amount of scrip held by them respectively, each owner thereof being entitled to 1 vote for each 10 dollars of scrip. Special meetings of any such corporation may be provided for by the by-laws thereof, and shall be held when called in accordance with such provision.

HISTORY: CL 1871, 3411;—How. 4766;—CL 1897, 8402;—Am. 1899, p. 177, Act 126, Imd. Eff. June 15;—CL 1915, 11163;—CL 1929, 10443;—CL 1948, 456.104.

456.105 Board of directors; selection of officers.

Sec. 5. It shall be the duty of said board of directors to choose from their own number a president and vice-president, and also to elect suitable persons as treasurer and secretary of such corporation, and from time to time to appoint a superintendent and such other subordinate officers as may be required by the by-laws.

HISTORY: CL 1871, 3412;—How. 4767;—CL 1897, 8403;—CL 1915, 11164;—CL 1929, 10444;—CL 1948, 456.105.

456.106 Board of directors; powers.

Sec. 6. The board of directors shall have the general management of such corporation and shall have the power,—

To purchase land for the use of such association, but for no other purpose, and not exceeding in all 300 acres;

To levy assessments upon the subscribers to the articles of association, not exceeding the amount severally subscribed by them, payable at such times as the directors shall determine, and to enforce the collection thereof either by suit or forfeiture;

To cause to be prepared a plan or design for laying out such lands so purchased by them for cemetery purposes; and when such plan or design is adopted by them, it shall be their duty to cause the same to be recorded in a book to be kept by them for that purpose, and it shall not thereafter be altered or modified, unless by a 2/3 vote of all the directors, after a special notice of such proposed change shall have been given, and after said proposition shall have been submitted in writing to the board at a meeting thereof, to be held prior to the one at which the vote upon such proposed change shall be taken; Provided, That no such alteration shall be made which shall interfere with rights of burial already granted;

To dispose of rights of burial, fix the prices thereof, make conditions in relation to burials within the cemetery grounds, and guarantee to grantees of burial rights the care and preservation of the grounds;

To establish such rules and regulations for the control and management of the grounds and all matters and things incident thereto, as they shall deem for the best interests of the corporation;

To sell any part or portion of the lands owned by such corporation, in case the same shall not be occupied or required for burial purposes, or for the uses of such cemetery;

To invest the moneys received from the sale of burial rights, and to prescribe, from time to time the interest or dividends which shall be paid to holders of the scrip of such corporation, subject to the restrictions hereinafter named.

HISTORY: CL 1871, 3413;—How. 4768;—CL 1897, 8404;—CL 1915, 11165;—CL 1929, 10445;—CL 1948, 456.106.

456.106a Conveyance of land.

Sec. 6a. The corporation shall not convey any part or portions of land owned by it if the land is part of the plan or design of the cemetery adopted and recorded as provided in section 6 unless at least \$5,000.00 for each acre so conveyed is allocated to the irrevocable endowment fund established in section 7 of this act.

HISTORY: Add. 1964, p. 62, Act 54, Eff. Aug. 28.

456.107 Board of directors; duties, reports, endowment funds, accounting.

Sec. 7. The board of directors shall preserve good order in the grounds of such cemetery; provide for the laying out and embellishing of the same, and see that they are well-kept and in good condition; establish an irrevocable endowment fund or funds to produce income for future use in the keeping of the grounds and niches, crypts and mausoleum space of such cemeteries in good condition. The fund shall be governed by the terms and provisions of section 7a; cause to be issued scrip or certificates to each subscriber to the articles of the association, which certificates shall specify the amount paid into the capital stock by such subscriber, such scrip to be personal property and transferable by the holder thereof, under such regulations as the board of directors may adopt; and make a report to the annual meeting of the condition of the association, and its receipts and disbursements for the previous year. On or before June 30 of each year an account of all adult burial rights sold and all proceeds received during the preceding calendar year from sales of interment rights, entombment rights or columbarium rights made after the effective date of this 1966 amendatory act, shall be

filed with the state cemetery commission of the department of commerce, along with an account, certified to by the trustee or trustees, of all amounts deposited the calendar year previous, into the irrevocable endowment fund.

HISTORY: CL 1871, 3414;—Am. 1875, p. 263, Act 219, Imd. Eff. May 3;—How. 4769;—CL 1897, 8405;—CL 1915, 11166;—CL 1929, 10446;—Am. 1941, p. 571, Act 330, Eff. Jan. 10, 1942;—CL 1948, 456.107;—Am. 1958, p. 416, Act 207, Eff. Aug. 11;—Am. 1966, p. 625, Act 339, Eff. Mar. 10, 1967.

456.107a Endowment care funds; minimum requirements, administration, investment, prohibited use; legal remedies.

Sec. 7a. (1) The fund required to be set aside under section 7 for the purpose of keeping and maintaining the grounds of such cemeteries established after the effective date of this 1966 amendatory act, or mausoleums which are not located in the confines of a dedicated cemetery and are established after the effective date of this 1966 amendatory act, shall be created by the deposit of \$25,000.00 into the fund before any sale of burial rights, entombment rights or columbarium rights is made.

(2) With respect to all cemeteries or mausoleums, whether established before or after the effective date of this 1966 act, the fund shall be added to by payment, perpetually, into the same each month of not less than 15% of all proceeds received during the previous month from the sales of burial rights, entombment rights or columbarium rights made after the effective date of this 1966 amendatory act. No total deposit for a single adult burial right sale or assignment shall be less than \$20.00. Notwithstanding the minimum amount required to be paid into such endowment fund from the proceeds of sales of lots or burial rights, as provided herein, any cemetery which has an endowment fund of more than \$125,000.00 and exceeding \$10,000.00 per acre of the developed portion of such cemetery, may make application to the cemetery commission for a waiver of the 15% or \$20.00 minimum requirement. The cemetery commission shall take such testimony and make such investigation as it deems advisable pursuant to such application. If the cemetery commission determines that the applicant has an endowment fund of more than \$125,000.00 and exceeding \$10,000.00 per acre of the developed portion of such cemetery and that the income from such fund is sufficient to meet the then current cost of keeping the applicant's cemetery in good condition, it shall grant a waiver of the 15% and \$20.00 minimum requirement, and it shall grant such modifications with respect to contributions to such fund as it deems advisable.

(3) No portion of the funds required to be set aside under section 7 shall be used directly or indirectly for salaries of the officers or directors of the cemetery association or corporation, only the earnings from such funds shall be used to keep the grounds and graves in good condition.

(4) The endowment care fund may be administered by the board of directors itself, or by such trustees, individual or corporate, as it may select under the terms of a trust instrument or declaration. If it selects trustees to administer the fund, its liability shall be limited to reasonable care in such selection. Directors may serve as trustees if at least 2 members of the board are selected.

(5) The funds established under this section shall be invested subject to the provisions of sections 1 and 2 of Act No. 177 of the Public Acts of 1937, as amended, being sections 555.201 and 555.202 of the Compiled Laws of 1948, and the investment of any fund for endowment care heretofore or hereafter made which meets the requirements of said act is ratified and confirmed.

(6) In addition to all other remedies at law or in equity which any interested party may have, the attorney general and the circuit court of the county in which the cemetery is located shall have all the powers and jurisdiction granted to the attorney general and court as to trusts covered by Act No. 280 of the Public Acts of 1915, as amended, being sections 554.351 to 554.353 of the Compiled Laws of 1948. The reme-

dies granted shall include all such endowment care fund trusts without regard to uncertainty or indefiniteness of the beneficiaries thereof.

HISTORY: Add. 1956, p. 417, Act 207, Eff. Aug. 11;—Am. 1966, p. 626, Act 339, Eff. Mar. 10, 1967.

456.108 Tax exemption.

Sec. 8. All the lands of said corporation enclosed and set apart for cemetery purposes, and all rights of burial therein, shall be wholly exempt from taxation of any kind whatsoever.

HISTORY: CL 1871, 3415;—How. 4770;—CL 1897, 8406;—CL 1915, 11167;—CL 1929, 10447;—CL 1948, 456.108.

TAX EXEMPTION: Similar provision, see Compilers' § 211.7 subd. 6.

456.109 Burial rights; granting in lands subject to lien or tax delinquent lands prohibited.

Sec. 9. No mortgage, or other lien or incumbrance, shall be executed upon any of the lands of such corporation, actually used for burial purposes, and no rights of burial upon any mortgaged lands of such corporation, lands which are delinquent for taxes or special assessments or lands to which such corporation does not have title in fee, shall at any time be granted or sold by it.

HISTORY: CL 1871, 3416;—How. 4771;—CL 1897, 8407;—CL 1915, 11168;—CL 1929, 10448;—Am. 1941, p. 245, Act 169, Eff. Jan. 10, 1942;—CL 1948, 456.109.

456.110 Highways, sewers or other public thoroughfares through grounds; right to purchase additional property.

Sec. 10. No streets, highways, railways, sewers or canals shall be opened or constructed through the grounds of such corporation, without the assent of the board of directors, granted at a meeting of such board, called for the purpose of considering the propriety of granting such assent: Provided, That such assent shall not be required when lands owned, used or controlled by said corporation are taken under condemnation proceedings by the state, or any county, city or village for the purpose of widening an established street or highway: Provided further, That any such corporation whose property has been so condemned, shall have the right to purchase additional property for cemetery purposes within the corporate limits of any such village or city.

HISTORY: CL 1871, 3417;—How. 4772;—CL 1897, 8408;—CL 1915, 11169;—Am. 1921, p. 359, Act 177, Eff. Aug. 18;—Am. 1925, p. 40, Act 32, Eff. Aug. 27;—CL 1929, 10449;—CL 1948, 456.110.

456.111 Saloons and amusements prohibited.

Sec. 11. After any such corporation shall have been formed, and their cemetery site shall have been purchased, no saloon or place of entertainment shall thereafter be set up or established for the sale of intoxicating drinks, and no sporting festival shall be held within 1/4 of a mile of the entrance to the grounds of such corporation.

HISTORY: CL 1871, 3418;—How. 4773;—CL 1897, 8409;—CL 1915, 11170;—CL 1929, 10450;—CL 1948, 456.111.

456.112 Burial rights; transfer, rights of surviving spouse and next of kin.

Sec. 12. All rights of burial granted by such corporation shall be transferable and as fully alienable as any other personal property in this state, subject only to such conditions in reference thereto as shall be prescribed by the board of directors and subject to rights of the surviving spouse and next of kin now existing at law or in equity as to any individual burial space or grave in which there is an actual interment.

HISTORY: CL 1871, 3419;—How. 4774;—CL 1897, 8410;—CL 1915, 11171;—CL 1929, 10451;—CL 1948, 456.112;—Am. 1956, p. 417, Act 207, Eff. Aug. 11.

456.113 Arrests; power of employees; offender brought before justice and tried or bound over.

Sec. 13. The superintendent, landscape gardener, overseer, and watchman in any cemetery belonging to any corporation formed under this act, shall have the power to summarily arrest any person or persons who shall commit any crime, misdemeanor, or depredation, or be guilty of any disorderly conduct upon the grounds of such corporation. Upon any arrest being made by any 1 of said officers or employees of such corpo-

ration, it shall be the duty of the one making such arrest to convey the arrested party to a justice of the peace of the proper county, and make complaint to such magistrate, under oath, as to the nature of the offense committed; and thereupon, if the offense charged is cognizable by a justice of the peace, under the general laws of the state, such justice shall try such person charged with committing said offense, and upon the conviction of such person, shall render judgment and inflict such punishment upon such offender, either by fine or imprisonment, or both as the nature of the case may require, together with the costs of prosecution, as the justice of the peace shall order; but such punishment shall in no case exceed the limits fixed by law for the offense charged. In case the offense charged shall not be cognizable by a justice of the peace under the general laws of this state, then such justice shall examine the accused person, and the proceedings upon such examination shall be such as are prescribed by chapter 194 of the Compiled Laws of this state.

HISTORY: CL 1871, 3420;—Am. 1875, p. 261, Act 218, Eff. Aug. 3;—How. 4775;—CL 1897, 8411;—CL 1915, 11172;—CL 1929, 10452;—CL 1948, 456.113.

NOTE: The acts included in Ch. 194 of CL 1857, above referred to, consisted of Ch. 163 of R.S. 1846 and Act 98 of 1840, both of which were repealed by Act 175 of 1927. See Sec. 26 of Ch. 5 of Act 175 of 1927, being Compilers' § 765.26; also Ch. 14 of Act 175 of 1927, being Compilers' § 774.1 et seq.

456.114 Use of firearms in cemetery; entering over fence; penalty.

Sec. 14. No person shall use firearms upon the grounds of any cemetery owned and inclosed by any such corporation, nor hunt game therein. No person shall enter into such inclosed cemetery by climbing or leaping over or through any fence or wall around the same, nor direct or cause any animal to enter therein in any such manner. Any person offending against any of the provisions of this section shall be punished by a fine not exceeding 50 dollars or by imprisonment not exceeding 3 months, or by both, in the discretion of the court.

HISTORY: CL 1871, 3421;—Am. 1875, p. 262, Act 218, Eff. Aug. 3;—How. 4776;—CL 1897, 8412;—CL 1915, 11173;—CL 1929, 10453;—CL 1948, 456.114.

Sec. 15. (This was a repeal section.)

HISTORY: CL 1871, 3422;—How. 4777;—CL 1897, 8412n;—CL 1915, 11174;—CL 1929, 10454;—Rep. 1945, p. 402, Act 267, Imd. Eff. May 25.

456.115 Perpetual care fund; receipts; investment; bond; account.

Sec. 15. All corporations established under the provisions of this act may receive and hold any grant, donation or bequest made to them for the purpose of perpetually caring for and maintaining the lots of said donors, and may apply the income thereof under the direction of the board of directors for the improvement, embellishment and care of the ground, and the different lots, tombs and monuments. Such funds so received by grant, donation or bequest shall be kept in a separate fund and shall constitute a perpetual care or repair fund, the income of which shall be devoted to the perpetual keeping of the lots, monuments, markers and tombs of the donors in order. Such funds shall be held in trust and the principal shall not be encroached upon or the income be used for any purpose except that to which it is devoted. Any and all funds received by grant, donation or bequest by any corporation or association formed under the provisions of this act shall be invested by the board of directors in any of the investments authorized in section 7 hereof. From this fund so created there shall be drawn annually and credited to each donor, such an amount of the total income as the amount donated by the donor bears to the income of the entire amount contributed for the purposes of this section. The treasurer of every association or corporation formed under the provisions of this act, shall furnish annually to the board of directors a bond in double the amount of all moneys received under the provisions of this section, which bond shall provide for the safekeeping of all money, bonds, mortgages or securities, that the said treasurer shall render an account annually of all moneys received by him under the provisions hereof and pay and deliver all moneys, bonds and

securities to his successor in office, said bond to be approved by a majority vote of and members-elect of the board of directors.

HISTORY: Add. 1903, p. 311, Act 209, Eff. Sept. 17;—CL 1915, 11175;—CL 1929, 10455;—Am. 1941, p. 572, Act 330, Eff. Jan. 10, 1942;—CL 1948, 456.115.

GIFTS, GRANTS OR DEVISES: Indefiniteness, see Act 280 of 1915, being Compilers' §§ 554.351 to 554.353; probate contested when donee unnamed, see Act 207 of 1917, being Compilers' §§ 720.51 to 720.53; in perpetuity, restraint of alienation, see Act 373 of 1925, being Compilers' §§ 554.381 and 554.382.

SALE OF LAND: See Act 258 of 1925, being Compilers' §§ 554.401 to 554.404.

456.116 Non-profit corporation.

Sec. 16. Any corporation organized under this act may, by suitable provision in its articles of association, or by suitable amendment thereto filed in the same manner as required hereunder for the filing of the articles of association, provide that it is a non-profit corporation and may operate and conduct business as such.

HISTORY: Add. 1953, p. 201, Act 167, Eff. Oct. 2.

Section 16 of original act (Act 12, 1869, p. 12, Imd. Eff. Feb. 19) was an immediate effect clause. Section 16 added by Act 215, 1929, p. 545, Eff. Aug. 28 created a commission to revise laws relating to cemeteries, crypts, mausoleums, crematoriums, vaults and other means of disposing of the dead. It was repealed by Act 167, 1953, p. 202, Eff. Oct. 2.

456.117 Charter not deemed forfeited; filing articles; affidavit, report.

Sec. 17. Notwithstanding the provisions of any other laws, the charter of any corporation organized under this act shall not be deemed to be forfeited and the existence of such corporation shall not be deemed to be terminated because of its failure to file annual reports with any state official and/or to pay annual fees as required by any law of this state, provided that prior to July 1, 1954, such corporation shall file, or cause to be filed, with the corporation and securities commission true copies of its articles of association, any amendments thereto, and the affidavit of its treasurer, as required by section 3 hereof, duly authenticated by the clerk of the county in which such instruments were filed, and shall file therewith an affidavit of 1 of its officers setting forth that it has continued to exist and function as a corporation since its organization under the provisions of this act, and shall also file therewith the current annual report and pay such fee as is required by law, and thereafter such corporation shall file all annual reports and pay such fees as shall be required by any applicable law.

HISTORY: Add. 1953, p. 201, Act 167, Eff. Oct. 2.

Original section 17 of Act 12 of 1869, p. 12, which attempted to confer the power of eminent domain, was held unconstitutional in *Portage Twp. Bd. of Health v. Van Hoesen*, 87 Mich. 533, 535, N.W. 894.

456.118 Corporate name.

Sec. 18. Prior to the filing by any corporation, in accordance with section 17, of the instruments thereby required with the corporation and securities commission, the corporation shall ascertain from the commission whether its corporate name is in conflict with that of any other corporation whose articles of association or articles of incorporation have previously been filed with the commission. If, in the judgment of the commission, there shall be a conflict in corporate names, then the corporation filing under the provisions of the foregoing section shall amend its name by adding thereto the name of the locality in which it is organized or operating, or in such other manner as shall be approved by the corporation and securities commission to distinguish it from any corporation whose articles have previously been filed as aforesaid.

HISTORY: Add. 1953, p. 202, Act 167, Eff. Oct. 2.

Original section 18 of Act 12 of 1869, p. 12, which attempted to confer the power of eminent domain, was held unconstitutional in *Portage Twp. Bd. of Health v. Van Hoesen*, 87 Mich. 533, 535, N.W. 894.

456.119 List of corporations; compilation; forwarding to corporation and securities commission.

Sec. 19. Upon instructions from the corporation and securities commission, every county clerk shall forthwith compile a list of corporations whose articles have been filed in his office in accordance with the provisions of this act, and shall forthwith forward such list, together with the last known address of the corporations, to the corporation and securities commission, which shall forthwith notify every such corporation

of the provisions and requirements of this act, as amended, by mailing such notice addressed to the corporation at its last known address as given by the county clerk.

HISTORY: Add. 1953, p. 202, Act 167, Eff. Oct. 2.

Original section 19 of Act 12 of 1869, p. 12, which attempted to confer the power of eminent domain, was held unconstitutional in *Portage Twp. Bd. of Health v. Van Hoesen*, 87 Mich. 533, 535, N.W. 894.

Secs. 20-26.

HISTORY: Add. 1875, p. 283, Act 219, Imd. Eff. May 3;—How. 4778-4787.

These sections attempted to confer the power of eminent domain and were held unconstitutional in *Portage Twp. Bd. of Health v. Van Hoesen*, 87 Mich. 533, 535, N.W. 894.

Act 14, 1903, p. 16; Imd. Eff. Mar. 26.

AN ACT to provide for the extension of the term of existence of corporations or associations organized under Act No. 12 of the Public Acts of 1869, entitled "An act to authorize and encourage the formation of corporations to establish rural cemeteries and to provide for the care and maintenance thereof," as amended, being sections 8399 to 8412 inclusive of the Compiled Laws of 1897, the corporate term of which has heretofore expired or which may hereafter expire by limitation, and to fix the duties and liabilities of such renewed corporations or associations.

The People of the State of Michigan enact:

456.151 Extension of corporate life; reorganization or incorporation; procedure; articles or certified copy as evidence; rights and duties.

Sec. 1. It shall be lawful for any corporation or association organized under Act No. 12 of the Public Acts of 1869, entitled "An act to authorize and encourage the formation of corporations to establish rural cemeteries and to provide for the care and maintenance thereof," as amended, whose corporate term of existence has expired or may hereafter expire by limitation, at a special meeting of the board of directors of said corporation or association called for that purpose, to direct the continuance of its corporate existence for a further term not exceeding 30 years from the expiration of its former term, which resolution or direction shall express the date of the commencement and the termination of said extended term. Such special meeting may be called by the president, vice-president, treasurer or secretary of the corporation or association whose term of existence is about to expire, or by either of the persons acting as president, vice-president, treasurer, or secretary of the corporation or association whose term of corporate existence has expired by limitation, and notice of such meeting shall be given to all the directors of said corporation or association at least 10 days prior to the date of such meeting, by delivering to each of said directors, then living, personally, a written or printed notice of such meeting, or by leaving such notice at the residence of such director, or in lieu of such personal service, by publishing notice of such meeting once in each week for 3 weeks in succession, in a newspaper printed, published and circulating in the county in which said corporation or association cares for and maintains a cemetery. The board of directors of any corporation or association, the same being either a de jure or a de facto corporation, organized under said act as amended, and which corporation or association has heretofore acquired and held and still holds land conveyed or leased to it in its corporate name, may at such special meeting determine by resolution to reorganize such corporation or association and thereby such reorganization shall take, assume and keep the name of such corporation or association as the same has before been known, and such reorganization of such corporation or association so made and directed, shall be and remain a corporation with all the powers, duties and obligations of a corporation or association newly made or organized under said act and its amendments. Upon the adoption of such resolution,

which said resolution shall have the concurrence of a majority of such directors in cases where the term of existence of such corporation shall not have expired, and the concurrence of a majority of the directors present at such meeting and not less than 3 in number in case the term of the existence thereof shall have expired, it shall be the duty of the officers of such corporation or association present at such meeting, together with a sufficient number of other directors to constitute the above required number, to make, sign and acknowledge duplicate articles of association or incorporation, in which shall be set forth the amount of land owned by such corporation or association whose term of existence is about to expire or has expired by limitation, and the county or town in which it is situated, the amount of capital theretofore subscribed for and the number of shares into which the same is divided, the name of the new organization, which shall be the same as that of the corporation or association to be replaced or succeeded, the number of persons who shall constitute the board of directors thereafter, being not less than 5 nor more than 13, the names of those who shall constitute the first board of directors, and the name of the first treasurer, the names of those owning shares in such former corporation or association by subscription, assignment or otherwise, and the number of shares owned by each, as far as shown by the books of the old corporation or association. Said articles shall further set forth that the corporation is to hold, keep and retain the corporate name and continue the corporate existence of the corporation whose term is about to expire, or in case the term of existence of such corporation or association has already expired, that the purpose is to organize anew, and to take up, renew and continue the corporate existence of such corporation or association for a term not exceeding 30 years from the date of such expiration. One of such articles of reorganization shall be filed and recorded in a book kept for that purpose in the office of the county clerk of the county where such corporation or association is located, and the other to be kept by such corporation or association. Either of said duplicate articles of reorganization, or a certified copy of the record of the same shall be prima facie evidence of the facts therein recited, and of the validity and existence of the said corporation or association. The corporation or association so made, reorganized or renewed, shall be a corporation to all intents and purposes, having all the powers, and being subject to all the restrictions of the corporation originally organized under said act, or under said act as amended, and the same shall succeed to, own and hold all the property or rights of action held, owned and had by the corporation or association which it succeeds prior to its renewal or reorganization, and shall be liable for all its debts, liabilities and obligations as fully and completely as if its former corporate term had not expired, and its corporate existence had been beyond any question, both de jure and de facto. The officers and directors of the corporation or association renewed or reorganized shall hold and continue in their offices until their successors shall be duly elected and qualified.

HISTORY: CL 1915, 11176;—CL 1929, 10457;—CL 1948, 456.151.

NOTE: Act 12 of 1899, above referred to, is Compilers' §§ 456.101 to 456.116.

Act 10, 1927, p. 16; Eff. Sep. 5.

AN ACT to authorize cemetery corporations to sell or convey property rights, franchises and liabilities to a municipal corporation.

The People of the State of Michigan enact:

456.181 Cemetery corporations; sale to municipal corporation, defined.

Sec. 1. Any corporation organized under any law of this state for the purpose of establishing or maintaining a cemetery or burying ground is hereby authorized to sell,

assign, transfer or convey to any municipal corporation, in which such cemetery or burying ground is located or to any municipal corporation being within 10 miles of the municipal corporation in which such cemetery is located, all or any part of its assets, rights, franchises and liabilities upon such terms as may be mutually agreed upon, whenever a majority of the owners of the stock or scrip issued by said cemetery corporation present and voting shall, at a special meeting called for that purpose, decide to do so.

The term "municipal corporation" as used in this act shall be construed to mean any county, township, city or village.

HISTORY: CL 1929, 10458;—Am. 1933, p. 275, Act 185, Eff. Oct. 17;—Am. 1945, p. 642, Act 345, Eff. Sept. 6;—Am. 1947, p. 410, Act 268, Imd. Eff. June 27;—CL 1948, 456.181.

456.182 Resolution of directors; special meeting of stockholders.

Sec. 2. The board of directors or trustees of said cemetery corporation may, at a regular meeting thereof, pass a resolution containing the substance of the contract of conveyance proposed to be entered into between said corporation and any municipal corporation, and calling a special meeting of the stockholders or scrip holders for the purpose of authorizing such transfer.

HISTORY: CL 1929, 10459;—CL 1948, 456.182.

456.183 Notice of special meeting; publication.

Sec. 3. Notice of such meeting shall be given by publication of a notice for 6 consecutive weeks previous to the time of holding such meeting in a newspaper published and circulated in the county wherein said corporation has its principal office or place of business; such notice shall state the time and place of such meeting and the purpose thereof, and the substance of the contract of conveyance proposed to be entered into. Proof of such publication shall be filed with the secretary of said corporation at or before such meeting.

HISTORY: CL 1929, 10460;—Am. 1933, p. 276, Act 185, Eff. Oct. 17;—CL 1948, 456.183.

456.184 Legal rights and privileges unaffected by sale; duties of municipal corporation.

Sec. 4. None of the legal rights and privileges, statutory or otherwise, of stockholders, scrip holders and lot holders of said corporation, shall be affected by the contract or conveyance by which said cemetery property is transferred to a municipal corporation, but said municipal corporation shall assume and perform all liabilities, charges and duties, statutory or otherwise, imposed upon or assumed by said corporation and fully perform all existing contracts or agreements of said cemetery corporation and shall carry out and perform all provisions as to maintenance whether imposed upon said corporation by statute or assumed by its by-laws and any fund for maintenance as provided by statute or by the by-laws of said corporation shall be by it turned over to said municipal corporation and shall be by said municipal corporation preserved, applied and used as shall have been by statute or by said by-laws provided.

HISTORY: CL 1929, 10461;—CL 1948, 456.184.

Act 58, 1915, p. 85; Eff. Aug. 24.

AN ACT to provide for the incorporation of cremation companies and associations.

The People of the State of Michigan enact:

456.201 Cremation companies; incorporators, purposes.

Sec. 1. Five or more persons, who shall, by articles of agreement in writing, associate themselves according to the provisions of this act, under any name assumed by

them, for the purpose of providing the necessary appliances for the disposal by cremation of the bodies of the dead, and for the purpose of purchasing land for a crematorium or columbarium, or both, in this state, and for fencing, laying out, improving, establishing and maintaining said land, and who shall comply with sections 2, 3 and 4 of this act, shall, with their successors and assigns, constitute a body politic or corporate, under the name assumed by them in their articles of association: Provided, however, That no 2 corporations shall assume the same name.

HISTORY: CL 1915, 11177;—CL 1929, 10462;—CL 1948, 456.201.

CREMATION ASSOCIATIONS: Excepted from the provisions of Act 327, 1931, see Compilers' § 450.3.

REPORTS: See Compilers' § 450.3.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

CHANGE IN NAME: See Act 139 of 1995, being Compilers' § 450.1 et seq.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

456.202 Articles of agreement; signing, acknowledgment, contents.

Sec. 2. The articles of agreement of every corporation formed under the provisions of this act shall be signed by the persons associating in the first instance, and acknowledged before some persons authorized by the laws of this state to take the acknowledgment of deeds, and shall state:

1. The object for which it is organized.
2. The amount of land which it owns or proposes to purchase, and the town and county in which the same is situated.
3. The amount of its capital stock and the number of shares into which the same shall be divided.
4. The name by which such corporation shall be known.
5. The names of those who shall constitute the first board of directors, and the name of the first treasurer.
6. The names of the subscribers to the articles of association, and the number of shares subscribed by each, toward the required capital.
7. The term of duration of such corporation, which shall not exceed 30 years.

HISTORY: CL 1915, 11178;—CL 1929, 10463;—CL 1948, 456.202.

456.203 Certificate of organization; signing, recording, fee.

Sec. 3. Within 1 week after the organization of any corporation organized under this act, the secretary shall make out a certificate of the organization of such corporation, giving the information referred to in section 2, which certificate shall be signed by the president and secretary of such corporation, and shall forthwith record such certificate in the office of the secretary of state and the clerk of the county in which the company or association organized under the provisions of this act is located. And the said secretary of state and county clerk shall be each entitled to receive 20 cents a folio for recording the same.

HISTORY: CL 1915, 11179;—CL 1929, 10464;—CL 1948, 456.203.

456.204 Holding of land.

Sec. 4. Such corporation shall have power to acquire by gift, devise or purchase, and hold in fee simple so much land as may be necessary and appropriate for its purposes: Provided, That no land thus held shall be in any way encumbered by such corporation.

HISTORY: CL 1915, 11180;—CL 1929, 10465;—CL 1948, 456.204.

456.205 Tax exemption; exception.

Sec. 5. All the lands of said corporation enclosed and set apart for crematorium or columbarium purposes, and all the buildings erected thereon, used for such purposes as well as all rights of inurnment therein, shall be wholly exempt from taxation of any kind whatsoever except special assessments for public improvements: Provided, That all stock owned by said stockholders shall be taxed in the manner provided by law.

HISTORY: CL 1915, 11181;—CL 1929, 10466;—CL 1948, 456.205.

TAX EXEMPTION: Similar provisions, see Compilers' § 211.7 subd. 6.

456.206 Encumbrance of certain property prohibited.

Sec. 6. No mortgage or other lien or encumbrance, shall be executed upon the lands or buildings of such corporation actually used for the disposal of the dead as specified in the provisions of this act.

HISTORY: CL 1915, 11182;—CL 1929, 10467;—CL 1948, 456.206.

456.207 Annual meeting; election of directors, term; right to vote; special meetings.

Sec. 7. The annual meeting of every such corporation shall be held on the second Monday of May in each year, unless some other day shall be fixed by the by-laws thereof, and in such case it shall be held upon the day so fixed. The participants at the initial annual meeting shall elect a board of directors of 7, of which 3 shall serve for 1 year and 4 for 2 years, their successors at subsequent annual meetings being elected in each case for a period of 2 years. These directors shall hold office until their term expires and their successors shall be chosen, and shall transact such business relating to the affairs of the corporation as may properly come before them. At such meetings the owners of stock shall have the right to vote, either in person or by proxy, in proportion to the amount of stock held by them respectively, each owner thereof being entitled to 1 vote for each share of stock. Special meetings of any such corporation may be provided for by the by-laws thereof, and shall be held when called in accordance with such provision.

HISTORY: CL 1915, 11183;—CL 1929, 10468;—CL 1948, 456.207.

456.208 Officers; selection.

Sec. 8. It shall be the duty of said board of directors to choose from their own number a president and vice-president, and also to elect suitable persons as treasurer and secretary of such corporation, and from time to time to appoint a superintendent and such other subordinate officers as may be required by the by-laws.

HISTORY: CL 1915, 11184;—CL 1929, 10469;—CL 1948, 456.208.

456.209 Directors; powers.

Sec. 9. The board of directors shall have the general management of such corporation, and shall have the power: To purchase land for such company or association, but for no other purpose; to levy assessments upon the subscribers to the articles of association, not exceeding the amount severally subscribed by them payable at such times as the directors shall determine, and to enforce the collection thereof either by suit or forfeiture; to maintain and operate a crematorium or columbarium, or both, and to dispose of niches in the aforesaid urn-hall, fix the prices thereof and to guarantee to the owners of niches the perpetual maintenance and care of said columbarium. To invest the moneys received from incinerations or the sale of niches or both, and to prescribe, from time to time, the interest or dividends which shall be paid to holders of the stock of such corporation, subject to the restrictions hereinafter named.

HISTORY: CL 1915, 11185;—CL 1929, 10470;—CL 1948, 456.209.

456.210 Records of cremations; contents.

Sec. 10. It shall be the duty of any company or association incorporated under this act, to keep a record showing the name, age, and last place of residence of every per-

son incinerated in the crematorium maintained by said corporation, as well as the number of the cremation permit and name of the officiating undertaker.

HISTORY: CL 1915, 11186;—CL 1929, 10471;—CL 1948, 456.210.

REGISTRATION OF CREMATIONS: See Act 37 of 1917, being Compilers' §§ 327.311 to 327.315.

456.211 Records of niches.

Sec. 11. Corporations organized under this act and operating a columbarium shall also keep a record of the names and addresses of the owners of niches, as well as the numbers of the niches to which they hold title and names of deceased whose remains are inurned therein.

HISTORY: CL 1915, 11187;—CL 1929, 10472;—CL 1948, 456.211.

456.212 Grounds; laying out, improvement.

Sec. 12. It shall be the duty of such board of directors to lay out and embellish the grounds, and to see that they are well kept and in good condition.

HISTORY: CL 1915, 11188;—CL 1929, 10473;—CL 1948, 456.212.

456.213 Sale of niches; trust fund, investment and use.

Sec. 13. One-half of the moneys received from the sale of niches shall be transferred to a trust fund until a sufficient amount has accumulated to insure the perpetual maintenance, and care of the columbarium, in which case they may be diverted to the treasury of the corporation. Moneys received for the trust fund shall only be invested in such securities as are considered legal investments for banks and trust companies in the state of Michigan. All interest received from such investments, however, shall be payable to the treasurer of the corporation and be used as aforesaid.

HISTORY: CL 1915, 11189;—CL 1929, 10474;—CL 1948, 456.213.

INVESTMENTS: See Compilers' §§ 487.485 and 555.201.

Act 13, 1882, p. 45; Imd. Eff. Mar. 14.

AN ACT to authorize the formation of vault associations in the state of Michigan for the purpose of preserving and protecting bodies of deceased persons before burial.

The People of the State of Michigan enact:

456.251 Vault associations; incorporators; articles, execution, filing; body corporate.

Sec. 1. That any 5 or more persons desirous to organize an association for the purpose of preserving and protecting bodies of deceased persons before burial, may execute under their hands and acknowledge before some person authorized to take the acknowledgment of deeds, the duplicate articles of agreement, as hereinafter specified, 1 copy whereof shall be filed and recorded in the office of the secretary of state and 1 copy whereof shall be filed in the clerk's office of the county where said association is located, and upon the execution and acknowledgment of such articles and the filing thereof, the signers thereof, and those who may hereafter become associated with them, shall become a body politic and corporate for the purpose set forth in said articles.

HISTORY: How. 4789a;—CL 1897, 8413;—CL 1915, 11200;—CL 1929, 10475;—CL 1948, 456.251.

BURIAL ASSOCIATIONS: Excepted from the provisions of Act 327, 1931, see Compilers' § 450.3.

REPORTS: See Compilers' § 450.81.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

TAX EXEMPTION: See Compilers' § 211.7 subd. 6.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

CHANGE IN NAME: See Act 328 of 1905, being Compilers' § 450.1 et seq.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

456.252 Vault associations; articles of association, contents.

Sec. 2. The articles of association shall contain:

First, The full names of the persons associating in the first instance, and the place of residence of each person,

Second, The name of such corporation, and the place where its office for the transaction of business is located and the period for which it is incorporated, not exceeding 30 years,

Third, The object for which it is organized,

Fourth, The number and names of its trustees, if any, and regular officers, and the time and place of holding its annual meeting,

Fifth, The terms and conditions of membership therein,

Sixth, Amount of capital stock, number of shares, by whom taken, value of each share, and amount paid in on each share.

HISTORY: How. 4789b;—CL 1897, 8414;—CL 1915, 11201;—CL 1929, 10476;—CL 1948, 456.252.

456.253 Vault associations; corporate powers.

Sec. 3. Said association may purchase or take by devise or gift, hold, and convey, real estate not exceeding 3 acres of land, and may erect thereon, a vault and such other suitable buildings necessary to carry out the objects of said association.

HISTORY: How. 4789c;—CL 1897, 8415;—CL 1915, 11202;—CL 1929, 10477;—CL 1948, 456.253.

456.501-456.514 Repealed. 1968, p. 436, Act 251, Eff. Sep. 15.

Sections related to state cemetery commission; appointments; eligibility; officers, expenses; employees; rules; system of registration and inspection; fees; maintenance; licensing of salesmen.

Act 251, 1968, p. 431; Eff. Sep. 15.

AN ACT to regulate the creation, management and maintenance of cemeteries; to create a cemetery commission and to prescribe its powers and duties; to require the registration, regulation and inspection of cemeteries; to license and regulate persons selling burial, entombment and columbarium rights; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

456.521 Cemetery regulation act; short title.

Sec. 1. This act shall be known and may be cited as the "cemetery regulation act".

HISTORY: New 1968, p. 431, Act 251, Eff. Sep. 15.

456.522 Cemetery regulation act; definitions.

Sec. 2. As used in this act:

(a) "Cemetery" means any 1 or a combination of more than 1 of the following:

(i) A burial ground for earth interments.

(ii) A mausoleum for crypt entombments.

(iii) A crematory for the cremation for human remains.

(iv) A columbarium for the deposit of cremated remains.

(b) "Interment" means the disposition of human remains by earth interment, entombment or inurnment.

(c) "Burial right" means a right of earth interment.

(d) "Entombment right" means the right of crypt entombment in a mausoleum or in an above ground vault.

(e) "Columbarium right" means the right of inurnment in a columbarium for cremated remains.

(f) "Mausoleum" means a structure used, or intended to be used, for the entombment in a crypt or crypts therein, of the remains of deceased persons.

(g) "Crypt" means a chamber in a mausoleum of sufficient size to entomb the uncremated remains of a deceased person.

(h) "Columbarium" means a structure or room or other space in a building or structure used or intended to be used for the inurnment or deposit of cremated remains.

(i) "Crematory" means a building or structure, within which the remains of deceased persons are or are intended to be cremated.

(j) "Cremation" means the incineration of the body of the deceased person.

HISTORY: New 1968, p. 432, Act 251, Eff. Sep. 15.

456.523 State cemetery commission; creation; appointment, terms, vacancy.

Sec. 3. A state cemetery commission is created within the department of commerce to consist of 5 members appointed by the governor with the advice and consent of the senate for 4-year terms. The members of the commission holding office on the effective date of this act under the provisions of Act No. 337 of the Public Acts of 1966, shall serve as members of the commission until the expiration of their terms or their successors have been appointed. A member appointed to fill a vacancy occurring otherwise than by expiration of a term shall be appointed for the unexpired term.

HISTORY: New 1968, p. 432, Act 251, Eff. Sep. 15.

456.524 State cemetery commission; members, qualifications.

Sec. 4. Of the 5 members of the commission, 1 member shall represent the public, 1 member shall represent the churches of the state, and 3 members shall be appointed only from persons who have had, immediately preceding their appointment, a minimum of 5 consecutive years' experience in this state in the active administrative management of a cemetery or as a member of the board of directors of a cemetery corporation for this period and at the time of his appointment has the actual and full authority of a president, general manager, executive vice-president or superintendent. The 5-year consecutive period shall be exclusive of time spent in the armed services. They shall hold office only as long as they continue in such active and authoritative capacity. The public member appointed by the governor shall not have been at any time within 5 years immediately preceding his appointment, nor shall he be during his term of office engaged in, or a stockholder or legal counsel for any person, firm or corporation which is engaged in, any business or activity related or incidental in any manner to the disposition of human remains.

HISTORY: New 1968, p. 432, Act 251, Eff. Sep. 15.

456.525 State cemetery commission; officers, expenses.

Sec. 5. The commission shall elect such officers from its members as it deems advisable. Officers shall hold office at the pleasure of the commission. Commission members shall receive their necessary traveling and other expenses while on the business of the commission, in accordance with the provisions of the standard travel regulations issued by the department of administration.

HISTORY: New 1968, p. 432, Act 251, Eff. Sep. 15.

456.526 State cemetery commission; quorum; majority vote required; vacancy, effect.

Sec. 6. A majority of the members of the commission constitutes a quorum. A majority of the members is required to take action on all matters within the purview of the commission. A vacancy in the commission shall not impair the right of the remaining members to exercise all the powers of the commission.

HISTORY: New 1968, p. 433, Act 251, Eff. Sep. 15.

456.527 State cemetery commission; commerce department employees.

Sec. 7. The department of commerce shall provide employees to the commission as governed by legislative appropriations to carry out the provisions of this act.

HISTORY: New 1968, p. 433, Act 251, Eff. Sep. 15.

456.528 State cemetery commission; rules; subjects.

Sec. 8. The commission may promulgate rules in accordance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948, to implement the provisions of this act, and including:

(a) Earth burial, entombment and cremation procedures and standards within the confines of the cemetery.

(b) Casket handling within the confines of the cemetery.

(c) Rest rooms and public accommodations.

(d) Records relative to the location and placing of graves.

(e) The maintaining of records relative to the financial aspects of cemeteries.

(f) Standards of maintenance of cemeteries to provide for appropriate and necessary physical care of grounds, buildings and facilities.

(g) Tactics and practices in the selling of burial rights, entombment rights and columbarium rights.

(h) Requirements for applications for the granting of permits, registrations and licenses required under this act.

(i) The formal and informal procedures governing the conduct of contested cases under this act before the commission or its authorized hearing officer.

HISTORY: New 1968, p. 433, Act 251, Eff. Sep. 15.

456.529 State cemetery commission; powers as to hearings and witnesses.

Sec. 9. The commission may hold hearings, administer oaths, take testimony under oath and request in writing the appearance and testimony of witnesses, including the production of books and records. Upon the refusal of a witness to appear, testify or submit books and records after a written request, the commission or any party to a contested case may apply to the circuit court in Ingham county for a subpoena or a subpoena duces tecum. The court shall issue such subpoenas whenever reasonable grounds are shown.

HISTORY: New 1968, p. 433, Act 251, Eff. Sep. 15.

456.530 State cemetery commission; registration and inspection of cemeteries; exemption.

Sec. 10. The commission shall institute a system of registration and inspection of cemeteries authorized to be created, maintained and operated under Act No. 12 of the Public Acts of 1869, as amended, being sections 456.101 to 456.119 of the Compiled Laws of 1948, and Act No. 87 of the Public Acts of 1855, as amended, being sections 456.1 to 456.36 of the Compiled Laws of 1948, as well as other cemeteries operating under any state law or local ordinance or law. Cemeteries owned and operated by a municipality, church or religious institution shall be exempt from the provisions of this act. Cemeteries for earth interment of 10 acres or less in size, which are owned and operated entirely and exclusively by existing nonprofit entities and in which burials have heretofore taken place, shall be exempt from the fee provisions of this act. Such cemeteries shall be inspected at the discretion of the commission. They shall also be exempt from the care fund requirements of section 16, except as to the care fund report requirements if such cemeteries maintain care or memorial funds.

HISTORY: New 1968, p. 433, Act 251, Eff. Sep. 15.

456.531 State cemetery commission; registration and inspection fees.

Sec. 11. The commission shall charge an annual registration fee of \$10.00 per year for each cemetery registered and a fee of \$25.00 for annual inspection of the cemetery.

HISTORY: New 1968, p. 434, Act 251, Eff. Sep. 15.

456.532 Cemeteries; establishment; license, permit or registration required.

Sec. 12. No person or business entity shall establish a cemetery, or operate an existing cemetery, or sell burial rights, entombment rights or columbarium rights except under a valid license, permit or registration as required by this act.

HISTORY: New 1968, p. 434, Act 251, Eff. Sep. 15.

456.533 Cemeteries; application for permit, fee, investigation.

Sec. 13. Any person or business entity desiring to establish a cemetery shall file with the commission an application on commission forms for a permit to establish a cemetery. The application shall be accompanied by an investigation fee of \$250.00. After receipt of an application the commission shall make an investigation pertaining to the physical plans, the community need for the planned cemetery and pertinent information pertaining to the applicant's experience, financial stability, ability and integrity. If applicant is other than a natural person, the same investigation shall be made of the general manager and principal owners.

HISTORY: New 1968, p. 434, Act 251, Eff. Sep. 15.

456.534 Cemeteries; permit, issuance or denial.

Sec. 14. The commission after receipt of the investigation fee, application and after investigation, shall grant or refuse to grant the permit. If the commission decides to deny the application for permit, it shall follow the procedure set forth in section 19.

HISTORY: New 1968, p. 434, Act 251, Eff. Sep. 15.

456.535 Annual registration; application, fee.

Sec. 15. Every individual or business entity operating a cemetery shall register the cemetery by filing with the commission a registration application on or before June 1 of each year on the commission's form accompanied by the registration fee. Registrations shall expire on July 1 of each year. If the commission intends to deny registration, the procedure set forth in section 19 shall be followed.

HISTORY: New 1968, p. 434, Act 251, Eff. Sep. 15.

456.536 Irrevocable endowment care fund; report; waiver; minimum deposit.

Sec. 16. The commission shall require each cemetery to establish and maintain an irrevocable endowment care fund as required by section 35a of Act No. 87 of the Public Acts of 1855, as amended, or section 7a of Act No. 12 of the Public Acts of 1869, as amended, and to report annually on or before June 30 of each year, on forms approved and furnished by the commission, such care fund information required to be reported to the commission by other statutes and such information regarding the funds as the commission deems pertinent in the public interest. Any cemetery applying to the commission as authorized by other statutes for a care fund deposit modification or waiver shall be assessed the actual expenses for any examination or investigation by the cemetery commission. The commission shall require all persons engaged as agent or seller, as a means of livelihood either part time or full time, in the selling of burial rights, entombment rights or columbarium rights owned by parties other than a cemetery or a corporation subject to the care fund requirements of other laws, to deposit 15% of all gross proceeds received from the sales hereafter of said rights into the irrevocable care fund of the cemetery in which the rights are located if an irrevocable care fund exists

for such cemetery. No total deposit for a single adult burial right sale or assignment shall be less than \$20.00.

HISTORY: New 1968, p. 434, Act 251, Eff. Sep. 15.

456.537 Salesman; license, application, fee, exceptions; contents.

Sec. 17. Every person desiring to sell burial rights, entombment rights or columbarium rights as a means of livelihood as agent or seller, either part or full time shall file with the commission an application accompanied by the required fee. The application shall be filed annually and the fee the first year shall be \$25.00 and thereafter a fee of \$15.00 each year. This requirement shall not apply to cemetery employees selling on the premises of cemeteries or in its registered offices or off the premises of cemeteries when such selling is not for additional compensation.

Application for a salesman's license shall be in the form prescribed by the commission and signed and sworn by the applicant and, in addition to such information required by the commission, it shall include the name and residence address of the applicant; a statement of the previous history, record and association of the applicant, which statement shall be sufficient to establish to the satisfaction of the commission, the applicant's reputation and character in business; a statement as to whether the applicant intends to engage in any other occupation or business other than that of a cemetery rights salesman; a statement showing whether or not the applicant has previously applied for a salesman's license and the result of such application and whether or not the applicant has ever been the holder of such license which was revoked or suspended. Every applicant for a salesman's license shall be of good moral character.

HISTORY: New 1968, p. 434, Act 251, Eff. Sep. 15.

456.538 Application for establishment of cemeteries; denial; suspension or revocation.

Sec. 18. (1) The commission may deny any application filed under this act and refuse to issue any permit, registration or license or may suspend or revoke it when the commission finds the applicant or its officers or general manager:

- (a) Has made false statement of material fact in his application.
- (b) Has not complied with the provisions of this act.
- (c) Has been guilty of a fraudulent act in connection with selling or otherwise dealing in cemetery lots, burial rights or services of a type required to be registered hereunder.
- (d) Has been guilty in the judgment of the commission of any other conduct whether of the same or different character than herein before specified which constitutes dishonest and unfair dealing.

(2) If the commission's investigation reveals facts which, with reference to the establishment of a cemetery, show inappropriate physical plans, lack of community need, inadequate experience, financial stability or integrity to protect the public welfare.

HISTORY: New 1968, p. 435, Act 251, Eff. Sep. 15.

456.539 Denial; notice, contents, hearing, decision.

Sec. 19. If the commission intends to deny an application for a permit to establish a cemetery or refuse registration of an existing cemetery or deny a salesman's license or suspend or revoke any permit or registration or license, it shall give written notice to person or business involved of its intent to deny. The notice shall state a time and a place for hearing before the commission or its duly designated hearings officer, and a summary statement of the reasons for the proposed action. The notice of intent shall be mailed by certified mail to the applicant at least 15 days prior to the scheduled hearing date. The commission shall hold a hearing pursuant to the notice in the man-

ner required by Act No. 197 of the Public Acts of 1952, as amended, and the rules of procedure adopted by the commission, and thereafter shall make a written decision.

HISTORY: New 1968, p. 435, Act 251, Eff. Sep. 15.

456.540 Denial; appeal.

Sec. 20. Any person aggrieved by the decision of the commission rendered under section 19 may appeal to the circuit court under Act No. 197 of the Public Acts of 1952, as amended.

HISTORY: New 1968, p. 435, Act 251, Eff. Sep. 15.

456.541 Violation.

Sec. 21. Any person, firm, partnership, association, copartnership or corporation violating the provisions of this act is guilty of a misdemeanor and if a natural person, for the first offense shall be fined not more than \$100.00 or imprisoned not to exceed 90 days and for a second offense, fined not to exceed \$500.00 or imprisoned for not to exceed 1 year, or by both. In all cases where the violator is other than a natural person the fine for the first offense shall be not more than \$100.00 and for the second not more than \$1,000.00.

HISTORY: New 1968, p. 435, Act 251, Eff. Sep. 15.

456.542 Repeal.

Sec. 22. Act No. 337 of the Public Acts of 1966, being sections 456.501 to 456.514 of the Compiled Laws of 1948, is repealed.

HISTORY: New 1968, p. 436, Act 251, Eff. Sep. 15.

456.543 Effective date of act.

Sec. 23. This act shall take effect September 15, 1968.

HISTORY: New 1968, p. 436, Act 251, Eff. Sep. 15.

CHAPTER 457. FRATERNAL ASSOCIATIONS

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- 457.586 Subordinate castles; incorporation; body corporate, powers; certified copy of articles as evidence.
- 457.587 Erection of building; capital stock, creation, shares; cemetery.

- 457.588 Commanderies; incorporation.
 457.589 Governing law; amendment of act.
 457.590 Business offices; change of location.

LEGION OF THE CROSS
 Act 106 of 1891

- 457.601 Legion of Cross; incorporation.
 457.602 Supreme temple; incorporators; articles of association, execution, contents.
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 457.605 Articles; filing, recording; body corporate, powers; certified copy of articles as evidence.
 457.606 Supreme temple; powers.
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- 457.621 Knights of Essenic Order; incorporation.
 457.622 Supreme senate; incorporators; articles of association, execution, contents.
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 457.627 Erection of building; capital stock, creation, shares; cemetery.
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 Act 49 of 1893

- 457.631 United Friends; incorporation.
 457.632 Supreme commandery; body corporate, powers; articles or certified copy as evidence.
 457.633 Supreme commandery; amendment of constitution and laws.
 457.634 Subordinate commanderies; chartering; existing commanderies; regulation.
 457.635 Subordinate commanderies; incorporation; certified copy of articles as evidence.
 457.636 Property; holding, disposition; control of business.

ORDER OF HERMANN'S SONS
 Act 78 of 1893

- 457.641 Order of Hermann's Sons; grand lodge, incorporation, procedure.
 457.642 Hermann's Sons, grand lodge; powers.
 457.643 Subordinate lodges; incorporation, procedure.
 457.644 Property; holding, disposition.
 457.645 Certified copy of articles as evidence.

- 457.646 Governing law; amendment of act.

RATHBONE SISTERS
 Act 208 of 1895

- 457.651 Rathbone Sisters; incorporation of temples.
 457.652 Grand temple; incorporators; articles of association, execution, contents.
 457.653 Grand temple; articles, charter and constitution, filing; body corporate, powers; taxation.
 457.654 Grand temple; certified copy of articles as evidence.
 457.655 Subordinate temples; chartering; existing temples; regulation.
 457.656 Subordinate temples; incorporation; body corporate, powers; certified copy of articles as evidence.
 457.657 Erection of building; capital stock, creation, shares; cemetery.

MYSTIC ORDER OF THE NEW KAABA
 Act 18 of 1895

- 457.661 Mystic Order of New Kaaba; incorporation.
 457.662 Supreme temple; incorporators; articles, execution, contents.
 457.663 Grand temple; incorporators; articles, execution, contents.
 457.664 Subordinate temple; incorporators; articles, execution, contents.
 457.665 Articles; filing, recording; body corporate, powers; certified copy of articles as evidence; taxation.
 457.666 Supreme temple; powers.
 457.667 Supreme temple; only one to be incorporated; approval of articles of subordinate bodies.

LUTHERAN BUND
 Act 179 of 1897

- 457.671 Lutheran Bund; incorporation.
 457.672 Incorporators; articles of association, execution, contents.
 457.673 Articles, constitution, by-laws and resolution; filing; body corporate, powers; taxation.
 457.674 Membership; delegates; rules; officers, duties; constitution, by-laws, amendment.
 457.675 Reserve fund; loaning, investment and control.
 457.676 Control of affairs.
 457.677 Amendment of articles; procedure; evidence of existence.

ALLIANCE MARQUETTE
 Act 71 of 1901

- 457.681 Alliance Marquette; incorporation of councils.
 457.682 Grand council; incorporators; articles, execution, contents.
 457.683 Grand council; French as official language; evidence.
 457.684 Grand council; articles and charter, filing; body corporate, powers.
 457.685 Grand council; certified copy of articles as evidence; subordinate councils, institution, regulation.

457.686	Subordinate council; incorporation; body corporate, powers; certified copy of articles as evidence.		ESKIMOS Act 55 of 1917
457.687	Business offices; location; office of grand council, change in location.	457.701	Eskimos; incorporation of councils.
457.688	Insurance business; funeral benefits.	457.702	Grand council; incorporators; articles, execution, contents.
	KALEVAN RITARIT Act 80 of 1909	457.703	Grand council; articles and constitution, filing; body corporate, powers.
457.691	Kalevan Ritarit; incorporation.	457.704	Grand council; rules; officers.
457.692	Incorporators; articles of association, execution, contents.	457.705	Grand council; certified copy of articles as evidence; subordinate councils, institution, regulation.
457.693	Articles and charter; filing, recording; body corporate, powers.	457.706	Subordinate councils; incorporation; body corporate, powers; certified copy of articles as evidence.
457.694	Rules and by-laws; officers.	457.707	Business offices; location; office of grand council, change of location.
457.695	Articles; certified copy as evidence.	457.708	Insurance business; funeral benefits.

Act 134, 1871, p. 209; Imd. Eff. Apr. 15.

AN ACT to provide for the incorporation of St. George's societies.

The People of the State of Michigan enact:

457.1 St. George's societies; incorporators.

Sec. 1. That any number of persons of English birth, who may now or hereafter be residents of this state, or the descendants of such persons in the first or second degree, may be incorporated in pursuance of the provision of this act.

HISTORY: CL 1871, 3246;—How. 4520;—CL 1897, 7804;—CL 1915, 10240;—CL 1929, 10521;—CL 1948, 457.1.

GERMAN SOCIETIES: Act 124 of 1891, being CL 1915, 10277 to 10284, and entitled: "An act to provide for the incorporation of regiments and companies of the Deutscher Landwehr-Unterstützungs-Verein," was repealed by Act 37 of 1919.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

FRATERNAL NAMES AND EMBLEMS: For protection of, see Compilers' § 450.1 et seq.

457.2 Articles of association; execution, contents.

Sec. 2. Any 10 or more persons residents of this state, being of English birth or their descendants as aforesaid, desiring to become incorporated, may make and execute articles of association under their hands and seals, which said articles of association shall be acknowledged before some officer of this state having authority to take acknowledgment of deeds, and shall set forth:

First. The names of persons associating, and their place of residence;

Second. The location of the association of which they are members;

Third. The corporate name by which such association shall be known in the law: Provided, That each association incorporated under this act, shall be known as "The St. George Society" of (the name of the city or township where such association is located, and if more than 1 such association is located in the same city or township, the same shall be designated by number.)

Fourth. The object and purpose of such association, which shall be to provide for the relief of distressed members and their families (provided such distress is not occasioned by drunkenness or crime), the visitation of the sick, the burial of the dead, and to aid and assist the widows and orphans of deceased members, and in the discretion of the society to relieve and advise distressed immigrants, and others from that part of Great Britain south of the Tweed, and the isles adjacent thereto, and their sons and grandsons. The period for which such association shall be incorporated shall not exceed 30 years.

HISTORY: CL 1871, 3247;—How. 4521;—CL 1897, 7805;—CL 1915, 10241;—CL 1929, 10522;—CL 1948, 457.2.

457.3 Articles; filing, recording; body corporate, powers; certified copy as evidence.

Sec. 3. A copy of said articles of association shall be filed with county clerk of the county in which such corporation shall be formed, and shall be recorded by such clerk in a book to be kept in his office for that purpose, and thereupon the persons who shall have signed said articles of association, their associates and successors, shall be a body politic, and corporate by the name expressed in such articles of association, and by that name they and their successors shall have succession, and shall be persons in the law, capable of suing and being sued, and they and their successors may have a common seal, and the same may change and alter at pleasure; and a certified copy of the record of such articles of association under the seal of the county where the said record is kept, shall be received as prima facie evidence in all courts in this state, of the existence and due incorporation of such corporation.

HISTORY: CL 1871, 3248;—How. 4522;—CL 1897, 7806;—CL 1915, 10242;—CL 1929, 10523;—CL 1948, 457.3.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.4 Property; holding, disposition.

Sec. 4. Every corporation formed in pursuance of this act shall be capable in its corporate name, of purchasing, taking, receiving, holding and enjoying to itself estates both real and personal: Provided, That the value of such real and personal estate shall not exceed the sum of 100,000 dollars, and that they and their successors shall have full authority and power to give, grant, sell, mortgage, lease, devise, and dispose of said real and personal estate, or part thereof, and other estates real and personal, may acquire instead thereof, at their will and pleasure; and the proceeds shall be devoted exclusively to charitable and benevolent purposes set forth in section 2.

HISTORY: CL 1871, 3249;—How. 4523;—CL 1897, 7807;—CL 1915, 10243;—CL 1929, 10524;—CL 1948, 457.4.

457.5 By-laws and rules; officers, powers.

Sec. 5. Said corporations shall have full power and authority to make and establish rules, regulations and by-laws for regulating and governing all the affairs and business of said corporations, not contrary to the laws of this state and the United States and to designate, elect, or appoint from among their number such officers, under such names and style as shall be in accordance with the constitution or charter of said society, who shall have the supervision, control, and management of the affairs of said corporations.

HISTORY: CL 1871, 3250;—How. 4524;—CL 1897, 7808;—CL 1915, 10244;—CL 1929, 10525;—CL 1948, 457.5.

457.6 Erection of buildings; capital stock, creation, shares.

Sec. 6. Any corporations formed in pursuance of this act may erect and own such suitable edifices, buildings or halls as such corporation shall deem necessary, with convenient rooms, for the meeting of said society, and for that purpose may create a capital stock of not more than 60,000 dollars, to be divided into shares of not more than 25 dollars each.

HISTORY: CL 1871, 3251;—How. 4525;—CL 1897, 7809;—CL 1915, 10245;—CL 1929, 10526;—CL 1948, 457.6.

457.7 Governing law; amendment of act.

Sec. 7. All corporations formed under the provisions of this act shall be subject to the provisions of chapter 73 of the Compiled Laws of this state, so far as the same may be applicable to corporations formed under this act, and the legislature may alter or amend this act at any time.

HISTORY: CL 1871, 3252;—How. 4526;—CL 1897, 7810;—CL 1915, 10246;—CL 1929, 10527;—CL 1948, 457.7.

NOTE: Ch. 73 of CL 1857, above referred to, included the following provisions which have not been repealed or reenacted: Compilers' §§ 450.504 to 450.525.

See Act 327, 1931, being Compilers' § 450.1 et seq.

Act 173, 1891, p. 215; Imd. Eff. Jun. 30.

AN ACT to provide for the incorporation of orders of the Sons of St. George.

The People of the State of Michigan enact:

457.11 Sons of St. George; incorporators.

Sec. 1. That any number of persons of English birth, who may now or hereafter be residents of this state, or the descendants of such persons in the first or second degree, may be incorporated in pursuance of the provisions of this act.

HISTORY: CL 1897, 7795;—CL 1915, 10231;—CL 1929, 10528;—CL 1948, 457.11.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.12 Articles of association; execution, contents.

Sec. 2. Any 10 or more residents of this state, being of English birth, or their descendants as aforesaid, desiring to become incorporated, may make and execute articles of association under their hands and seals, which said articles of association shall be acknowledged before some officer of this state having authority to take acknowledgments of deeds, and shall set forth:

First, The names of citizens associating, and their place of residence;

Second, The location of the association of which they are members;

Third, The corporate name by which such association shall be known in the law: Provided, That each association incorporated under this act shall be known as "Order Sons of St. George" of the name of the city or township where such association is located, and if more than 1 [such] association is located in the same city or township, the same shall be designated by number;

Fourth, The object and purpose of such association, which shall be to provide for the relief of distressed members and their families, provided such distress is not occasioned by drunkenness or crime, the visitation of the sick, the burial of the dead, and to aid and assist the widows and orphans of deceased members, and in the discretion of the lodge to relieve and advise distressed immigrants and others from that part of Great Britain south of the Tweed, and the isles adjacent thereto, and their sons and grandsons. The period for which such association shall be incorporated shall not exceed 30 years.

HISTORY: CL 1897, 7796;—CL 1915, 10232;—CL 1929, 10529;—CL 1948, 457.12.

457.13 Articles; filing, recording; body corporate, powers; certified copy as evidence.

Sec. 3. A copy of said articles of association shall be filed with the county clerk of the county in which such corporation shall be formed, and shall be recorded by such clerk in a book to be kept in his office for that purpose, and thereupon the persons who shall have signed said articles of association, their associates and successors, shall be a body politic and corporate by the name expressed in such articles of association, and by that name, they and their successors shall have succession, and shall be citizens in the law capable of suing and being sued, and they and their successors may have a common seal, and the same, may change and alter at pleasure; and a certified copy of the record of such articles of association, under the seal of the county where the said record is kept, shall be received as prima facie evidence, in all courts in this state, of the existence and due incorporation of such corporation.

HISTORY: CL 1897, 7797;—CL 1915, 10233;—CL 1929, 10530;—CL 1948, 457.13.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.14 Property; holding, disposition.

Sec. 4. Every corporation formed in pursuance of this act shall be capable, in its corporate name, of purchasing, taking, receiving, holding and enjoying to itself estates

both real and personal: Provided, That the value of such real and personal estate shall not exceed the sum of 100,000 dollars, and that they and their successors shall have full authority and power to give, grant, sell, mortgage, lease, devise, and dispose of said real and personal estate, or part thereof, and other estates, real and personal, may acquire instead thereof at their will and pleasure; and the proceeds shall be devoted exclusively to charitable and benevolent purposes, set forth in section 2.

HISTORY: CL 1897, 7798;—CL 1915, 10234;—CL 1929, 10531;—CL 1948, 457.14.

457.15 By-laws and rules; officers, powers.

Sec. 5. Said corporation [corporations] shall have full power and authority to make and establish rules, regulations, and by-laws for regulating and governing all the affairs and business of said corporation, not contrary to the laws of this state or the United States, and to designate, elect, or appoint, from among their number, such officers, under such name and style as shall be in accordance with the constitution or charter of said lodge, who shall have the supervision, control and management of the affairs of said corporations.

HISTORY: CL 1897, 7799;—CL 1915, 10235;—CL 1929, 10532;—CL 1948, 457.15.

457.16 Erection of buildings; capital stock, creation, shares.

Sec. 6. Any corporation formed in pursuance of this act may erect and own such suitable edifices, buildings or halls as such corporation shall deem necessary, with convenient rooms for the meeting of said lodge, and for that purpose may create a capital stock of not more than 60,000 dollars, to be divided into shares of not more than 25 dollars each.

HISTORY: CL 1897, 7800;—CL 1915, 10236;—CL 1929, 10533;—CL 1948, 457.16.

457.17 Governing law; amendment of act.

Sec. 7. All corporations formed under the provisions of this act shall be subject to the provisions of chapter 73 of the Compiled Laws of this state, the same being chapter 191 of Howell's statutes, so far as the same may be applicable to corporations formed under this act, and the legislature may alter or amend this act at any time.

HISTORY: CL 1897, 7801;—CL 1915, 10237;—CL 1929, 10534;—CL 1948, 457.17.

NOTE: Ch. 73 of CL 1857, which is undoubtedly the compilation first mentioned above, or Ch. 191 of How., above referred to, included the following provisions which have not been repealed or reenacted: Compilers' §§ 450.504 to 450.525 and 450.631 et seq.

See Act 327, 1931, being Compilers' § 450.1 et seq. See Compilers' § 450.133 et seq.

457.18 Grand lodge; incorporation, purpose.

Sec. 8. Any 10 or more members of the body known as the Grand Lodge of the state of Michigan of the Order Sons of St. George, which number shall include the executive board of said grand lodge, may under the provisions of this act, make and execute articles of association under their hands and seals, to be acknowledged before some officer of this state having authority to take acknowledgment of deeds, which articles shall set forth the same facts provided for in section 2 of this act, except that the location may be set forth as in the state of Michigan merely, and the corporate name shall be the "Grand Lodge of the State of Michigan of the Order Sons of St. George," and the object and purpose of the association shall be, and shall be set forth as, to exercise such jurisdiction, power and authority over subordinate lodges of said order in this state as are now, or may be given it by virtue of the articles and regulations of such grand lodge as they now, or as they may from time to time exist, not inconsistent with the laws and constitution of this state and of the United States.

HISTORY: Add. 1895, p. 158, Act 60, Imd. Eff. April 4;—CL 1897, 7802;—CL 1915, 10238;—CL 1929, 10535;—CL 1948, 457.18.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.19 Grand lodge; articles of association, filing; body corporate, powers.

Sec. 9. Such articles of association shall be filed in the office of the secretary of state, and thereupon the persons who have signed the same, their associates and successors, shall be a body corporate with all the powers and privileges as to property

conferred by this act upon local lodges of said order, together with the jurisdiction, power and authority over local or subordinate lodges of said order in this state, mentioned in the preceding section, and shall be subject to all the provisions of law and reservations of power described in section 7 of this act.

HISTORY: Add. 1885, p. 158, Act 60, Imd. Eff. April 4;—CL 1897, 7803;—CL 1915, 10239;—CL 1929, 10536;—CL 1948, 457.19.

Act 41, 1877, p. 30; Imd. Eff. Mar. 30.

AN ACT to provide for the incorporation of St. Andrew's Societies.

The People of the State of Michigan enact:

457.21 St. Andrew's societies; incorporators.

Sec. 1. That any number of persons of Scottish birth, who may now or hereafter be residents of this state, or the descendants of such persons in the first or second degree, may be incorporated in pursuance of the provisions of this act.

HISTORY: How. 4527;—CL 1897, 7811;—CL 1915, 10247;—CL 1929, 10537;—CL 1948, 457.21.
FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.22 Articles of association; execution, contents.

Sec. 2. Any 10 or more persons, residents of this state, being of Scottish birth or their descendants as aforesaid, desiring to become incorporated, may make and execute articles of association, under their hands and seals, which said articles of association shall be acknowledged before some officer of this state having authority to take acknowledgments of deeds, and shall set forth.

First, The names of persons associating and their places of residence;

Second, The location of the association of which they are members;

Third, The corporate name by which such association shall be known in the law: Provided, That each association incorporated under this act shall be known as "The St. Andrew's Society of (the name of the city or township where such association is located, and if more than 1 association is located in the same city or township the same shall be designated by number);

Fourth, The object and purpose of such association, shall be to provide for and relieve poor natives of Scotland and children and grand-children of natives of Scotland.

The period for which such association shall be incorporated shall not exceed 30 years.

HISTORY: How. 4528;—CL 1897, 7812;—CL 1915, 10248;—CL 1929, 10538;—CL 1948, 457.22.

457.23 Articles; filing, recording; body corporate, powers; certified copy as evidence.

Sec. 3. A copy of said articles of association shall be filed with the county clerk of the county in which such corporation shall be formed, and shall be recorded by such clerk in a book to be kept in his office for that purpose, and thereupon the persons who shall have signed said articles of association, their associates and successors, shall be a body politic and corporate by the name expressed in such articles of association, and by that name they and their successors shall have succession and shall be persons in law, capable of suing and being sued, and they and their successors may have a common seal, and may change and alter the same at pleasure; and a certified copy of the record of such articles of association under the seal of the county where the said record is kept, shall be received as prima facie evidence in all courts in this state of the existence and due incorporation of such corporation.

HISTORY: How. 4529;—CL 1897, 7813;—CL 1915, 10249;—CL 1929, 10539;—CL 1948, 457.23.
SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.24 Property; holding, disposition.

Sec. 4. Every corporation formed in pursuance of this act shall be capable in its corporate name of purchasing, taking, receiving, holding, and enjoying to itself estates both real and personal: Provided, That the value of such real and personal estate shall not exceed the sum of 100,000 dollars, and that they and their successors shall have full authority and power to give, grant, sell, mortgage, lease, devise, and dispose of said real and personal estate or any part thereof, and other estates, real and personal, may acquire instead thereof at their will and pleasure, and the proceeds shall be devoted exclusively to the charitable and benevolent purposes set forth in section 2.

HISTORY: How. 4530;—CL 1897, 7814;—CL 1915, 10250;—CL 1929, 10540;—CL 1948, 457.24.

457.25 By-laws and rules; officers, powers.

Sec. 5. Said corporations shall have full power and authority to make and establish rules, regulations, and by-laws for regulating and governing all the affairs and business of said corporations, not contrary to the laws of this state and the United States, and to designate, elect, or appoint, from among their number such officers under such names and styles as shall be in accordance with the constitution and charter of such society, who shall have the supervision, control, and management of the affairs of said corporations.

HISTORY: How. 4531;—CL 1897, 7815;—CL 1915, 10251;—CL 1929, 10541;—CL 1948, 457.25.

457.26 Erection of buildings; capital stock, creation, shares.

Sec. 6. Any corporation formed in pursuance of this act may erect and own such suitable edifices, buildings, or halls as such corporation shall deem necessary, with convenient rooms for the meetings of said society, and for that purpose may create a capital stock of not more than 60,000 dollars to be divided into shares of not more than 25 dollars each.

HISTORY: How. 4532;—CL 1897, 7816;—CL 1915, 10252;—CL 1929, 10542;—CL 1948, 457.26.

457.27 Governing law; amendment of act.

Sec. 7. All corporations formed under the provisions of this act shall be subject to the provisions of chapter 73 of the Compiled Laws of this state, so far as the same may be applicable to corporations formed under this act, and the legislature may alter or amend this act at any time.

HISTORY: How. 4533;—CL 1897, 7817;—CL 1915, 10253;—CL 1929, 10543;—CL 1948, 457.27.

NOTE: Ch. 73 of CL 1857, which is undoubtedly the compilation above referred to, included the following provisions which have not been repealed or reenacted: Compilers' §§ 450.504 to 450.525.

See Act 327, 1931, being Compilers' § 450.1 et seq.

Act 53, 1875, p. 49; Eff. Aug. 3.

AN ACT to provide for the incorporation of societies of St. Patrick.

The People of the State of Michigan enact:

457.31 St. Patrick's societies; incorporators.

Sec. 1. That any number of persons of Irish birth or extraction who may now or hereafter be residents of this state, or the descendants of such persons, may be incorporated in pursuance of the provisions of this act.

HISTORY: How. 4513;—CL 1897, 7818;—CL 1915, 10254;—CL 1929, 10544;—CL 1948, 457.31.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.32 Articles of association; execution, contents.

Sec. 2. Any 10 or more persons, residents of this state, being of Irish birth, or their descendants as aforesaid, desiring to become incorporated, may make and execute articles of association, under their hands and seals, which said articles of association shall

be acknowledged before some officer of this state having authority to take acknowledgements of deeds, and shall set forth

First, The names of the persons associating, and their place of residence;

Second, The location of the association of which they are members;

Third, The corporate name by which such association shall be known in the law: Provided, That each association incorporated under this act shall be known as "The Society of St. Patrick" of (the name of the city, village, or township where such association is located, and if more than 1 such association is located in the same city, village, or township, the same shall be designated by number);

Fourth, The object and purpose of such association, which shall be to provide for the relief of distressed members and their families, the visitation of the sick, the burial of the dead, and to aid and assist the widows and orphans of deceased members. The period for which such association shall be incorporated shall not exceed 30 years.

HISTORY: How. 4514;—CL 1897, 7819;—CL 1915, 10255;—CL 1929, 10545;—CL 1948, 457.32.

457.33 Articles; filing, recording; body corporate, powers; certified copy as evidence.

Sec. 3. A copy of said articles of association shall be filed with the county clerk of the county in which such corporation shall be formed, and upon payment of a fee of 75 cents shall be recorded by such clerk in a book to be kept in his office for that purpose, and thereupon the persons who shall have signed said articles of association, their associates and successors, shall be a body politic and corporate by the name expressed in such articles of association, and by that name they and their successors shall have succession, and shall be persons in the law capable of suing and being sued, and they and their successors may have a common seal, and the same may change and alter at pleasure, and a certified copy of the record of such articles of association, under the seal of the county where said record is kept, shall be received as prima facie evidence in all courts in this state of the existence and due incorporation of such corporation.

HISTORY: How. 4515;—CL 1897, 7820;—CL 1915, 10256;—CL 1929, 10546;—CL 1948, 457.33.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.34 Property; holding, disposition.

Sec. 4. Every corporation formed in pursuance of this act shall be capable in its corporate name of purchasing, taking, receiving, holding to itself and enjoying estates both real and personal: Provided, That the value of such real and personal estate shall not exceed the sum of 100,000 dollars, and that they and their successors shall have full authority and power to give, grant, sell, mortgage, lease, devise, and dispose of said real and personal estate, or part thereof, and other estate, real and personal, may acquire instead thereof, at their will and pleasure; and the proceeds shall be devoted exclusively to the charitable and benevolent purposes set forth in section 2.

HISTORY: How. 4516;—CL 1897, 7821;—CL 1915, 10257;—CL 1929, 10547;—CL 1948, 457.34.

457.35 By-laws and rules; officers, powers.

Sec. 5. Said corporations shall have full force and authority to make and establish rules, regulations, and by-laws for regulating and governing all the affairs and business of said corporation, not contrary to the laws of this state or of the United States, and to designate, elect, or appoint, from among their number such officers, under such names and style as shall be in accordance with the constitution or charter of said society, who shall have the supervision or control, and management of the affairs of said corporations.

HISTORY: How. 4517;—CL 1897, 7822;—CL 1915, 10258;—CL 1929, 10548;—CL 1948, 457.35.

457.36 Erection of buildings; capital stock, creation, shares.

Sec. 6. Any corporations formed in pursuance of this act may erect and own such suitable edifices, buildings, or halls as such corporations shall deem necessary, with convenient rooms for the meeting of said society, and for that purpose may create a capital stock of not more than 60,000 dollars, to be divided into shares of not more than 25 dollars each.

HISTORY: How. 4518;—CL 1897, 7823;—CL 1915, 10259;—CL 1929, 10549;—CL 1948, 457.36.

457.37 Governing law; amendment of act.

Sec. 7. All corporations formed under the provisions of this act shall be subject to the provisions of chapter 73 of the Compiled Laws of this state, so far as the same may be applicable to corporations formed under this act, and the legislature may alter or amend this act at any time.

HISTORY: How. 4519;—CL 1897, 7824;—CL 1915, 10260;—CL 1929, 10550;—CL 1948, 457.37.

NOTE: Ch. 73 of CL 1857, which is undoubtedly the compilation above referred to, included the following provisions which have not been repealed or reenacted: Compilers' §§ 450.504 to 450.525.

See Act 327, 1931, being Compilers' § 450.1 et seq.

Act 84, 1879, p. 81; Imd. Eff. May 20.

AN ACT to provide for the incorporation of state conventions and divisions of the Ancient Order of Hibernians.

The People of the State of Michigan enact:

457.41 Ancient Order of Hibernians; incorporation.

Sec. 1. That state conventions and subordinate divisions of the Ancient Order of Hibernians of the state of Michigan may be incorporated in pursuance of the provisions of this act.

HISTORY: How. 4534;—CL 1897, 7825;—CL 1915, 10261;—CL 1929, 10551;—CL 1948, 457.41.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

457.42 State convention; articles of association, execution, contents.

Sec. 2. Any 5 or more persons, residents of this state and being members of the [a] state convention of the Ancient Order of Hibernians of the state of Michigan, desirous to become incorporated, may with the consent of such convention, make and execute articles of association under their hands and seals, which said articles of association shall be acknowledged before some officer of this state, having authority to take acknowledgments of deeds, and shall set forth:

First, The names of the persons associating in the first instance, and their place of residence;

Second, The corporate name by which such association shall be known in the law, and the place of its business office;

Third, The object and purpose of such association, which shall be to promote the general welfare of the society known as the "Ancient Order of Hibernians," and the period for which it is incorporated, not exceeding 30 years.

HISTORY: How. 4535;—CL 1897, 7826;—CL 1915, 10262;—CL 1929, 10552;—CL 1948, 457.42.

457.43 Articles; filing; body corporate, powers.

Sec. 3. A copy of said articles of association shall be filed with the secretary of state, and thereupon the persons, who shall have signed such articles of association, their associates and successors, shall be a body politic and corporate, by the name expressed in such articles of association, and by that name they and their successors shall have succession and shall be persons in the law capable to purchase, take, receive, hold and

enjoy to them and their successors, estates, real and personal, of suing and being sued, and they and their successors may have a common seal which may be changed and altered at their pleasure, provided that the value of such real and personal estate shall not exceed the sum of 100,000 dollars, and that they may and their successors shall have authority and power to give, grant, sell, lease, mortgage and dispose of said real and personal estate or any part thereof at their will and pleasure, and the proceeds thereof, rents and incomes therefrom, shall be devoted exclusively to the humane and benevolent purposes of the Ancient Order of Hibernians of the state of Michigan.

HISTORY: How. 4536;—CL 1897, 7827;—CL 1915, 10263;—CL 1929, 10553;—CL 1948, 457.43.
SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.44 By-laws and rules; officers.

Sec. 4. Said corporation shall have full power and authority to make and establish rules, regulations and by-laws for regulating and governing all the affairs and business of said corporation, according to the laws of this state and the United States, and to designate, elect or appoint from its members such officers under such name and style as shall be in accordance with the constitution of said order.

HISTORY: How. 4537;—CL 1897, 7828;—CL 1915, 10264;—CL 1929, 10554;—CL 1948, 457.44.

457.45 Articles; certified copy as evidence.

Sec. 5. A copy of the record of such articles of association under the seal of the state, duly certified according to law, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such corporation.

HISTORY: How. 4538;—CL 1897, 7829;—CL 1915, 10265;—CL 1929, 10555;—CL 1948, 457.45.

457.46 Subordinate divisions; chartering; existing divisions; regulation.

Sec. 6. Such corporation when duly formed, shall have power to institute and charter subordinate divisions within this state, and from time to time to make, ordain, constitute and establish such constitution, general laws and by-laws, ordinances and regulations as the state convention shall judge proper for the regulations and government of such subordinate division, not repugnant to the laws of this state: Provided, That the existing subordinate divisions heretofore duly chartered by the state convention, shall be subject to the control of the state conventions under this act as heretofore, and in the same manner and to the same extent as those that may be hereafter instituted and chartered under this act: Provided further, That in case the corporation or persons associating in the first instance, shall by death, resignation or for other causes, under the rules of the state convention become ineligible to act in such capacity, their successors may from time to time be appointed by the state division.

HISTORY: How. 4539;—CL 1897, 7830;—CL 1915, 10266;—CL 1929, 10556;—CL 1948, 457.46.

457.47 Subordinate divisions; incorporation; body corporate; powers; certified copy of articles as evidence.

Sec. 7. Any 5 or more persons resident of this state, being members of a subordinate division of the "Ancient Order of Hibernians," having been duly chartered by the state convention desirous to become incorporated, may make and execute articles of association, specifying as provided in section 2 of this act, and file a copy of the same with the clerk of the county in which such corporation shall be formed, which shall be recorded by such clerk in a book to be kept in his office for that purpose and thereupon the persons who shall have signed such articles of association, their associates and successors, shall be a body politic and corporate, by the name expressed in such articles of association, and by that name they and their successors shall have succession, and shall be persons in law capable to purchase, hold, enjoy, grant, sell, give, lease and demise real and personal estate, of suing and being sued, and may have a common seal and change and alter the same at pleasure, and a certified copy of the record of such articles of association under the seal of the county where the said rec-

ord is kept shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such corporation, provided that said corporation shall be limited to the powers and provisions of section 3 of this act regarding real and personal estate and the proceeds thereof under the rules and regulations of the state convention, and may elect or appoint from among its members such officers under such name and style as shall be in accordance with its constitution.

HISTORY: How. 4540;—CL 1897, 7831;—CL 1915, 10267;—CL 1929, 10557;—CL 1948, 457.47.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.48 Business office; change of location.

Sec. 8. The location of the business office of the state convention may be changed at any time upon filing a written notice of such change in the office of the secretary of state within 20 days from the time of the change of such location, and any subordinate division may change the location of its business office upon filing a like notice in the office of the clerk of the county where such corporation is organized.

HISTORY: How. 4541;—CL 1897, 7832;—CL 1915, 10268;—CL 1929, 10558;—CL 1948, 457.48.

Act 55, 1895, p. 150; Imd. Eff. Mar. 29.

AN ACT to provide for the incorporation of the grand, district and subordinate lodges of the Loyal Orange Institution of the state of Michigan.

The People of the State of Michigan enact:

457.51 Loyal Orange Institution, incorporation.

Sec. 1. That the grand, district and subordinate lodges of the Loyal Orange Institution of the state of Michigan, may be incorporated in pursuance of the provisions of this act.

HISTORY: CL 1897, 7833;—CL 1915, 10269;—CL 1929, 10559;—CL 1948, 457.51.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.52 Grand lodge; articles of association, execution, contents.

Sec. 2. The 5 principal officers or in lieu thereof any 5 or more persons, residents of this state, being members of the grand lodge of the Loyal Orange Institution of the state of Michigan, duly chartered as such by the supreme grand Orange lodge of the United States, desiring to become incorporated, may make and execute articles of association, under their hands and seal which said articles of association shall be acknowledged before some officer of the state having authority to take acknowledgment of deeds, and shall set forth:

First, The names of persons associating in the first instance, and their places of residence;

Second, The corporate name by which such association shall be known in the law, and place of its business office;

Third, The object and purpose of such association, which shall be to promote the general welfare of the fraternity, known as the Loyal Orange Institution, and the period for which it is incorporated, not exceeding 30 years.

HISTORY: CL 1897, 7834;—CL 1915, 10270;—CL 1929, 10560;—CL 1948, 457.52.

457.53 Grand lodge; articles, filing; body corporate, powers; taxation.

Sec. 3. A copy of said articles of association, together with a copy of the charter and constitution of said grand lodge, shall be filed with the secretary of state, and thereupon the persons who shall have signed such articles of association, their associates and successors, shall be a body politic and corporate, by the name expressed in such articles of association, and by that name they and their successors shall have succession, and shall be persons in the law, capable to purchase, take, receive, hold and en-

joy to them and their successors, estates real and personal, of suing and being sued, and they and their successors may have a common seal, which may be changed and altered at their pleasure, provided that the value of such real and personal estate shall not exceed the sum of 100,000 dollars, and that they and their successors shall have authority and power to give, grant, sell, lease, demise and dispose of said real and personal estate, or part thereof, at their will and pleasure, and the proceeds, rents and incomes shall be devoted exclusively to such charitable and benevolent purposes of the Loyal Orange Institution as shall best promote the welfare and the membership and the interests of the society, but such real and personal estate shall be subject to taxation for all purposes. Said corporation shall have the full power and authority to make and establish rules and regulations for the governing of all the affairs and business of said corporation, according to the laws of this state, and the United States, and to designate, elect or appoint from its members such officers, under such name and style, as shall be in accordance with the constitution of the grand lodge.

HISTORY: CL 1897, 7835;—CL 1915, 10271;—CL 1929, 10561;—CL 1948, 457.53.

TAXATION: See Compilers' § 211.1 et seq.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.54 Grand lodge; certified copy of articles as evidence; subordinate lodges, institution; existing lodges; regulation.

Sec. 4. A copy of the record of such articles of association, under the seal of the state, duly certified according to law shall be received as prima facie evidence in all courts of this state, of the existence and due incorporation of such corporation. Such corporation, when duly formed, shall have power to institute and charter district and subordinate lodges within this state, and from time to time, to make, ordain, constitute and establish such constitution, general laws and by-laws, ordinances and regulations, as the grand lodge shall judge proper for the regulation and government of such district and subordinate lodges, not repugnant to the laws of this state: Provided, That the existing district and subordinate lodges heretofore duly chartered by the supreme grand lodge of the United States, approved by the state grand lodge, shall be subject to the control of said state grand lodge, under this act, as heretofore, and in the same manner and to the same extent as those that may be hereafter instituted and chartered under this act.

HISTORY: CL 1897, 7836;—CL 1915, 10272;—CL 1929, 10562;—CL 1948, 457.54.

457.55 Subordinate lodge, incorporation; body corporate, powers; certified copy of articles as evidence.

Sec. 5. The 5 principal officers, or in lieu thereof any 5 or more persons, *resident of this state being members of a district or subordinate lodge of the Loyal Orange Institution, having been duly chartered by the supreme grand lodge of the United States and approved by the grand lodge of this state, desirous to become incorporated, may make and execute articles of association, specifying as provided in section 2 of this act, and file a copy of the same with the clerk of the county in which such corporation shall be formed, which shall be recorded by such clerk, in a book to be kept in his office for that purpose; and thereupon the persons who shall have signed said articles of association, their associates and successors shall be a body politic and corporate, by the name expressed in such articles of association, and by the name they and their successors shall have succession and shall be persons in the law capable to purchase, hold, enjoy, grant, sell, give, lease and demise real and personal estate; of suing and being sued, and may have a common seal, and change and alter the same at pleasure; and a certified copy of a record of such articles of association, under the seal of the county where the said record is kept, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such corporation: Provided, Said corporation shall be limited to the powers and provisions of section 3 of this act, regarding

real and personal estate, and the proceeds thereof, under the rules and regulations of the grand lodge, and may elect or appoint from among its members such officers, under such name and style as shall be in accordance with its constitution.

HISTORY: CL 1897, 7837;—CL 1915, 10273;—CL 1929, 10563;—CL 1948, 457.55.

*NOTE: It is evident the word "resident" should be "residents".

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.56 Erection of buildings; capital stock, creation, shares; cemetery or crematorium, purchase, rules and regulations.

Sec. 6. Any corporation formed in pursuance of this act, may erect and own such suitable edifice, buildings or hall as to such corporation may seem proper, with convenient rooms for the meetings of the Loyal Orange Institution; and for that purpose may create a capital stock of not more than 100,000 dollars, to be divided into shares of not more than 25 dollars each, Provided That said corporation shall have the right and privilege of purchasing said stock in case of sale or transfer of the same by any of its members, And provided further That none of said stock shall be sold or transferred to any person or persons who are not members in good standing of the Loyal Orange Institution of this state; and any such corporation may take, purchase, hold and own such suitable lot or parcel of ground as may be convenient for the purpose of a cemetery or crematorium and may make all lawful rules and regulations for the disposition of lots and the disposal of its dead, as to such corporation may seem proper.

HISTORY: CL 1897, 7838;—CL 1915, 10274;—CL 1929, 10564;—CL 1948, 457.56.

457.57 Governing law; amendment of act.

Sec. 7. All corporations formed under this act, shall be subject to the provisions of chapter 73, of the Compiled Laws of this state, so far as the same may be applicable to corporations formed under this act; and the legislature may alter or amend this act at any time.

HISTORY: CL 1897, 7839;—CL 1915, 10275;—CL 1929, 10565;—CL 1948, 457.57.

NOTE: Ch. 73 of CL 1857, which is undoubtedly the compilation above referred to, included the following provisions which have not been repealed or reenacted: Compilers' §§ 450.504 to 450.525.

See Act 327, 1831, being Compilers' § 450.1 et seq. See Compilers' § 450.133 et seq.

457.58 Business office; change of location.

Sec. 8. The location of the business office of the grand lodge of the Loyal Orange Institution, may be changed at any time, upon filing a written notice of such change in the office of the secretary of state, within 20 days from the time of the change of such location.

HISTORY: CL 1897, 7840;—CL 1915, 10276;—CL 1929, 10566;—CL 1948, 457.58.

Act 99, 1871, p. 160; Imd. Eff. Apr. 13.

AN ACT to provide for the incorporation of St. Jean Baptiste societies.

The People of the State of Michigan enact:

457.61 St. Jean Baptiste societies; incorporators; articles of association, execution, contents.

Sec. 1. That whenever any 10 or more persons, residents of any county in this state, and being members of any St. Jean Baptiste society already formed, or any 10 or more persons, residents of any county in this state, desirous of forming such a society, desire to become incorporated, may make and execute articles of association under their hands and seals; which said articles of association shall be acknowledged before some officer of this state having authority to take acknowledgments of deeds, and shall set forth,

First. The names of the persons associating in the first instance, and their place of residence;

Second. The corporate name of the association, and the place where its meetings shall be held;

Third. The object and purpose of the association, which may be charitable, benevolent, or literary, or any 2, or all of these combined; and also the period for which it is incorporated, not exceeding 30 years.

HISTORY: CL 1871, 3125;—How. 4604;—CL 1897, 7849;—CL 1915, 10285;—CL 1929, 10567;—CL 1948, 457.61.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq. See Compilers' § 450.133 et seq.

457.62 French as official language.

Sec. 2. The French language may be adopted as the official language of such societies, and all records and proceedings may be kept, and all meetings held in that language, and translations of any of the documents belonging to such societies duly authenticated as correct translations of such documents, or of the original documents translated from the French into the English language, shall be received whenever necessary in all courts of law within this state.

HISTORY: CL 1871, 3126;—How. 4605;—CL 1897, 7850;—CL 1915, 10286;—CL 1929, 10568;—CL 1948, 457.62.

457.63 Articles; filing, recording; body corporate, powers; certified copy as evidence.

Sec. 3. A copy of said articles of association together with a copy of the constitution and by-laws of the association of which the persons executing said articles are members (duly translated into the English language and properly authenticated as a correct translation of the same, from the French into the English language, and duly sworn to and acknowledged as such, by the person translating the same, before some officer of this state having authority to take acknowledgments of deeds, whenever said articles of association and the by-laws have been or shall be originally written in the French language), shall be filed with the county clerk of the county in which such association shall be formed and shall be recorded by such clerk in a book to be kept in his office for that purpose; and thereupon the persons who have signed said articles of association and their successors, shall be a body corporate and politic, and known in law and in fact by the name expressed in such articles of association; and by that name they and their successors shall have succession, and shall be persons in law capable of suing and being sued, and they and their successors may have a common seal and may alter and change the same at pleasure, and a certified copy of the record of such articles of association, under the seal of the county where the said record is kept, shall be received as prima facie evidence of the due existence and incorporation of such association in all courts within this state.

HISTORY: CL 1871, 3127;—How. 4606;—CL 1897, 7851;—CL 1915, 10287;—CL 1929, 10569;—CL 1948, 457.63.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.64 Directors; powers; ex-officio members.

Sec. 4. The management and direction of the interests, affairs, and property of such association shall be vested in a board of directors of not less than 5, nor more than 20, of whom the officers of such association shall be ex-officio members of said board.

HISTORY: CL 1871, 3128;—How. 4607;—CL 1897, 7852;—CL 1915, 10288;—CL 1929, 10570;—CL 1948, 457.64.

457.65 Officers; election.

Sec. 5. Every such association shall have full power and authority, by its by-laws or otherwise, from time to time to designate and elect from among its members such officers of such association as it may see fit under such name and style as may be in accordance with its constitution.

HISTORY: CL 1871, 3129;—How. 4608;—CL 1897, 7853;—CL 1915, 10289;—CL 1929, 10571;—CL 1948, 457.65.

457.66 State society; incorporation, powers, purpose.

Sec. 6. Any number of members, not less than 10, belonging to 1 or more such associations as is provided for in the foregoing sections, after becoming incorporated themselves, may proceed in like manner to form a state society of St. Jean Baptiste, in the manner, as near as may be, hereinbefore provided for the incorporation of associations by residents of counties, but shall in addition thereto file a copy of its articles of association, its constitution and by-laws with the secretary of state, to be kept and recorded by him in a book kept for that purpose in his office; and such state association shall have such powers as may be granted to it, and shall perform such duties as may be prescribed for it by the county associations taking part in its organization; And provided, That its object and purpose shall be in accordance with the provisions of this act establishing county associations of St. Jean Baptiste: And provided further, That the county associations taking part in its organization may endow it with all requisite powers of superior jurisdiction, and the power of organizing new societies of St. Jean Baptiste, as from time to time it may deem necessary or proper.

HISTORY: CL 1871, 3130;—How. 4609;—CL 1897, 7854;—CL 1915, 10290;—CL 1929, 10572;—CL 1948, 457.66.
SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

Act 159, 1893, p. 258; Imd. Eff. May 31.

AN ACT to incorporate The Union of the French Canadian Society of the United States.

The People of the State of Michigan enact:

457.71 French Canadian Society; incorporation.

Sec. 1. That The Union of the French Canadian Society of the United States may be incorporated in pursuance of the provisions of this act.

HISTORY: CL 1897, 7855;—CL 1915, 10291;—CL 1929, 10573;—CL 1948, 457.71.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq. See Compilers' § 450.133 et seq.

457.72 Articles of association; execution, contents.

Sec. 2. Any 10 or more persons residents of this state, being members of any French Canadian society of the state of Michigan, desirous to be incorporated may make and execute articles of association under their hands and seal, which articles of association shall be acknowledged before some officer authorized by law to take acknowledgments of deeds, and shall set forth,

First, The names of the persons associating in the first instance, and their places of residence;

Second, The corporate name by which the association shall be known which shall be The Union of the French Canadian Society of the United States, the place of its principal business office, and period for which it is incorporated, not exceeding 30 years;

Third, The object and purpose of the association, which shall be to unite all the French Canadian societies organized or to be organized hereafter, to promote the general welfare, to improve the mental, social, and moral condition of the members of the union, and to provide for the relief of the families and heirs of deceased members of the union, but neither such purpose nor the condition of membership in said association shall include any requirement from the members to discriminate against any person in respect to civil rights because of religious belief or affiliation.

HISTORY: CL 1897, 7856;—CL 1915, 10292;—CL 1929, 10574;—CL 1948, 457.72.

457.73 Articles; constitution; filing; body corporate, powers.

Sec. 3. A copy of said articles of association together with a copy of the constitution of said union shall be filed with the secretary of state, and thereupon the persons who shall have signed said articles of association, their associates and successors, shall be a body corporate and politic and known in the law and in fact by the name heretofore designated and by that name they and their successors shall have succession and shall be a person in the law capable to purchase, take, receive, own and enjoy through them and their successors estates real and personal, of suing and being sued, and to have a common seal which may be altered or changed at their pleasure, and they and their successors shall have power to give, grant, sell, lease, demise and dispose of such real and personal estate or part thereof at their will and pleasure, and the proceeds, rents, and incomes shall be devoted exclusively to the charitable and benevolent purposes of the union.

HISTORY: CL 1897, 7857;—CL 1915, 10293;—CL 1929, 10575;—CL 1948, 457.73.
SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.74 By-laws and rules; officers.

Sec. 4. Said corporation shall have the power to make and establish rules, regulations and by-laws for regulating and governing all the officers and business of said corporation not repugnant to the laws of this state or of the United States, and to designate, elect or appoint from its members such officers under such name and style as shall be in accordance with the constitution of the union.

HISTORY: CL 1897, 7858;—CL 1915, 10294;—CL 1929, 10576;—CL 1948, 457.74.

457.75 Articles; certified copy as evidence.

Sec. 5. A copy of the record of said articles of association under the seal of this state duly certified according to law shall be received as prima facie evidence of the due existence and incorporation of such association in all the courts of the state and of the United States.

HISTORY: CL 1897, 7859;—CL 1915, 10295;—CL 1929, 10577;—CL 1948, 457.75.

457.76 Subordinate branches; chartering, powers, revocation.

Sec. 6. Such corporation when duly formed shall have power to affiliate and charter subordinate branches of said order which subordinate branches shall have power to make and adopt their own constitution and by-laws not repugnant to the constitution and by-laws adopted by the union or hereafter amended and adopted by the union, and in case of noncompliance with the general laws, by-laws, ordinances and regulations of the union, to revoke and annul the charter granted to such subordinate branch.

HISTORY: CL 1897, 7860;—CL 1915, 10296;—CL 1929, 10578;—CL 1948, 457.76.

457.77 Subordinate branches; incorporation; body corporate, powers; certified copy of articles as evidence.

Sec. 7. Any 9 or more persons, residents of this state, being members of any subordinate branch of the union desirous to become incorporated, may make and execute articles of associations under their hands and seals specifying as in article 2 of this act, and file a copy of such articles with the clerk of the county in which such corporation shall be formed, which shall be recorded by the clerk in such book to be kept in his office for that purpose, and thereupon the persons who shall have signed such articles of association, their associates and successors, shall be a body politic and corporate by the name expressed in such articles of association, and by that name they and their successors shall have succession, and shall be persons in the law capable to purchase, hold and enjoy, grant, sell, give and lease and demise real and personal estate, of suing and being sued, and may have a common seal and may change and alter the same at pleasure, and a certified copy of the record of such articles of association under the

seal of the county where the records are kept shall be received as prima facie evidence in all courts in this state of the existence and due incorporation of said corporation, and they and their successors shall have authority and power to give, grant, sell, lease, demise and dispose of said real and personal estate or part thereof, at their will and pleasure, and the proceeds, rents and income shall be devoted exclusively to the charitable and benevolent purpose of the branch of the union.

HISTORY: CL 1897, 7861;—CL 1915, 10297;—CL 1929, 10579;—CL 1948, 457.77.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.78 Insurance business.

Sec. 8. Corporations in pursuance of this act shall not be considered as engaged in the business of life insurance nor shall they be subject to the provisions of the statutes relating to life insurance or mutual benefit corporations, companies or associations.

HISTORY: CL 1897, 7862;—CL 1915, 10298;—CL 1929, 10580;—CL 1948, 457.78.

457.79 Principal business office; location.

Sec. 9. The principal business office of the union of the French Canadian society of the United States shall follow and be located at the place where the secretary thereof shall reside; and immediately after each election of officers of said corporation the secretary elect shall certify, under the corporate seal, his name, residence and location of such principal business office to the secretary of state.

HISTORY: Add. 1901, p. 169, Act 119, Eff. Sept. 5;—CL 1915, 10299;—CL 1929, 10581;—CL 1948, 457.79.

Act 35, 1897, p. 36; Eff. Aug. 30.

AN ACT for the incorporation of national societies of Colonial Dames of America in Michigan.

The People of the State of Michigan enact:

457.81 Colonial Dames of America; incorporation.

Sec. 1. That national societies of Colonial Dames of America in Michigan may be incorporated under the provisions of this act.

HISTORY: CL 1897, 7863;—CL 1915, 10300;—CL 1929, 10582;—CL 1948, 457.81.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

457.82 Articles of association; execution, contents.

Sec. 2. Any 25 or more persons, residents of this state, being members of a national society of Colonial Dames of America in Michigan, desiring to be incorporated, may make and execute articles of association under their hands and seals, which shall be acknowledged before some officer authorized by law to take acknowledgments of deeds and shall set forth:

First, The names and places of residence of the persons associating in the first instance;

Second, The corporate name by which the association shall be known, provided that no persons associating under this act shall be allowed to take the same name as any association heretofore incorporated; the place of its principal business office, and the period for which it is incorporated, which shall not exceed 30 years;

Third, The object and purpose of the association, which shall be to collect manuscripts, traditions, relics and mementoes of by-gone days for preservation, and to hold from time to time, as the society may direct, a loan exhibition to commemorate the success of the American revolution and consequent birth of our glorious republic; to diffuse healthful and intelligent information in whatever concerns the past and tends to create popular interest in American history; and, with a true spirit of patriotism,

seek to inspire genuine love of country in every heart within its range of influence; and to teach the young that it is a sacred obligation to do justice and honor to heroic ancestors whose ability, valor, sufferings and achievements are worthy of praise.

HISTORY: CL 1897, 7864;—CL 1915, 10301;—CL 1929, 10583;—CL 1948, 457.82.

457.83 Articles; filing; body corporate, powers.

Sec. 3. A copy of said articles of association shall be filed with the secretary of state, and thereupon the persons who have signed such articles of association, their associates and successors, shall be a body corporate and known in the law and in fact by the name assumed by them in said articles of association, and by that name they and their associates and successors shall have succession and be capable to purchase, take, hold, receive and enjoy real, personal and mixed property; to sue and be sued, to have a common seal; and shall have authority and power to give, grant, demise, sell, lease and dispose of such real and personal and mixed estate belonging to them, or any part thereof, as they may see fit.

HISTORY: CL 1897, 7865;—CL 1915, 10302;—CL 1929, 10584;—CL 1948, 457.83.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.84 Constitution and by-laws; contents.

Sec. 4. Said corporation shall have power to make and adopt a proper constitution and by-laws, prescribing the names and duties of its officers and all necessary and lawful rules and regulations for the government of its business.

HISTORY: CL 1897, 7866;—CL 1915, 10303;—CL 1929, 10585;—CL 1948, 457.84.

457.85 Articles; certified copy as evidence.

Sec. 5. A copy of such articles of association, duly certified under the seal of the state, shall be prima facie evidence of the due existence and incorporation of such association.

HISTORY: CL 1897, 7867;—CL 1915, 10304;—CL 1929, 10586;—CL 1948, 457.85.

Act 159, 1883, p. 171; Imd. Eff. Jun. 6.

AN ACT to provide for the incorporation of local assemblies of the order of Knights of Labor of North America, and of district assemblies thereof in the state of Michigan.

The People of the State of Michigan enact:

457.151 Knights of labor; local assembly; incorporation procedure.

Sec. 1. That any local assembly of the order of the Knights of Labor of North America, duly organized within this state under and pursuant to the provisions of the constitution and laws of the general assembly of the Knights of Labor of North America, may become a body corporate and politic in the manner following, viz:

First, At a regular meeting of such local assembly a resolution shall be put to a vote of the members thereof present, expressing the desire and determination of such local assembly to be incorporated, and directing the officers thereof to perfect such incorporation, and if such resolution be adopted by a 2/3 vote of all members in good standing it shall be declared adopted, otherwise lost;

Second, On such resolution being passed, the master workman and recording secretary of the assembly shall prepare articles of association under their hands and the seal of the assembly setting forth the number of persons then in good standing in the assembly desiring incorporation, the name by which the assembly is known and its number, the date of its organization, a copy of the resolution mentioned in the first subdivision of this section, the corporate name by which the assembly shall be known in the law, the general object and purpose of the association, which shall in no way conflict

or be inconsistent with the object and purpose of the general assembly of the order of Knights of Labor of North America as stated in its constitution, nor in conflict or inconsistent with any law of the United States or of this state, and the period for which it is incorporated, not exceeding 30 years;

Third, A copy of such articles of association shall be filed with the clerk of the county in which such corporation shall be formed, and together with the affidavit hereinafter named shall be recorded by the county clerk in a book to be kept by him for that purpose;

Fourth, The master workman and recording secretary executing such articles of association shall make and annex thereto before filing, an affidavit stating that they are respectively members of and occupy the official positions above named in said local assembly, that the resolution, a copy of which is set out in the articles of association, was duly adopted at a regular meeting of the assembly, and by a 2/3 vote of all members in good standing, and that all the statements in said articles of association are true to the best of their and each of their knowledge and belief, and that said local assembly is organized and acting under the constitution of the general assembly of the order of the Knights of Labor of North America.

HISTORY: How. 4577-l;—CL 1897, 7868;—CL 1915, 10305;—CL 1929, 10587;—CL 1948, 457.151.

LABOR ASSOCIATIONS: See Compilers' § 454.1 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

FRATERNAL NAMES AND EMBLEMS: For protection of, see Compilers' § 430.1 et seq.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

457.152 Local assembly; body corporate, powers; certified copy of articles as evidence.

Sec. 2. When the foregoing requirements are complied with, the local assembly shall be a body corporate and politic by the name expressed in such articles of association, and by that name shall be a person in law, capable of suing and being sued, and a copy of said articles of association and affidavit duly certified by the clerk in whose custody the same may be, under the seal of the proper county, shall be prima facie evidence in all the courts of this state of the existence and incorporation of said local assembly.

HISTORY: How. 4577m;—CL 1897, 7869;—CL 1915, 10306;—CL 1929, 10588;—CL 1948, 457.152.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.153 Local assembly; articles; filing, certified copy as evidence.

Sec. 3. A copy of such articles of association with an affidavit attached, as provided in section 1 of this act, duly certified by the county clerk of the proper county, may be filed with the secretary of state, copies of which, duly certified, shall in all the courts of this state be prima facie evidence of the existence and incorporation of said local assembly.

HISTORY: How. 4577n;—CL 1897, 7870;—CL 1915, 10307;—CL 1929, 10589;—CL 1948, 457.153.

457.154 District assembly; incorporation; certified copy of articles as evidence.

Sec. 4. Any district assembly of the order of the Knights of Labor of North America, organized and acting under and pursuant to the constitution and laws of the general assembly of the order, may become incorporated by adopting a like resolution as provided in section 1 of this act, executing articles of association under the hands of its district master workman and district recording secretary and the seal of the district assembly, containing like statements as those required in articles of association for the incorporation of local assemblies, with a like affidavit annexed made by the above named officers, and filing the same with the clerk of the county where such district assembly is incorporated which articles of association and affidavit shall be recorded by the county clerk. A copy thereof duly certified by the clerk of such county shall have the same force and effect as evidence as is provided in section 2 of this act. A certified

copy of such articles may be filed with the secretary of state in the same manner and shall have the same force and effect as evidence as is provided in said section.

HISTORY: How. 4577c;—CL 1897, 7871;—CL 1915, 10308;—CL 1929, 10590;—CL 1948, 457.154.

457.155 Property; holding, disposition.

Sec. 5. Every corporation formed pursuant to the provisions of this act may take and hold personal and real property so far as the same may be necessary or convenient for the purposes of the organization, not exceeding 50,000 dollars in amount and may convey, incumber, and deal with the same as it may from time to time determine by a majority vote of all members in good standing: Provided, That no property held and owned by such corporation shall be sold or incumbered except at a regular or special meeting of the assembly, 5 days' written notice of which shall have been given to every member in good standing and at the time being within the jurisdiction, which notice shall briefly state the disposition intended to be made of such property, describing it, and shall be signed by the district recording secretary or recording secretary, as the case may be, and with the seal of the assembly attached.

HISTORY: How. 4577p;—CL 1897, 7872;—CL 1915, 10309;—CL 1929, 10591;—CL 1948, 457.155.

457.156 Control of business of corporation.

Sec. 6. The management, direction, and control of the property and business of such corporation shall be vested in such of its officers and members as a majority of its members present and acting thereon at any regular meeting of the assembly shall from time to time determine.

HISTORY: How. 4577q;—CL 1897, 7873;—CL 1915, 10310;—CL 1929, 10592;—CL 1948, 457.156.

Act 9, 1885, p. 8; Imd. Eff. Mar. 4.

AN ACT to provide for the incorporation, and to define the objects, of the order of the Sons of Industry.

The People of the State of Michigan enact:

457.171 Sons of Industry; Supreme lodge; incorporation.

Sec. 1. That the supreme lodge of the order of the Sons of Industry may be incorporated in pursuance of this act.

HISTORY: How. 4577r;—CL 1897, 7874;—CL 1915, 10311;—CL 1929, 10593;—CL 1948, 457.171.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.172 Articles of association; execution, contents.

Sec. 2. Any 5 or more persons, resident of this state, being members of the supreme lodge of the Sons of Industry, may make and execute articles of association under their hands and seals, which articles of association shall be acknowledged before some officer authorized by law to execute deeds, and shall set forth:

First, The names of the persons associating in the first instance, and their places of residence;

Second, The corporate name by which such association shall be known in law, and the place of its business office;

Third, The object and purpose of such association, which shall be to promote the general welfare, and create a fraternal feeling amongst its members, and also to provide benefits to its members, and their widows, orphans, or heirs;

Fourth, The period for which the association may be incorporated shall be 30 years.

HISTORY: How. 4577s;—CL 1897, 7875;—CL 1915, 10312;—CL 1929, 10594;—CL 1948, 457.172.

457.173 Articles; filing; body corporate, powers.

Sec. 3. The original articles of association of said supreme lodge, shall be filed with the secretary of state, and thereupon the persons who shall have signed such articles of association, their associates and successors, shall be a body politic and corporate, by the name expressed in such articles of association, and by that name they and their successors shall be known, have succession, and be persons in law, capable to take, receive, hold, and enjoy, to them and their successors, estates, real and personal; Provided, That the value of such estates shall not exceed the sum of 10,000 dollars, and that the proceeds, rents, and incomes realized therefrom, shall be devoted exclusively to the charitable and benevolent purposes of the said supreme lodge as herein defined; and they shall also be capable of suing and being sued, and to have a common seal, which may be altered or changed at their pleasure. Said corporation shall have full power to make and establish its rules, regulations, and by-laws for regulating its business and affairs, and to designate, elect, or appoint from its members, such officers, under such name as may be designated from time to time.

HISTORY: How. 4577t;—CL 1897, 7876;—CL 1915, 10313;—CL 1929, 10595;—CL 1948, 457.173.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.174 Articles; certified copy as evidence.

Sec. 4. A transcript of such articles of association, under the seal of the state, duly certified according to law, shall be received as prima facie evidence in all courts in this state of the existence and due incorporation of such corporation.

HISTORY: How. 4577u;—CL 1897, 7877;—CL 1915, 10314;—CL 1929, 10596;—CL 1948, 457.174.

457.175 Grand and subordinate lodges, chartering; existing lodges, regulation.

Sec. 5. Such corporation, when duly formed, shall have power to institute and charter grand and subordinate lodges of said order, and from time to time to make, ordain, constitute, and establish such general laws and by-laws, ordinances, and regulations for the government of such grand or subordinate lodge, as to them shall seem proper and necessary; and in case of violation, or non-compliance with such ordinances, by-laws, and regulations, to revoke and annul the charter granted such grand or subordinate lodges: Provided, That the existing subordinate lodges, heretofore duly chartered by the supreme lodge, shall be subject to the control of the supreme lodge under this act, as heretofore, and in the same manner, and to the same extent as those that may hereafter be instituted and chartered under this act.

HISTORY: How. 4577v;—CL 1897, 7878;—CL 1915, 10315;—CL 1929, 10597;—CL 1948, 457.175.

457.176 Governing law; amendment of act.

Sec. 6. All corporations formed under this act shall be subject to the provisions of chapter 130 of the Compiled Laws of 1871, so far as the same may be applicable to corporations formed under this act; and the legislature may alter or amend this act at any time.

HISTORY: How. 4577w;—CL 1897, 7879;—CL 1915, 10316;—CL 1929, 10598;—CL 1948, 457.176.

NOTE: Ch. 130 of CL 1871, above referred to, included the following provisions which have not been repealed or reenacted: Compilers' §§ 450.504 to 450.525.

See Act 327, 1931, being Compilers' § 450.1 et seq.

Act 145, 1865, p. 251; Imd. Eff. Mar. 10.

AN ACT to provide for the incorporation of Masonic Lodges.

The People of the State of Michigan enact:

457.201 Masonic lodges; incorporation.

Sec. 1. That any chapter of Royal Arch Masons, and any chartered lodge of the order of Free and Accepted Masons, may be incorporated in pursuance of the provisions of this act.

HISTORY: CL 1871, 3217;—How. 4472;—CL 1897, 7961;—CL 1915, 10398;—CL 1929, 10599;—CL 1948, 457.201.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

INSURANCE CODE: Provisions of Ch. IV of Pt. III of Act 256 of 1917 not applicable to Masonic lodges, see Compilers' §§ 500.126 and 500.8094.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

FRATERNAL NAMES AND EMBLEMS: For protection of, see Compilers' § 430.1 et seq.

457.202 Incorporators; articles of association, execution, contents.

Sec. 2. Any 10 or more residents of this state being members either of any commandery of Knights, Templars, council, chapter of Royal Arch Masons or of any chartered lodge of the order of Free and Accepted Masons or being members of any such commandery, council, chapter or lodge who shall be desirous to become incorporated, may make and execute articles of association under their hands and seals, which said articles of association shall be acknowledged before some officer of this state, having authority to take acknowledgments of deeds, and shall set forth

First, The names of persons associating in the first instance, and their place of residence;

Second, The name and location of the lodge of which they are members; or the name and location of the commandery, council or chapter of which they are members; and in case it is the intention to incorporate a lodge and chapter together, the names of both such lodge and chapter shall be stated or given;

Third, The corporate name by which such association shall be known in the law;

Fourth, The object and purpose of such association, which shall be to promote the general welfare of the Masonic fraternity, and the period for which it is incorporated, not exceeding 30 years.

HISTORY: Am. 1867, p. 196, Act 141, Imd. Eff. March 27;—CL 1871, 3218;—How. 4473;—CL 1897, 7962;—CL 1915, 10399;—CL 1929, 10600;—CL 1948, 457.202.

457.203 Articles and charter; filing, recording; body corporate, powers; certified copy of articles as evidence.

Sec. 3. A copy of said articles of association, together with a copy of the charter of the lodge or chapter, of which the persons executing said articles are members, or in case a lodge and chapter are to be incorporated together, a copy of the charters of both such lodge and chapter of which such persons are members of 1 or both, shall be filed with the county clerk of the county in which such corporation shall be formed, and shall be recorded by such clerk in a book to be kept in his office for that purpose; and thereupon the persons who shall have signed said articles of association, their associates and successors, shall be a body politic and corporate, by the name expressed in such articles of association; and by that name they and their successors shall have succession, and shall be persons in the law, capable of suing and being sued, and they and their successors may have a common seal, and the same may change and alter at pleasure; and a certified copy of the record of such articles of association, under the seal of the county where the said record is kept, shall be received as prima facie evidence in all courts in this state of the existence and due incorporation of such corporation.

HISTORY: Am. 1867, p. 196, Act 141, Imd. Eff. March 27;—CL 1871, 3219;—How. 4474;—CL 1897, 7963;—CL 1915, 10400;—CL 1929, 10601;—CL 1948, 457.203.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.204 Erection of buildings; capital stock, creation, shares; property, holding and disposition; cemetery.

Sec. 4. Every corporation formed in pursuance with this act may erect and own such suitable edifice, building or hall as to such corporation shall seem proper, with convenient rooms for the meetings of the Masonic bodies, and for this purpose may create a capital stock of not more than 500,000 dollars, to be divided into shares of not more than 50 dollars each, and may take, receive, purchase and hold in its corporate capacity real and personal estate, and the same or any part thereof, demise, convey, mortgage, use and dispose of at pleasure; and any such corporation may take, purchase, hold and own such suitable lot or parcel of ground as may be convenient for the purpose of a cemetery; and make all lawful rules and regulations for the disposal of lots and the burial of the dead therein as to such corporation may seem proper.

HISTORY: Am. 1867, p. 234, Act 180, Imd. Eff. March 27;—CL 1871, 3220;—How. 4475;—Am. 1893, p. 33, Act 33, Imd. Eff. April 14;—CL 1897, 7964;—CL 1915, 10401;—CL 1929, 10602;—CL 1948, 457.204.

457.205 Board of trustees; election, quorum; officers, appointment, duties.

Sec. 5. The stockholders, each of whom shall be entitled to 1 vote for each share of stock held by him, may elect from their number a board of trustees of not less than 6 nor more than 15 members, a majority of whom shall constitute a quorum, and the trustees shall appoint from their own number a president, secretary and treasurer, who shall perform the duties of their respective offices in accordance with the rules and regulations which may be prescribed by the board of trustees.

HISTORY: Am. 1867, p. 235, Act 180, Imd. Eff. March 27;—CL 1871, 3221;—How. 4476;—Am. 1893, p. 33, Act 33, Imd. Eff. April 14;—CL 1897, 7965;—CL 1915, 10402;—CL 1929, 10603;—CL 1948, 457.205.

457.206 Board of trustees; powers.

Sec. 6. The management and direction of the interests, affairs and property of such corporation shall be vested in said board of trustees, and said board shall make all needful rules, ordinances and by-laws, regulating the transaction of the business and management of the property, and all the affairs, concerns and interests of such corporation, and providing for the time and manner of electing the officers and trustees of the corporation, and the length of the terms of office of the trustees, a part of whom, after the first election, shall be chosen annually: Provided, That such rules, ordinances and by-laws, shall not be repugnant to the constitution and laws of the grand lodge of the order of Free Masons of the state of Michigan, and the constitution and laws of the United States and this state.

HISTORY: CL 1871, 3222;—How. 4477;—CL 1897, 7966;—CL 1915, 10403;—CL 1929, 10604;—CL 1948, 457.206.

457.207 By-laws and rules; powers of trustees.

Sec. 7. Every corporation organized under and in pursuance of this act, shall have full power and authority to provide by its by-laws, from time to time, for the election from its members of such other officers of the corporation, under and by such name and style as shall be in accordance with its Masonic constitution; and instead of appointing a board of trustees to have the management and control of its property, interests and affairs, as provided in sections 5 and 6 of this act, may, if the corporation so choose, provide in its by-laws that the property, affairs and interests of the corporation shall be managed and controlled by such persons or officers of the corporation or in such manner as the corporation shall from time to time provide for that purpose in such by-laws and government, and for the care and management of its property, affairs and interests, and to carry into effect the powers and privileges in this act granted, and may alter and amend the same at pleasure: Provided, That in all cases

where such corporation shall choose to appoint a board of trustees to have the management of its property and affairs such board shall have the powers and the management and direction of the interests and property of the corporation, as provided in said sections 5 and 6 of this act.

HISTORY: Am. 1867, p. 235, Act 180, Imd. Eff. March 27;—CL 1871, 3223;—How. 4478;—CL 1897, 7967;—CL 1915, 10404;—CL 1929, 10605;—CL 1948, 457.207.

457.208 Governing law; amendment of act.

Sec. 8. All corporations, formed under this act, shall be subject to the provisions of chapter 73, of the Compiled Laws of this state, so far as the same may be applicable to corporations formed under this act, and the legislature may alter or amend this act at any time.

HISTORY: Am. 1867, p. 236, Act 180, Imd. Eff. March 27;—Am. 1869, p. 106, Act 61, Imd. Eff. March 26;—CL 1871, 3224;—How. 4479;—CL 1897, 7968;—CL 1915, 10405;—CL 1929, 10606;—CL 1948, 457.208.

NOTE: Ch. 73 of CL 1857, above referred to, included the following provisions which have not been repealed or reenacted: Compilers' §§ 450.504 to 450.525.

See notes under Sec. 1 of this act.

457.209 Effective date of act.

Sec. 9. This act shall take immediate effect.

HISTORY: CL 1871, 3224;—CL 1915, 10406;—CL 1929, 10607;—CL 1948, 457.209.

457.210 Surrender of charter; procedure; saving clause.

Sec. 10. Any lodge or chapter which shall have been incorporated before this act as amended takes effect as a law, may by a vote of the members of such lodge or chapter at any regular meeting thereof surrender their corporate rights, powers and liabilities; but such surrender shall not in any manner affect any suits which may be pending, or any action or causes of action accrued or accruing or any rights which any person may have acquired by virtue of such incorporation; but before such surrender shall be valid, a certificate of the proper officer under the seal of such lodge or chapter shall be filed in the office of the county clerk of the county in which such lodge or chapter may be certifying that such lodge or chapter has voted to surrender its corporate rights and any such lodge or chapter having so surrendered its corporate rights may be again incorporated in conformity with this act as hereby amended.

HISTORY: Add. 1867, p. 197, Act 141, Imd. Eff. March 27;—CL 1871, 3225;—How. 4480;—CL 1897, 7969;—CL 1915, 10407;—CL 1929, 10608;—CL 1948, 457.210.

Act 1, 1895, p. 1; Imd. Eff. Feb. 15.

AN ACT to provide for the incorporation of Masonic associations.

The People of the State of Michigan enact:

457.221 Masonic associations; incorporation.

Sec. 1. That Masonic associations may be incorporated under the provisions of this act.

HISTORY: CL 1897, 7970;—CL 1915, 10406;—CL 1929, 10609;—CL 1948, 457.221.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

INSURANCE CODE: Provisions of Ch. IV of Pt. III of Act 258 of 1917 not applicable to Masonic lodges, see Compilers' §§ 500.126 and 500.8094.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.222 Articles of association; execution, contents.

Sec. 2. Any 10 or more residents of this state, who are members of any chartered body, or of different chartered bodies of the order of Free and Accepted Masons, may make and execute articles of association under their hands and seals, which said articles of association shall be acknowledged before some officer of this state having authority to take acknowledgment of deeds, and shall set forth:

First, The names of the persons associating in the first instance, their places of residence and the name and location of the Masonic body or bodies to which they severally belong.

Second, The corporate name by which such association shall be known in the law.

Third, The purpose of the association, which shall be to provide a building or buildings to be used for Masonic purposes, and the period for which such association is incorporated, not exceeding 30 years.

HISTORY: CL 1897, 7971;—CL 1915, 10409;—CL 1929, 10610;—CL 1948, 457.222.

457.223 Articles; filing, recording; body corporate; certified copy as evidence.

Sec. 3. A copy of said articles of association shall be filed with the county clerk of the county within which such corporation shall be formed, and shall be recorded by such clerk in a book to be kept in his office for that purpose, and thereupon the persons who shall have signed said articles of association, their associates and successors, shall be a body corporate by the name expressed in such articles of association. A copy of such articles of association, under the seal of the county clerk in whose office said record is kept, and certified by him, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such association.

HISTORY: CL 1897, 7972;—CL 1915, 10410;—CL 1929, 10611;—CL 1948, 457.223.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.224 Property; holding, disposition; erection of buildings; borrowing power.

Sec. 4. Every corporation organized under the provisions of this act may take, receive, purchase and hold in its corporate capacity, and for its corporate purposes, real and personal property and the same or any part thereof demise, sell, convey, use and dispose of at pleasure; and may erect and own suitable building or buildings to be used in whole or in part for meetings of Masonic bodies and may borrow money and for that purpose may issue its bonds and mortgage its property to secure the payment of said bonds.

HISTORY: CL 1897, 7973;—CL 1915, 10411;—CL 1929, 10612;—CL 1948, 457.224.

457.225 Certificates or shares of stock; issuance.

Sec. 5. Every such corporation shall have full power and authority to provide by its laws for the issuing of certificates or shares of stock and for the manner in which the same shall be held and represented.

HISTORY: CL 1897, 7974;—CL 1915, 10412;—CL 1929, 10613;—CL 1948, 457.225.

457.226 Succession and by-laws.

Sec. 6. Every such corporation shall have power to provide by its by-laws for succession to its original membership and for new membership; and shall also have power to provide by its by-laws for election from its members of a board of trustees and to fix the number and term of office of such trustees; but such board shall not be less than 5 in number and such term of office shall not exceed 3 years.

HISTORY: CL 1897, 7975;—CL 1915, 10413;—CL 1929, 10614;—CL 1948, 457.226.

457.226a Nonprofit corporation as manager of other corporations; evidence; trust fund for unknown interests.

Sec. 6a. Any nonprofit corporation which occupies and manages all of the assets and liabilities of any corporation organized under the provisions of this act and such nonprofit corporation is organized for and has carried out the same purposes as the corporation organized under this act, and has paid all taxes assessed against the property thereof, shall be deemed to be validly organized for the purposes of the original corporation and where such nonprofit corporation has maintained the possession of all

known existing records and stock certificate records as well as all other property, real or personal, for a period of 10 years or more without express objection of known stockholders of record of the corporation organized under the provisions of this act and such nonprofit corporation has recognized the rights of the owners of stock certificates in the corporation organized under this act as one and the same as the rights of stockholders in the nonprofit corporation and upon such nonprofit corporation establishing a trust fund for the protection of any unknown interest in the corporation organized under this act, all of the rights, title and interest to all real or personal properties and records in the possession of such nonprofit corporation shall hereafter be vested in such nonprofit corporation.

HISTORY: Add. 1956, p. 171, Act 83, Imd. Eff. Apr. 5.

457.227 Board of trustees, powers; officers, appointment, duties.

Sec. 7. The management and control of the business, affairs and property of such corporation shall be vested in said board of trustees, and said board shall have power to borrow any money and cause to be made and issued any bonds and mortgages authorized by section 4 of this act. Said trustees shall appoint from their own number a president, secretary and treasurer, who shall perform the duties of their respective offices in accordance with the rules and regulations prescribed by the board of trustees.

HISTORY: CL 1897, 7976;—CL 1915, 10414;—CL 1929, 10615;—CL 1948, 457.227.

Act 235, 1849, p. 313; Eff. Apr. 2.

AN ACT to incorporate the grand lodge of Free and Accepted Masons of the state of Michigan.

The People of the State of Michigan enact:

457.231 Grand lodge of Free and Accepted Masons; body corporate, powers.

Sec. 1. The grand lodge of Free and Accepted Masons of the state of Michigan; by that name and style are hereby incorporated and declared a body politic and corporate in deed and law with succession, and shall be in law capable of suing and being sued, pleading and being impleaded [impleaded], answering and being answered, defending and being defended in all courts and places whatsoever, in all manner of action, suits, complaints, matters, and causes whatsoever, and that they and their successors shall have a common seal, and may change and alter the same at their pleasure.

HISTORY: Am. 1871, p. 49, Act 342, Eff. July 18;—CL 1915, 10415;—CL 1929, 10616;—CL 1948, 457.231.

This act does not appear in compilations before that of 1915.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

INSURANCE CODE: Provisions of Ch. IV of Pt. III of Act 256 of 1917 not applicable to masonic lodges, see Compilers' §§ 500.12b and 500.8094.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.232 Officers; board of directors.

Sec. 2. The officers of said corporation shall be: the grand master, deputy grand master, senior grand warden, junior grand warden, grand treasurer, and grand secretary, for the time being, and they shall constitute the board of directors of said corporation for the transaction of all business authorized by this act.

HISTORY: Am. 1869, p. 115, Act 69, Imd. Eff. March 26;—Amending Act of 1869, rep. 1871, p. 50, Act 342, Eff. July 15;—Am. 1871, p. 50, Act 342, Eff. July 18;—CL 1915, 10416;—CL 1929, 10617;—CL 1948, 457.232.

457.233 Governing law.

Sec. 3. This act shall be subject to the provisions of chapter 55 of the Revised Statutes of 1846, so far as the same may be applicable.

HISTORY: CL 1915, 10417;—CL 1929, 10618;—CL 1948, 457.233.

NOTE: Ch. 55 of R.S. 1846, above referred to, is Compilers' § 450.504 et seq.

See notes under Sec. 1 of this act.

457.234 Powers of corporation; property, holding, disposition.

Sec. 4. Said corporation may, under the direction of the grand lodge when assembled, make all by-laws for its government, the government of all constituent lodges under its jurisdiction, the government of all institutions owned, established or maintained by it, and for the transaction of all business of the corporation. Said corporation may acquire, hold, sell and convey any real or personal estate for its own use or for the use of any institution owned, established or maintained by it. It may own, establish and maintain a home or homes for members of the order of Free and Accepted Masons and their dependent relatives. It may take, hold and convey such other property, real or personal, as may be conveyed, devised or bequeathed to it in trust for any Masonic use, purpose, organization or institution. When authorized by the board of directors, all real and personal estate may be conveyed by deed or bill of sale in the name of the corporation, executed and acknowledged as the act and deed of the corporation by the grand master for the time being, or by such other person as the board of directors may appoint for that purpose, with the seal of the grand lodge attached, and such conveyance so executed shall be valid and binding for all intents and purposes whatsoever: Provided, however, That all property, real or personal, conveyed, devised or bequeathed to said corporation in trust for any Masonic use, purpose, organization or institution shall be held by said corporation and used by it in accordance with the terms of the instrument by which the same is conveyed, devised or bequeathed.

HISTORY: Am. 1871, p. 50, Act 342, Eff. July 18;—Am. 1905, p. 1, Act 1, Imd. Eff. Jan. 28;—Am. 1911, p. 254, Act 157, Eff. Aug. 1;—CL 1915, 10418;—CL 1929, 10619;—Am. 1931, p. 17, Act 10, Eff. Sept. 18;—CL 1948, 457.234.

457.235 Powers of corporation as trustee for subordinate lodges.

Sec. 5. Said corporation may hold real and personal estate of subordinate lodges in trust for the use of such subordinate lodges, and do all acts and things in law relating thereto as trustees, and may convey the same as above, under the direction of such subordinate lodge and the rules, regulations, and by-laws of the grand lodge in relation thereto.

HISTORY: Am. 1871, p. 50, Act 342, Eff. July 18;—CL 1915, 10419;—CL 1929, 10620;—CL 1948, 457.235.

The amendatory act of 1871 contained a Sec. 2 reading as follows: "Act No. 69 of the session laws of 1869 is hereby repealed."

457.236 Amendment or repeal of act.

Sec. 6. The legislature may at any time alter, amend, or repeal this act.

HISTORY: CL 1915, 10420;—CL 1929, 10621;—CL 1948, 457.236.

Act 48, 1895, p. 143; Imd. Eff. Mar. 29.

AN ACT to incorporate the grand chapter of Royal Arch Masons of Michigan.

The People of the State of Michigan enact:

457.241 Grand chapter of Royal Arch Masons; incorporation; body corporate, powers.

Sec. 1. That the grand chapter of Royal Arch Masons of Michigan, by that name and style, is hereby incorporated and declared a body politic and corporate in deed and law, capable of suing and being sued, pleading and being impleaded, answering and being answered, defending and being defended, in all courts and places whatsoever, in



all manner of action, suits, complaints, matters and causes whatsoever, and shall have a common seal which it may change at pleasure.

HISTORY: CL 1897, 7977;—CL 1915, 10421;—CL 1929, 10622;—CL 1948, 457.241.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

INSURANCE CODE: Provisions of Ch. IV of Pt. III of Act 256 of 1917 not applicable to Masonic lodges, see Compilers' §§ 500.128 and 500.8094.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.242 Board of directors.

Sec. 2. The officers of the corporation shall be the grand high priest, grand king, grand scribe, grand treasurer and grand secretary, for the time being, and they shall constitute the board of directors of the corporation for the transaction of all business authorized by this act.

HISTORY: CL 1897, 7978;—CL 1915, 10422;—CL 1929, 10623;—CL 1948, 457.242;—Am. 1964, p. 11, Act 6, Eff. Aug. 28.

457.243 Powers of corporation; bylaws; property, holding, disposition.

Sec. 3. The corporation, under direction of the grand chapter when assembled, may make and establish all necessary bylaws and rules for its governance and the governance of all subordinate chapters under the jurisdiction of the grand chapter, relating to the business and property authorized to be done, held and conveyed by this act; and said corporation may take, hold and convey, as may be required from time to time, any real or personal estate for the purpose of its or their organizations, not at any time exceeding in the aggregate the sum of \$200,000.00, but such property, both real and personal shall be subject to assessment and taxation for all purposes, and all real and personal estate so held may be conveyed by deed or bill of sale in the name of the corporation, executed by the grand high priest for the time being, or by such other person as the board of directors shall appoint for that purpose, and in case of real estate acknowledged by him to be the act and deed of the corporation, with the seal of the grand chapter attached, and such conveyance so executed shall be valid and binding for all intents and purposes whatsoever.

HISTORY: CL 1897, 7979;—CL 1915, 10423;—CL 1929, 10624;—CL 1948, 457.243;—Am. 1967, p. 38, Act 28, Imd. Eff. Jun. 2.

TAXATION: See Compilers' § 211.1 et seq.

Act 35, 1895, p. 124; Imd. Eff. Mar. 26.

AN ACT to incorporate the grand council of Royal and Select Masters of Michigan.

The People of the State of Michigan enact:

457.251 Grand council of Royal and Select Masters; incorporation; body corporate, powers.

Sec. 1. That the grand council of Royal and Select Masters of Michigan, by that name and style, is hereby incorporated and declared a body politic and corporate in deed and law, capable of suing and being sued, pleading and being impleaded, answering and being answered, defending and being defended, in all courts and places whatsoever, in all manner of action, suits, complaints, matters and causes whatsoever, and shall have a common seal which it may change at pleasure.

HISTORY: CL 1897, 7980;—CL 1915, 10424;—CL 1929, 10625;—CL 1948, 457.251.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

INSURANCE CODE: Provisions of Ch. IV of Pt. III of Act 256 of 1917 not applicable to Masonic lodges, see Compilers' §§ 500.128 and 500.8094.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.252 Officers; board of directors.

Sec. 2. The officers of said corporation shall be the grand master, deputy grand master and grand recorder for the time being, and they shall constitute the board of directors of said corporation for the transaction of all business authorized by this act.

HISTORY: CL 1897, 7981;—CL 1915, 10425;—CL 1929, 10626;—CL 1948, 457.252.

457.253 Powers of corporation; property, holding, disposition.

Sec. 3. Said corporation, under the direction of the grand council when assembled, may make and establish all necessary by-laws and rules for its governance and the governance of subordinate councils under the jurisdiction of the grand council, relating to the business and property authorized to be done, held and conveyed by this act; and said corporation may take, hold and convey, as may be required from time to time, any real and personal estate for the purpose of its or their organizations, not exceeding in value in the aggregate the sum of 50,000 dollars; and all real and personal estate so held may be conveyed by deed or bill of sale in the name of said corporation, executed by the grand master for the time being, or by such other person as the board of directors may appoint for that purpose, under the seal of the grand council, and such conveyance so executed shall be valid and binding for all intents and purposes whatsoever. Provided, That the property of said association shall be subjected to taxation for all purposes.

HISTORY: CL 1897, 7982;—CL 1915, 10426;—CL 1929, 10627;—CL 1948, 457.253.

TAXATION: See Compilers' § 211.1 et seq.

Act 63, 1917, p. 107; Eff. Aug. 10.

AN ACT to provide for the incorporation of grand chapters of the Order of the Eastern Star in Michigan.

The People of the State of Michigan enact:

457.261 Grand chapter of Order of Eastern Star; incorporation.

Sec. 1. Any grand chapter of the Order of The Eastern Star within the state of Michigan may be incorporated under and in pursuance of this act in the following manner.

HISTORY: CL 1929, 10628;—CL 1948, 457.261. This act probably supersedes Act 194 of 1913, being CL 1915, 10441-10449.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.262 Incorporators; articles of association, execution, contents.

Sec. 2. The worthy grand matron, the worthy grand patron, the associate grand matron, the associate grand patron, the grand secretary, the grand treasurer, the grand conductress and the associate grand conductress of any grand chapter of the Order of the Eastern Star in this state, together with not less than 10 past grand matrons or past grand patrons, residents of this state, and being members of the grand chapter of the Order of the Eastern Star proposed to be incorporated, having been directed so to do by the said grand chapter of the Order of the Eastern Star, may make and execute articles of association under their hands and seals, which articles of association shall be acknowledged before some officer authorized by law to take acknowledgments of deeds and shall set forth:

First, The names of the persons associating themselves in the first instance and their places of residence;

Second, The names and locations of the subordinate chapters of which they are, respectively, members;

Third, The place of its business office and the corporate name by which it shall be known in law, which shall not be similar to that of any other grand chapter which shall have been previously organized under this act;

Fourth, The object and purpose of such association and the period for which it is to be incorporated, which shall not exceed 30 years.

HISTORY: CL 1929, 10629;—CL 1948, 457.262.

457.263 Body corporate; powers.

Sec. 3. Such corporation, when duly formed under this act, shall become and be a body politic and corporate in deed and law with succession and shall be in law capable of suing and being sued, pleading and being impleaded, answering and being answered, defending and being defended in all courts and places whatsoever, as a corporation.

HISTORY: CL 1929, 10630;—CL 1948, 457.263.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.264 Officers; board of directors.

Sec. 4. The officers of said corporation shall be: the worthy grand matron, the worthy grand patron, the associate grand matron, the associate grand patron, the grand secretary, the grand treasurer, the grand conductress, and the associate grand conductress, for the time being, and they shall constitute the board of directors of said corporation for the transaction of all business authorized by this act.

HISTORY: CL 1929, 10631;—CL 1948, 457.264.

457.265 Powers of corporation; property, holding, disposition.

Sec. 5. Said corporation shall have a common seal and may change and alter the same at its pleasure; it may make, under direction of the grand chapter when assembled and established, all by-laws and rules for its government and the government of all subordinate chapters under the jurisdiction of the grand chapter relating to the business and property authorized to be done, held and conveyed by this act; it may take, hold and convey, as may be required from time to time, any real or personal estate for the purpose of its organization and not at any time, exceeding of personal estate, 250,000 dollars, and, of real estate, 500,000 dollars. It may also take, hold and convey such other property, in any amount of value, whether real or personal, as may be conveyed, devised or bequeathed to said corporation in trust for any use, purpose, organization or institution of said Order of the Eastern Star. All real and personal estate so held may be conveyed by deed or bill of sale in the name of the corporation executed by the worthy grand matron, worthy grand patron and grand secretary for the time being, and in case of real estate acknowledged by them respectively to be the act and deed of the corporation, or by such other person or persons as the board of directors may appoint for that purpose with the seal of said grand chapter attached and such conveyance so executed shall be valid and binding for all intents and purposes whatsoever: Provided, That all property, real or personal, conveyed, devised or bequeathed to said corporation in trust for any use, purpose, organization or institution of said Order of the Eastern Star shall be held by such corporation and used by it in accordance with the terms of the instrument by which the same is conveyed, devised, or bequeathed, or later modifying instrument executed by the original donors, their successors or assigns.

HISTORY: CL 1929, 10632;—CL 1948, 457.265.

457.266 Powers of corporation as to property of subordinate chapters.

Sec. 6. Said corporation may hold real or personal estate, or both, of subordinate chapters and may do all things in law relating thereto as trustee, and may convey the same as above under the direction of such subordinate chapter and the rules, regulations and by-laws of the grand chapter in relation thereto.

HISTORY: CL 1929, 10633;—CL 1948, 457.266.

457.267 Reincorporation under act; rights.

Sec. 7. Any grand chapter of the Order of the Eastern Star which has been heretofore incorporated under any other act of this state may be reincorporated under the provisions of this act upon a proper surrender to the source from which it received them, of all the rights, powers, privileges, property, money, accounts and books of account, bonds and obligations, contracts, actions and rights of actions, and any and all other things which it may have received and which it is not entitled by this act to hold; and such reincorporated organization shall thereupon succeed to any and all rights, privileges, powers and property which it is authorized by this act to hold.

HISTORY: CL 1929, 10634;—CL 1948, 457.267.

FORMER ACT: Act 194 of 1913, being CL 1915, 10441-10449, which was probably superseded by this act.

Act 35, 1909, p. 57; Eff. Sep. 1.

AN ACT to provide for the incorporation of Order of the Eastern Star associations.

The People of the State of Michigan enact:

457.271 Order of Eastern Star association; incorporation.

Sec. 1. Associations of the Order of the Eastern Star may be incorporated under the provisions of this act.

HISTORY: CL 1915, 10434;—CL 1929, 10635;—CL 1948, 457.271.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.272 Articles of association; execution, contents.

Sec. 2. Any 10 or more residents of this state, who are members of any chartered body or of different chartered bodies of the Order of the Eastern Star, may make and execute articles of association under their hands and seals, which said articles of association shall be acknowledged before some officer of this state having authority to take acknowledgments of deeds, and shall set forth:

First, The names of the persons associating in the first instance, their places of residence and the name and location of the Order of the Eastern Star body or bodies to which they severally belong;

Second, The corporate name by which such association shall be known in the law;

Third, The purpose of the association, which shall be to provide a building or buildings to be used for Order of the Eastern Star purposes, and the period for which such association is incorporated, not exceeding 30 years.

HISTORY: CL 1915, 10435;—CL 1929, 10636;—CL 1948, 457.272.

457.273 Articles; filing, recording; body corporate; certified copy as evidence.

Sec. 3. A copy of said articles of association shall be filed with the county clerk of the county within which such corporation shall be formed, and shall be recorded by such clerk in a book to be kept in his office for that purpose, and thereupon the persons who shall have signed said articles of association, their associates and successors, shall be a body corporate by the name expressed in such articles of association. A copy of such articles of association, under the seal of the county clerk in whose office said

record is kept, and certified by him, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such association.

HISTORY: CL 1915, 10436;—CL 1929, 10637;—CL 1948, 457.273.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 800.1920, 800.1923 and GCR 105.

457.274 Powers of corporation; property, holding, disposition.

Sec. 4. Every corporation organized under the provisions of this act may take, receive, purchase and hold in its corporate capacity and for its corporate purposes real and personal property, and the same or any part thereof demise, sell, convey, use and dispose of at pleasure; and may erect and own suitable building or buildings to be used in whole or in part for meetings of Order of the Eastern Star bodies, and may borrow money, and for that purpose may issue its bonds and mortgage its property to secure the payment of said bonds.

HISTORY: CL 1915, 10437;—CL 1929, 10638;—CL 1948, 457.274.

457.275 Powers of corporation; issuance of stock.

Sec. 5. Every such corporation shall have full power and authority to provide by its by-laws for the issuing of certificates or shares of stock and for the manner in which the same shall be held and represented.

HISTORY: CL 1915, 10438;—CL 1929, 10639;—CL 1948, 457.275.

457.276 Membership; election of officers and trustees; terms.

Sec. 6. Every such corporation shall elect annually a president, vice president and secretary and shall have power to provide by its by-laws for succession to its original membership and for new membership; and shall provide by its by-laws for election from its members of a board of trustees, and shall fix the number and term of office of such trustees: Provided, Such board shall consist of not less than 5 in number and such term of office shall not exceed 3 years.

HISTORY: CL 1915, 10439;—CL 1929, 10640;—CL 1948, 457.276.

457.277 Management and control.

Sec. 7. The management and control of the business, affairs and property of such corporation shall be vested in said board of trustees, and said board shall have power to borrow any money and cause to be made and issued any bonds and mortgages authorized by section 4 of this act. Said trustees shall appoint from their number a chairman, vice chairman, secretary and treasurer, who shall perform the duties of their respective offices in accordance with the rules and regulations prescribed by the board of trustees.

HISTORY: CL 1915, 10440;—CL 1929, 10641;—CL 1948, 457.277.

Act 256, 1897, p. 386; Imd. Eff. Jun. 2.

AN ACT to incorporate the White Shrine of Jerusalem.

The People of the State of Michigan enact:

457.291 White Shrine of Jerusalem; incorporation.

Sec. 1. That any supreme shrine of the White Shrine of Jerusalem, a higher degree of adaptive Masonry, following the order of the Eastern Star, working under a ritual, copyrighted by Charles D. Magee, Senior, which copyright is number 9252AA. may be incorporated in pursuance of the provisions of this act.

HISTORY: CL 1897, 7983;—CL 1915, 10427;—CL 1929, 10642;—CL 1948, 457.291.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.292 Articles of association; execution, contents.

Sec. 2. Any 10 or more residents of this state, being members of said supreme shrine who shall be desirous of becoming incorporated, may make and execute articles of association, under their hands and seals, which said articles of association shall be acknowledged before some officer of this state, having authority to take acknowledgments of deeds, and shall set forth,

First, The names of persons associating in the first instance and their place of residence,

Second, The name and location of the supreme shrine of which they are members.

Third, The corporate name by which such association shall be known in the law,

Fourth, The object and purposes of such association which shall be to promote the general welfare of the order of the White Shrine of Jerusalem, and make all lawful rules and regulations for the management and government of said supreme shrine and subordinate shrines.

Fifth, To use and operate the ritual of the White Shrine of Jerusalem, a higher degree of adaptive Masonry, as copyrighted by Charles D. Magee Senior, of Chicago, known as number 9252A.A. and recorded by the librarian of congress February thirteenth, 1895.

Sixth, To organize supreme and subordinate bodies under said copyright, and to do all things necessary to carry out the objects and purposes set forth in said ritual, and the period for which it is incorporated, not exceeding 30 years.

HISTORY: CL 1897, 7984;—CL 1915, 10428;—CL 1929, 10843;—CL 1948, 457.292.

457.293 Articles; filing, recording; body corporate, powers; certified copy as evidence.

Sec. 3. Said articles of association shall be filed with the county clerk of the county in which said corporation shall be formed, and shall be recorded by such clerk in a book to be kept in his office for that purpose, and also a copy of said articles of association filed with the secretary of state, and thereupon the persons who shall have signed such articles of association, their associates and successors shall be a body politic and corporate, by the name expressed in such articles of association; and by that name, they, and their successors shall have succession, and shall be persons in law capable of suing and being sued, and they and their successors may have a common seal and the same may be changed and altered at pleasure; and a certified copy of the records of the articles of association under the seal of the county where the said records are kept shall be received as prima facie evidence in all courts in this state of the existence and due incorporation of such corporation.

HISTORY: CL 1897, 7985;—CL 1915, 10429;—CL 1929, 10844;—CL 1948, 457.293.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 800.1920, 800.1923 and GCR 105.

457.294 Building; capital stock; property, holding and disposition; taxation; cemetery.

Sec. 4. Every corporation formed in pursuance of this act may erect and own or lease such suitable edifice, building or hall as to such corporation shall seem proper, with convenient rooms for the meetings of said fraternity and for that may create a capital stock of not more than 50,000 dollars, to be divided into shares of not more than 50 dollars each, and may take, receive, purchase and hold in its corporate capacity real and personal estate, and the same or any part thereof demise, convey, mortgage, use and dispose of at pleasure: Provided, however, That all such property both real and personal shall be subject to taxation the same as other property; and such corporation may take, purchase, hold and own such suitable lots or parcels of ground as may be convenient for the purpose of a cemetery, and may make all lawful rules and

regulations for the disposition of lots and the burial of the dead therein, as to such corporation may seem proper.

HISTORY: CL 1897, 7986;—CL 1915, 10430;—CL 1929, 10645;—CL 1948, 457.294.

457.295 Board of trustees; election, quorum, officers.

Sec. 5. The stockholders, each of whom shall be entitled to 1 vote for each share of stock held by him, may elect from their number a board of trustees, not less than 6 nor more than 9 members, a majority of whom shall form a quorum, and the trustees shall appoint from their own number a president, secretary and treasurer, who shall perform the duties of their offices in accordance with the rules and regulations which may be prescribed by the board of trustees.

HISTORY: CL 1897, 7987;—CL 1915, 10431;—CL 1929, 10646;—CL 1948, 457.295.

457.296 Board of trustees; powers.

Sec. 6. The management and direction of the interests and affairs and property of such corporation shall be vested in said board of trustees, and said board shall make all needful rules, ordinances and by-laws regulating the transaction of the business and the management of the property and all the affairs, concerns and interests of such corporation, and providing for the time and manner of electing the officers and trustees of the corporation and the length of the term of office of the trustees, a part of whom after the first election shall be chosen annually.

HISTORY: CL 1897, 7988;—CL 1915, 10432;—CL 1929, 10647;—CL 1948, 457.296.

457.297 Powers of corporation; property, holding, disposition.

Sec. 7. Every corporation under and in pursuance of this act shall have full power and authority to provide by its by-laws from time to time for the election from its own members of such other officers of the corporation, under and by such name and style as shall be in accordance with its ritual, by-laws and constitution, and instead of appointing a board of trustees to have the management and control of its property, interests and affairs as provided in sections 5 and 6 of this act, may if the corporation so choose, provide in its rituals and by-laws that the property, affairs and interests of the corporation shall be managed and controlled by such persons or officers of the corporation, or in such manner as the corporation shall from time to time provide for that purpose in such by-laws; and the corporation may enact all such by-laws, rules and regulations as may be necessary for its government and the government of subordinate shrines and for the care and management of its property, and for the care and management of the property of subordinate shrines and the affairs and interests of both the supreme and subordinate bodies and to carry into effect the powers and privileges in this act granted and may alter and amend the same at pleasure; Provided however, That in all cases where such corporation shall choose to appoint a board of trustees to have the management of its property and affairs, such board shall have the power and the management and the direction of the interests and property of the corporation as provided in sections 5 and 6 of this act.

HISTORY: CL 1897, 7989;—CL 1915, 10433;—CL 1929, 10648;—CL 1948, 457.297.

Act 22, 1891, p. 20; Eff. Oct. 2.

AN ACT to provide for the incorporation of lodges of the Benevolent and Protective Order of Elks.

The People of the State of Michigan enact:

457.301 Lodges of Benevolent and Protective Order of Elks; incorporation.

Sec. 1. That any lodge of the Benevolent and Protective Order of Elks, organized within this state, and having a charter from the grand lodge of the Benevolent and Protective Order of Elks, may become incorporated under the provisions of this act.

HISTORY: CL 1897, 8079;—CL 1915, 10553;—CL 1929, 10649;—CL 1948, 457.301.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.302 Incorporators; articles of association, execution, contents.

Sec. 2. Any 10 or more persons residents of this state, being members in good standing of a lodge of the Benevolent and Protective Order of Elks, having competent authority from the grand lodge of the order, desirous to become incorporated, may make and execute articles of association, under their hands and seals, which articles of association shall be acknowledged before some officer authorized by law to take acknowledgments of deeds, and shall set forth:

First, The names of the persons associating in the first instance, and their place of residence;

Second, The corporate name by which such association shall be known in the law, and the place of its business office;

Third, The objects and purposes of such association, which shall be to protect and aid its members and their families, and to promote friendship, and social intercourse, and to accumulate a fund for that purpose; and the period for which it is incorporated, not exceeding 30 years.

HISTORY: CL 1897, 8080;—CL 1915, 10554;—CL 1929, 10650;—CL 1948, 457.302.

457.303 Articles, charter and constitution; filing; body corporate, power.

Sec. 3. A copy of said articles of association together with the charter and constitution of the grand lodge of the Benevolent and Protective Order of Elks, shall be filed with the secretary of state; and thereupon the persons who have signed such articles of association, their associates and successors, shall be a body politic and corporate, by the name expressed in such articles of association, and by that name they and their successors shall have succession, and shall be persons in the law, capable to purchase, take, receive, hold and enjoy to them and their successors estates, real and personal, including a lodge house or temple suitable to their needs, objects and purposes, of suing and being sued, and to have a common seal, which may be altered or changed at their pleasure: Provided, That the value of such real and personal estate shall not exceed the sum of 500,000 dollars, and that they and their successors shall have power to give, grant, sell, lease, mortgage, demise and dispose of said real and personal estate or part thereof at their will and pleasure, and the proceeds, rents and incomes may be devoted in furtherance of the corporate powers, needs, objects and purposes. Said corporation shall have full power to make and establish rules, regulations and by-laws, for regulating and governing all the affairs and business of said corporation not repugnant to, or inconsistent with the constitution, rules and edicts of the grand lodge of the order, or the constitution and laws of this state, or of the United States, and to elect and appoint from its members such officers under such name and style as shall be in accordance with the constitution of the grand lodge of the order: Provided further, That lodges organized under said Act 22 of the Public Acts of 1891, as amended, having a membership of 1,000 or more shall have a board of 5 trustees. One trustee shall be elected annually for the term of 5 years, except that at the first election after this act goes into effect 5 trustees shall be elected, 1 for 1 year, 1 for 2 years, 1 for 3 years, 1 for 4 years and 1 for 5 years.

HISTORY: CL 1897, 8081;—Am. 1905, p. 49, Act 33, Imd. Eff. March 29;—Am. 1911, p. 26, Act 18, Eff. Aug. 1;—Am. 1915, p. 147, Act 83, Eff. Aug. 24;—CL 1915, 10555;—CL 1929, 10651;—CL 1948, 457.303.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and CCR 105.

457.304 Articles; certified copy as evidence.

Sec. 4. A copy of the record of such articles of association under the seal of the state, duly certified according to law, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such corporation.

HISTORY: CL 1897, 8082;—CL 1915, 10556;—CL 1929, 10652;—CL 1948, 457.304.

Act 90, 1905, p. 120; Imd. Eff. May 3.

AN ACT to provide for the incorporation of lodges and encampments of the Independent Order of Odd Fellows.

The People of the State of Michigan enact:

457.321 Lodges of Independent Order of Odd Fellows; incorporation.

Sec. 1. The grand and subordinate lodges of the Independent Order of Odd Fellows of the state of Michigan, may be incorporated in pursuance of the provisions of this act.

HISTORY: CL 1915, 10450;—CL 1929, 10653;—CL 1948, 457.321.

FORMER ACTS: Act 199 of 1865, being CL 1897, 7990-7999; Act 47 of 1869, being CL 1897, 8000.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

INSURANCE CODE: Provisions of Ch. IV of Pt. III of Act 256 of 1917 not applicable to lodges of Odd Fellows, see Compilers' §§ 500.128 and 500.8094.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.322 Grand Lodge; articles of association, execution, contents.

Sec. 2. Any 5 or more persons, residents of this state, being members of any grand lodge of the Independent Order of Odd Fellows, of the state of Michigan, desirous to become incorporated, may make and execute articles of association, under their hands and seal, which said articles of association shall be acknowledged before some officer of the state having authority to take acknowledgment of deeds, and shall set forth:

First, The name of persons associating in the first instance, and their places of residence;

Second, The corporate name by which such association shall be known in the law, and the place of its business office;

Third, The object and purpose of such association, which shall be to promote the general welfare of the order or fraternity, known as the Independent Order of Odd Fellows, to perform the functions ordinarily and properly to be performed by the Independent Order of Odd Fellows of the state of Michigan as the governing body of the Odd Fellow lodges in Michigan, to make laws for the government of such lodges, to acquire, own and convey real and personal property of any kind, in its own right for its own use or in trust for the benefit of Odd Fellow lodges in the state of Michigan, or for any other purposes compatible with the purposes of the corporation, to own and operate a home or homes for the members of Odd Fellow lodges in the state of Michigan or the female members of Rebekah lodges in Michigan, and to own and operate a camp or camps for the members of such lodges and the children or orphans of such members, or other children, to create corporations not for profit for such purposes, to provide and maintain an endowment fund for the benefit of any activity of the corporation or any corporation created by this corporation, and to do every other lawful thing

that shall be for the welfare and benefit of the Odd Fellow lodges in Michigan, or the grand lodge of the Independent Order of Odd Fellows of Michigan, a Michigan corporation, and to join with others in any of the above enumerated activities.

HISTORY: CL 1915, 10451;—CL 1929, 10654;—CL 1948, 457.322;—Am. 1961, p. 79, Act 79, Eff. Sep. 8.

457.323 Grand lodge; articles, charter, constitution, filing; body corporate, powers.

Sec. 3. A copy of said articles of association, together with a copy of the charter and constitution of said grand lodge, shall be filed with the secretary of state, and thereupon the persons who shall have signed such articles of association, their associates and successors, shall be a body politic and corporate, by the name expressed in such articles of association, and by that name they and their successors shall have succession, and shall be persons in the law, capable to purchase, take, receive, hold and enjoy, to them and their successors, estates, real and personal, of suing and being sued, and they and their successors may have a common seal, which may be changed and altered at their pleasure. The value of such real and personal estate shall not exceed the sum of \$1,000,000.00, and they and their successors shall have authority and power to give, grant, sell, lease, demise and dispose of said real and personal estate, or part thereof, at their will and pleasure, and the proceeds, rents and incomes shall be devoted exclusively to charitable and benevolent purposes of the Independent Order of Odd Fellows. Said corporation shall have full power and authority to make and establish rules, regulations and bylaws, for regulating and governing all the affairs and business of said corporation according to the laws of the state, and the United States, and to designate, elect or appoint from its members such officers, under such name and style, as shall be in accordance with the constitution of the grand lodge.

HISTORY: CL 1915, 10452;—CL 1929, 10655;—CL 1948, 457.323;—Am. 1961, p. 80, Act 79, Eff. Sep. 8.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.324 Grand lodge; certified copy of articles as evidence.

Sec. 4. A copy of the record of such articles of association, under the seal of the state, duly certified according to law, shall be received as prima facie evidence in all courts of this state, of the existence and due incorporation of such corporation.

HISTORY: CL 1915, 10453;—CL 1929, 10656;—CL 1948, 457.324.

457.325 Subordinate lodges; chartering; existing lodges; regulation.

Sec. 5. Such corporation, when duly formed, shall have power to institute and charter subordinate lodges within this state and from time to time to make, ordain, constitute and establish such constitution, general laws and by-laws, ordinances and regulations, as the grand lodge shall judge proper for the regulation and government of such subordinate lodges, not repugnant to the laws of this state: Provided, That the existing subordinate lodges heretofore duly chartered by the grand lodge, shall be subject to the control of the grand lodge, under this act, as heretofore, and in the same manner and to the same extent, as those that may be hereafter instituted and chartered under this act: Provided further, That in case the corporators, or persons associating in the first instance, shall by death, resignation, or for other cause, under the rules of the grand lodge, become ineligible to act in such capacity, their successors may, from time to time, be appointed by the grand lodge.

HISTORY: CL 1915, 10454;—CL 1929, 10657;—CL 1948, 457.325.

457.326 Subordinate lodges; incorporation; body corporate, powers; certified copy of articles as evidence.

Sec. 6. Any 5 or more persons, residents of this state, being members of a subordinate lodge of the Independent Order of Odd Fellows, having been duly chartered by the grand lodge, desirous to become incorporated, may make and execute articles of association, specifying as provided in section 2 of this act, and file a copy of the same

with the clerk of the county in which such corporation shall be formed, which shall be recorded by such clerk in a book to be kept in his office for that purpose; and thereupon the persons who shall have signed said articles of association, their associates and successors, shall be a body politic and corporate, by the name expressed in such articles of association, and by that name they and their successors shall have succession, and shall be persons in the law capable to purchase, hold, enjoy, grant, sell, give, lease and demise, real and personal estate; of suing and being sued, and may have a common seal, and change and alter the same at pleasure; and a certified copy of the record of such articles of association, under the seal of the county where the said record is kept, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such corporation: Provided, Said corporation shall be limited to the powers and provisions of sections 3 and 11 of this act, regarding real and personal estate, and the proceeds thereof, under the rules and regulations of the grand lodge, and may elect or appoint from among its members such officers, under such name and style, as shall be in accordance with its constitution.

HISTORY: CL 1915, 10455;—CL 1929, 10658;—CL 1948, 457.326.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.327 Erection of building; capital stock, creation, shares; cemetery.

Sec. 7. Any corporation formed in pursuance of this act, may erect and own such suitable edifice, building or hall, as to such corporation shall seem proper, with convenient rooms for the meetings of the fraternity of Odd Fellows; and for that purpose may create a capital stock of not more than 50,000 dollars, to be divided into shares of not more than 25 dollars each; and any such corporation may take, purchase, hold and own such suitable lot or parcel of ground as may be convenient, for the purpose of a cemetery, and may make all lawful rules and regulations for the disposition of lots, and the burial of the dead therein, as to such corporation may seem proper.

HISTORY: CL 1915, 10456;—CL 1929, 10659;—CL 1948, 457.327.

457.328 Encampment or canton; incorporation.

Sec. 8. Any grand encampment or grand canton of the Independent Order of Odd Fellows of the state of Michigan, and any subordinate encampment or canton thereof, having been duly chartered, may be incorporated in like manner as grand and subordinate lodges of the Independent Order of Odd Fellows, and enjoy the same powers, privileges and benefits under the provisions of this act.

HISTORY: CL 1915, 10457;—CL 1929, 10660;—CL 1948, 457.328.

457.329 Governing law; amendment of act.

Sec. 9. All corporations, formed under this act, shall be subject to the provisions of chapter 230 of the Compiled Laws of 1897 of this state, so far as the same may be applicable to corporations formed under this act; and the legislature may alter or amend this act at any time.

HISTORY: CL 1915, 10458;—CL 1929, 10661;—CL 1948, 457.329.

NOTE: Ch. 230 of CL 1897, above referred to, included the following provisions which have not been repealed or reenacted: Compilers' §§ 450.504 et seq., 450.601, 450.631 et seq.

Act 84 of 1921, being CL 1929, 9943 et seq., has repealed and superseded part of the above chapter.

See notes under Sec. 1 of this act.

457.330 Business office; change of location.

Sec. 10. The location of the business offices of the grand lodge and grand encampment of the Independent Order of Odd Fellows, or either of them, may be changed at any time, upon filing a written notice of such change in the office of the secretary of state, within 20 days from the time of the change of such location.

HISTORY: CL 1915, 10459;—CL 1929, 10662;—CL 1948, 457.330.

457.331 Property; holding, disposition; erection of buildings; subscription to stock.

Sec. 11. Any lodge or encampment of the Independent Order of Odd Fellows, or any association thereof, incorporated under the provisions of this act, may receive, purchase and hold in its corporate capacity, real and personal estate, and the same or any part thereof, demise, convey, mortgage, use and dispose of at pleasure to the amount of 200,000 dollars; and may subscribe to the stock of any incorporated company, for the purpose of erecting a suitable edifice, building or hall, with convenient rooms for the meetings and use of the fraternity of Odd Fellows.

HISTORY: CL 1915, 10480;—Am. 1917, p. 816, Act 335, Eff. Aug. 10;—CL 1929, 10663;—CL 1948, 457.331.
FORMER LAW: Act 47 of 1869, being CL 1897, 8000.

457.332 Two or more subordinate lodges or encampments; incorporation.

Sec. 12. Any 5 or more persons, residents of this state, being members of a subordinate lodge or encampment of the Independent Order of Odd Fellows, and having been designated or elected as representatives or delegates of 2 or more subordinate lodges or encampments of the Independent Order of Odd Fellows, desirous of becoming incorporated, may make and execute articles of association in like manner as is provided in this act for the incorporation of separate subordinate lodges and encampments, and such corporation shall be governed by, and shall have the benefit of, all the provisions of this act: Provided, That said association shall in all respects be subject to the laws of the grand lodge.

HISTORY: Add. 1917, p. 816, Act 335, Eff. Aug. 10;—CL 1929, 10664;—CL 1948, 457.332.

Act 17, 1877, p. 10; Imd. Eff. Mar. 1.

AN ACT to provide for the incorporation of lodges of Knights of Pythias.

The People of the State of Michigan enact:

457.351 Knights of Pythias lodges; incorporation.

Sec. 1. That the grand lodge and subordinate lodges of Knights of Pythias of the state of Michigan may be incorporated in pursuance of the provisions of this act.

HISTORY: How. 4551;—CL 1897, 8001;—CL 1915, 10462;—CL 1929, 10665;—CL 1948, 457.351.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

INSURANCE CODE: For applicability of Ch. IV of Pt. III of Act 256 of 1917 to lodges of Knights of Pythias, see Compilers' §§ 500.128 and 500.8094.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.352 Grand lodge; articles of association, execution, contents.

Sec. 2. Any 10 or more persons residents of this state being members of the grand lodge of the Knights of Pythias of the state of Michigan desirous to become incorporated may make and execute articles of association under their hands and seals which articles of association shall be acknowledged before some officer authorized by law to take acknowledgments of deeds and shall set forth:

First The names of the persons associating in the first instance and their places of residence

Second The corporate name by which such association shall be known in the law, and the place of its business office

Third The object and purpose of such association which shall be to promote the general welfare of the fraternity known as the grand lodge of Knights of Pythias and the period for which it is incorporated not exceeding 30 years.

HISTORY: How. 4552;—CL 1897, 8002;—CL 1915, 10463;—CL 1929, 10666;—CL 1948, 457.352.

457.353 Grand lodge; articles, charter and constitution, filing; body corporate, powers.

Sec. 3. A copy of said articles of association, together with a copy of the charter and constitution of said grand lodge, shall be filed with the secretary of state, and thereupon the persons who shall have signed such articles of association, their associates and successors shall be a body politic and corporate by the name expressed in such articles of association, and by that name they and their successors shall have succession, and shall be persons in the law, capable to purchase, take, receive, hold, and enjoy, to them and their successors, estates real and personal, of suing and being sued, and to have a common seal, which may be altered or changed at their pleasure. They and their successors shall have power to give, grant, sell, lease, demise, and dispose of said real and personal estate, or part thereof, at their will and pleasure, and the proceeds, rents and incomes shall be devoted exclusively to the charitable and benevolent purposes of the grand lodge of Knights of Pythias. Said corporation shall have full power to make and establish rules, regulations, and by-laws for regulating and governing all the affairs and business of said corporation not repugnant to the constitution and laws of this state or of the United States, and to designate, elect, or appoint from its members such officers, under such name and style as shall be in accordance with the constitution of the supreme lodge of the world.

HISTORY: How. 4553;—CL 1897, 8003;—CL 1915, 10464;—Am. 1929, p. 42, Act 18, Eff. Aug. 28;—CL 1929, 10667;—CL 1948, 457.353.
SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.354 Grand lodge; certified copy of articles as evidence.

Sec. 4. A copy of the record of such articles of association under the seal of the state duly certified according to law shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such corporation.

HISTORY: How. 4554;—CL 1897, 8004;—CL 1915, 10465;—CL 1929, 10668;—CL 1948, 457.354.

457.355 Subordinate lodges; chartering; existing lodges; regulation.

Sec. 5. Such corporation when duly formed shall have power to institute and charter subordinate lodges of said order within this state and from time to time to make, ordain, constitute and establish such general laws and by-laws, ordinances and regulations for the government of such subordinate lodges not repugnant to law or to the constitution or regulations of the grand lodge of Knights of Pythias as to them shall seem proper and necessary, and in case of violation or non-compliance with such ordinances, by-laws and regulations to revoke and annul the charter granted to such subordinate lodges: Provided, That the existing subordinate lodges heretofore duly chartered by the grand lodge of Michigan (or the United States), shall be subject to the control of the said grand lodge under this act as heretofore and in the same manner, and to the same extent as those that may hereafter be instituted and chartered under this act.

HISTORY: How. 4555;—CL 1897, 8005;—CL 1915, 10466;—CL 1929, 10669;—CL 1948, 457.355.

457.356 Subordinate lodges; incorporation; body corporate, powers; certified copy of articles as evidence.

Sec. 6. Any 9 or more persons, residents of this state, being members of any subordinate lodge, having been duly chartered by the grand lodge of this state, desirous to become incorporated, may make and execute articles of association under their hands and seals, specifying as provided in article 2 of this act, and file a copy of such articles with the clerk of the county in which such corporation shall be formed, which shall be recorded by such clerk in a book to be kept in his office for that purpose; and thereupon the persons who shall have signed said articles of association, their associates and successors, shall be a body politic and corporate by the name expressed in such articles of association; and by that name they and their successors shall have succession, and

shall be persons in the law capable to purchase, hold, enjoy, grant, sell, give, lease and demise real and personal estate, of suing and being sued, and may have a common seal, and change and alter the same at pleasure; and a certified copy of the record of such articles of association, under the seal of the county where the said record is kept, shall be received as prima facie evidence in all courts in this state of the existence and due incorporation of such corporation. They and their successors shall have authority and power to give, grant, sell, lease, demise, and dispose of said real and personal estate, or part thereof, at their will and pleasure, and the proceeds, rents, and income shall be devoted exclusively to the charitable and benevolent purposes of the order of Knights of Pythias.

HISTORY: How. 4556;—CL 1897, 8006;—CL 1915, 10467;—Am. 1929, p. 42, Act 18, Eff. Aug. 28;—CL 1929, 10670;—CL 1948, 457.356.
SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.357 Erection of building; capital stock, creation, shares, cemetery.

Sec. 7. Any corporation formed in pursuance of this act may erect and own such suitable edifice, building, or hall, as to such corporation shall seem proper, with convenient rooms for the meetings of the lodges of the order of Knights of Pythias; and for that purpose may create a capital stock to be divided into shares of not more than 50 dollars each; and any such corporation may take, purchase, hold, and own such suitable lot or parcel of ground as may be convenient for the purpose of a cemetery, and may make all lawful rules and regulations for the disposition of lots, and the burial of the dead therein as to such corporation may seem proper: Provided, This act shall not be construed to affect municipal regulations in regard to cemeteries.

HISTORY: How. 4557;—CL 1897, 8007;—CL 1915, 10468;—Am. 1929, p. 43, Act 18, Eff. Aug. 28;—CL 1929, 10671;—CL 1948, 457.357.

457.358 Governing law; amendment of act.

Sec. 8. All corporations formed under this act shall be subject to the provisions of chapter 130 of the Compiled Laws of this state, so far as the same may be applicable to corporations formed under this act, and the legislature may alter or amend this act at any time.

HISTORY: How. 4558;—CL 1897, 8008;—CL 1915, 10469;—CL 1929, 10672;—CL 1948, 457.358.

NOTE: Ch. 130 of CL 1871, above referred to, included the following provisions which have not been repealed or reenacted: Compilers' §§ 450.504 to 450.525.

See notes under Sec. 1 of this act.

457.359 Uniform Rank Knights of Pythias; incorporation.

Sec. 9. Any brigade, regiment or division of the Uniform Rank Knights of Pythias of this state, having been duly warranted, may be incorporated in like manner as grand and subordinate lodges of Knights of Pythias, and enjoy the same powers, privileges and benefits under the provisions of this act.

HISTORY: Add. 1895, p. 162, Act 65, Eff. Aug. 30;—CL 1897, 8009;—CL 1915, 10470;—CL 1929, 10673;—CL 1948, 457.359.

Act 85, 1905, p. 114; Imd. Eff. May 3.

AN ACT to provide for the incorporation of Knights of Pythias associations.

The People of the State of Michigan enact:

457.361 Knights of Pythias associations; incorporation.

Sec. 1. That Knights of Pythias associations may be incorporated under the provisions of this act.

HISTORY: CL 1915, 10471;—CL 1929, 10674;—CL 1948, 457.361.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

INSURANCE CODE: For applicability of Ch. IV of Pt. III of Act 256 of 1917 to lodges of Knights of Pythias, see Compilers' §§ 500.128 and 500.8094.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.362 Articles of association; execution, contents.

Sec. 2. Any 7 or more residents of this state, who are members of any chartered body, or of different chartered bodies of the order of Knights of Pythias may make and execute articles of association under their hands and seals, which said articles of association shall be acknowledged before some officer of this state having authority to take acknowledgments of deeds, and shall set forth:

First. The names of the persons associating in the first instance, their places of residence and the name and location of the Pythian body or bodies to which they severally belong;

Second. The corporate name by which such association shall be known in law;

Third. The purpose of the association, which shall be to provide a building or buildings to be used in whole or in part for Pythian purposes, and the period for which such association is incorporated not exceeding 30 years;

Fourth. The principal office or place of business.

HISTORY: CL 1915, 10472;—CL 1929, 10675;—CL 1948, 457.362.

457.363 Articles; filing, record; body corporate; certified copy as evidence.

Sec. 3. A copy of said articles of association shall be recorded in the office of the secretary of state and in the office of the county clerk of the county within which such incorporation shall be formed, and shall be recorded by such clerk in a book to be kept in his office for that purpose, and thereupon the persons who shall have signed said articles of association, their associates and successors, shall be a body corporate by the name expressed in such articles of association. A copy of such articles of association, under the seal of the circuit court and signed and certified by the county clerk in whose office said record is kept shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such association.

HISTORY: CL 1915, 10473;—CL 1929, 10676;—CL 1948, 457.363.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.364 Powers of corporation; property, holding, disposition.

Sec. 4. Every corporation organized under the provisions of this act may take, receive, purchase and hold in its corporate capacity and for its corporate purposes, real and personal property, and the same or any part thereof demise, sell, convey, lease, use and dispose of at pleasure; and may erect and own, enlarge, alter and repair suitable building or buildings and may purchase, lease, own and maintain furnishings and fixtures therein to be used in whole or in part for meetings of Pythian bodies and may lease said building or buildings for business purposes in whole or in part and may borrow money therefor and for that purpose may issue its bonds and mortgage its property to secure the payment of such bonds.

HISTORY: CL 1915, 10474;—CL 1929, 10677;—CL 1948, 457.364.

457.365 Shares of stock; ownership.

Sec. 5. Shares of stock and certificates of such corporation may be held and owned by chartered or incorporated bodies of Knights of Pythias.

HISTORY: CL 1915, 10475;—CL 1929, 10678;—CL 1948, 457.365.

457.366 Shares of stock; by-laws.

Sec. 6. Every such corporation shall have full power and authority to provide by its by-laws for the issuing of its certificates and shares of stock and for the manner in which said shares of stock shall be held and represented.

HISTORY: CL 1915, 10476;—CL 1929, 10679;—CL 1948, 457.366.

457.367 Membership; trustees, election, term, qualification.

Sec. 7. Every such corporation shall have power to provide by its by-laws for succession to its original membership and for new membership; and shall also have power to

provide by its by-laws for the election from its stockholders of a board of trustees, and to fix the number and term of office of such trustees. But such board of trustees shall not be less than 5 and such term of office shall not exceed 3 years. Such board of trustees shall consist of an equal number from each subordinate chartered lodge of Knights of Pythias owning and holding shares of stock in said corporation as a lodge and situated in the town or city where the property of said corporation is located.

HISTORY: CL 1915, 10477;—CL 1929, 10680;—CL 1948, 457.367.

457.368 Powers of trustees; appointment of officers; by-laws and rules.

Sec. 8. The management and control of the business, affairs and property of such corporation shall be vested in said board of trustees and said board of trustees shall have power to borrow any money, and cause to be made and issue the bonds and mortgages authorized by section 4 of this act. Said trustees shall appoint from their own number a president, vice-president, secretary and treasurer, who shall perform the duties of their respective offices in accordance with the rules and regulations prescribed by the board of trustees. The first board of trustees provided for in this act shall have power to adopt by-laws and rules of procedure, and such by-laws and rules shall be binding upon all stockholders until the same are repealed.

HISTORY: CL 1915, 10478;—CL 1929, 10681;—CL 1948, 457.368.

457.369 First board of trustees; trustee eligibility.

Sec. 9. The first board of trustees of such corporation shall be elected by ballot from the original incorporators and their number determined upon by the incorporating stockholders. But such first board of trustees shall consist of an equal number from each subordinate lodge of Knights of Pythias represented by such incorporating stockholders. And such incorporating stockholder at such election shall have 1 vote and no more. Such board of trustees shall hold office until their successors are elected and qualified. But no person shall be entitled to election or to hold the office of trustee unless he be in good standing in his subordinate lodge of Knights of Pythias, and when he ceases to be in such good standing his office as a member of said board of trustees shall be deemed vacant and shall be vacated without further proceedings.

HISTORY: CL 1915, 10479;—CL 1929, 10682;—CL 1948, 457.369.

457.370 Gifts; entertainments.

Sec. 10. The said corporation shall have the further power to receive and own contributions and gifts and to use the same for its corporate purposes. It shall have the further power to hold and give entertainments for profit and to use the funds so realized for its corporate purposes.

HISTORY: CL 1915, 10480;—CL 1929, 10683;—CL 1948, 457.370.

457.371 Subscriptions; calling in; sale, procedure; proceeds; recovery of balance; rights of purchaser.

Sec. 11. The said board of trustees may call in the subscriptions to the capital stock of such corporation by installments, in such proportions and at such times and places as they shall think proper by giving notice thereof as the by-laws shall prescribe, and in case any stockholder shall neglect or refuse payment of any such installment for the space of 30 days after the same shall become due and payable, said corporation may recover the amount of said installment from such delinquent stockholder in any proper action for that purpose, or, so much of the stock of such delinquent stockholder as may be necessary to pay such installment so due, may be sold by the trustees at public auction at the office of the secretary of the corporation, giving at least 10 days' notice of said sale personally, in writing or by mail, to such delinquent stockholder at his last known address, or by publishing the same 3 weeks in succession in some newspaper published in the city or town where said office is located, and in case of the sale of said stock the proceeds thereof shall be first applied to the payment of the install-

ment called for and the expenses of the sale, and the residue, if any, shall be paid over to the delinquent stockholder. In case the proceeds of such sale shall be insufficient to pay such installment such corporation may recover the balance from such delinquent stockholder. Such sale shall entitle the purchaser to all the rights of such delinquent stockholder to the extent of the shares so purchased.

HISTORY: CL 1915, 10481;—CL 1929, 10684;—CL 1948, 457.371.

Act 104, 1905, p. 151; Imd. Eff. May 10.

AN ACT to provide for the incorporation of the Social Order of Moose of the state of Michigan.

The People of the State of Michigan enact:

457.401 Social Order of Moose; incorporation of lodges.

Sec. 1. That grand and subordinate lodges of the Social Order of Moose, of the state of Michigan, may be incorporated in pursuance of provisions of this act.

HISTORY: CL 1915, 10624;—CL 1929, 10685;—CL 1948, 457.401.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.402 Grand lodge; incorporators; articles of association, execution, contents.

Sec. 2. That any 10 or more persons with their associates and successors, shall constitute the grand lodge of the Social Order of Moose, of the state of Michigan, and they are hereby authorized to make and execute under their hands and seals, articles of association, which said articles of association shall be acknowledged before some officer of this state, having authority to make (take) acknowledgments of deeds, and shall set forth:

First. The names of persons so associating in the first instance, and their places of residence;

Second. The corporate name by which such association shall be known in the law, and the place of its business office;

Third. The object and purpose of such association shall be to protect and aid its members and their families, and to promote friendship and social intercourse, and to accumulate a fund for that purpose, and the period for which it is incorporated, not exceeding 30 years.

HISTORY: CL 1915, 10625;—CL 1929, 10686;—CL 1948, 457.402.

457.403 Grand lodge; articles and constitution, filing; body corporate, powers.

Sec. 3. A copy of the said articles of association, together with a copy of the constitution of said grand lodge, shall be filed with the secretary of state, and thereupon the persons who shall have signed such articles of association, and their associates and successors, shall be a body politic and corporate under the name of the grand lodge of the Social Order of Moose, of the state of Michigan, and by that name they and their associates shall have succession, and shall be persons in the law, capable to purchase, take, receive, hold and enjoy, to them and their successors, estates real and personal, of suing and being sued, and they and their successors may have a common seal, which may be changed and altered at their pleasure: Provided, That the value of such real and personal estate shall not exceed the sum of 50,000 dollars, and that they, and their successors, shall have authority and power to give, grant, sell, lease, demise and dispose of said real estate or part thereof, at their will and pleasure, and the proceeds, rents and income shall be devoted exclusively to the charitable and benevolent purposes of the

Social Order of Moose, of the state of Michigan. Said corporation shall have full power and authority to make and establish rules, regulations and by-laws, for regulating and governing all the affairs and business of said corporation, according to the laws of this state, and the United States, and to designate, elect or appoint, from its members, such officers, under such name and style as shall be in accordance with the customs of their order.

HISTORY: CL 1915, 10626;—CL 1929, 10687;—CL 1948, 457.403.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.404 Grand lodge; certified copy of articles as evidence.

Sec. 4. A copy of the record of said articles of association, under the seal of the state, duly certified according to law, shall be received as prima facie evidence in all courts of this state, of the existence and due incorporation of such corporation.

HISTORY: CL 1915, 10627;—CL 1929, 10688;—CL 1948, 457.404.

457.405 Subordinate lodges; chartering, regulation.

Sec. 5. Such corporation when duly formed shall have full power to institute, and charter subordinate lodges within this state, and within all states and territories of the United States, and within the Dominion of Canada, and from time to time to make, ordain, constitute and establish such constitution, general laws and by-laws, ordinances and regulations as it shall judge proper for the regulation and government of such subordinate lodges, not repugnant to the laws of this state, or the United States, or the Dominion of Canada.

HISTORY: CL 1915, 10628;—CL 1929, 10689;—CL 1948, 457.405.

Act 291, 1913, p. 552; Eff. Aug. 14.

AN ACT to provide for the incorporation of subordinate lodges of the supreme lodge of the world, Loyal Order of Moose.

The People of the State of Michigan enact:

457.411 Loyal Order of Moose; incorporation of subordinate lodges.

Sec. 1. Any subordinate lodge of the Loyal Order of Moose, organized within this state, and having a charter from the supreme lodge of the world, Loyal Order of Moose, may become incorporated under the provisions of this act.

HISTORY: CL 1915, 10629;—CL 1929, 10690;—CL 1948, 457.411.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.412 Incorporators; articles of association, execution, contents.

Sec. 2. Any 10 or more persons, residents of this state, being members in good standing of a subordinate lodge of the Loyal Order of Moose, having competent authority from the supreme lodge of the world, Loyal Order of Moose, desirous to become incorporated, may make and execute articles of association, under their hands and seals, which articles of association shall be acknowledged before some officer authorized by law to take acknowledgments of deeds, and shall set forth:

First, The names of the persons associating in the first instance, and their place of residence;

Second, The corporate name by which such association shall be known in the law, and the place of its business office;

Third, The objects and purposes of such association, which shall be to assist in binding civilized mankind closer together with bonds of fraternal love, to teach and educate its members and their families a higher and nobler citizenship, and to promote

friendship, and social intercourse, and to accumulate a fund for that purpose; and the period for which it is incorporated, not exceeding 30 years.

HISTORY: CL 1915, 10630;—CL 1929, 10691;—CL 1948, 457.412.

457.413 Articles, charter and constitution; filing; body corporate, powers.

Sec. 3. A copy of said articles of association, together with the charter and constitution of the supreme lodge of the world, Loyal Order of Moose, shall be filed with the secretary of state; and thereupon the persons who have signed such articles of association, their associates and successors, shall be a body politic and corporate, by the name expressed in such articles of association, and by that name they and their successors shall have succession, and shall be persons in the law, capable to purchase, take, receive, hold and enjoy to them and their successors, estates, real and personal, of suing and being sued, and to have a common seal, which may be altered or changed at their pleasure: Provided, That the value of such real and personal estate shall not exceed the sum of 500,000 dollars and that they and their successors shall have the power to give, grant, sell, lease, mortgage, demise and dispose of said real and personal estate or part thereof at their will and pleasure, and the proceeds, rents and incomes shall be devoted to the protection and aid of its members and their families, and for no other purpose. Said corporation shall have full power to make and establish rules, regulations and by-laws, for regulating and governing all the affairs and business of said corporation not repugnant to, or inconsistent with the constitution, rules and edicts of the supreme lodge of the world, Loyal Order of Moose, or with the constitution and laws of this state, or of the United States, and to elect and appoint from its members, such officers, under such name and style as shall be in accordance with the constitution of the grand lodge of the order.

HISTORY: CL 1915, 10631;—CL 1929, 10692;—CL 1948, 457.413.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.414 Articles, certified copy as evidence.

Sec. 4. A copy of the record of such articles of association under the seal of the state, duly certified according to law, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such corporation.

HISTORY: CL 1915, 10632;—CL 1929, 10693;—CL 1948, 457.414.

Act 130, 1879, p. 130; Imd. Eff. May 31.

AN ACT to provide for the incorporation of a grand council of the Royal Arcanum.

The People of the State of Michigan enact:

457.431 Grand council of Royal Arcanum; incorporation.

Sec. 1. That the grand council of the Royal Arcanum of the state of Michigan, may be incorporated in pursuance of the provisions of this act.

HISTORY: How. 4565;—CL 1897, 8017;—CL 1915, 10489;—CL 1929, 10694;—CL 1948, 457.431.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.432 Incorporators; articles of association, execution, contents.

Sec. 2. Any 10 or more persons, residents of this state, being members of the grand council of the Royal Arcanum of the state of Michigan, desirous to become incorporated, may make and execute articles of association, under their hands and seals, which articles of association shall be acknowledged before some officer authorized by law to take acknowledgments of deeds, and shall set forth;

First, The names of the persons associating in the first instance, and their places of residence;

Second, The corporate name by which such association shall be known in law;

Third, The object and purpose of such association, which shall be to promote the general welfare of the fraternity known as the grand council of the Royal Arcanum, and the period for which it is incorporated, not exceeding 30 years.

HISTORY: How. 4566;—Am. 1895, p. 552, Act 255, Eff. Aug. 30;—CL 1897, 8018;—CL 1915, 10490;—CL 1929, 10695;—CL 1948, 457.432.

457.433 Articles, charter and constitution; filing; body corporate, powers.

Sec. 3. A copy of said articles of association, together with a copy of the charter and constitution of said grand council, shall be filed with the secretary of state, and thereupon the persons who shall have signed such articles of association, their associates and successors shall be a body politic and corporate by the name expressed in such articles of association, and by that name, they and their successors shall have succession, and shall be persons in the law, capable to purchase, take, receive, hold and enjoy, to them and their successors, estates, real and personal, of suing and being sued, and to have a common seal, which may be altered or changed at their pleasure: Provided, That the value of such real and personal estate shall not exceed the sum of 10,000 dollars, and that they and their successors shall have power to give, grant, sell, lease, demise and dispose of [said] real and personal estate, or part thereof, at their will and pleasure, and the proceeds, rents and incomes shall be devoted exclusively to the charitable and benevolent purposes of the Grand Council of the Royal Arcanum. Said corporation shall have full power to make and establish rules, regulations and by-laws for regulating and governing all the affairs and business [business] of said corporation not repugnant to the constitution and laws of this state or of the United States, and to designate, elect, or appoint from its members such officers, under such name and style as shall be in accordance with the constitution of the Supreme Council of the Royal Arcanum.

HISTORY: How. 4567;—CL 1897, 8019;—CL 1915, 10491;—CL 1929, 10696;—CL 1948, 457.433.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.434 Articles; certified copy as evidence.

Sec. 4. A copy of the record of such articles of association under the seal of the state, duly certified according to law, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such corporation.

HISTORY: How. 4568;—CL 1897, 8020;—CL 1915, 10492;—CL 1929, 10697;—CL 1948, 457.434.

457.435 Subordinate councils; chartering; existing councils; regulation.

Sec. 5. Such corporation when duly formed shall have power to institute and charter subordinate councils of said order within this state, and from time to time to make, ordain, constitute and establish such general laws and by-laws, ordinances and regulations for the government of such subordinate councils, not repugnant to law or to the constitution or regulations of the grand council of the Royal Arcanum, as to them shall seem proper and necessary; and in case of violation or non-compliance with such ordinances, by-laws and regulations, to revoke and annul the charter granted to such subordinate councils: Provided, That the existing subordinate councils heretofore duly chartered by the grand council of Michigan or the supreme council, shall be subject to the control of the said grand council under this act as heretofore, and in the same manner, and to the same extent as those that may hereafter be instituted and chartered under this act.

HISTORY: How. 4569;—CL 1897, 8021;—CL 1915, 10493;—CL 1929, 10698;—CL 1948, 457.435.

457.436 Subordinate councils; incorporation; body corporate, powers; certified copy of articles as evidence.

Sec. 6. Any 9 or more persons, residents of this state, being members of any subordinate council, having been duly chartered by the grand council of this state, desirous to

become incorporated, may make and execute articles of association under their hands and seals, specifying as provided in article 2 of this act, and file a copy of such articles with the clerk of the county in which such corporation shall be formed, which shall be recorded by such clerk in a book to be kept in his office for that purpose; and thereupon the persons who shall have signed such articles of association, their associates and successors, shall be a body politic and corporate by the name expressed in such articles of association; and by that name they and their successors shall have succession, and shall be persons in the law, capable to purchase, hold, enjoy, grant, sell, give, lease and demise real and personal estate, of suing and being sued, and may have a common seal, and change and alter [the same] at pleasure; and a certified copy of the record of such articles of association, under the seal of the county where the record is kept, shall be received as prima facie evidence in all courts in this state of the existence and due incorporation of such corporation: Provided, That the value of such real [and personal] estate shall not exceed the sum of 1,000 dollars, and that they and their successors shall have authority and power to give, grant, sell, lease, demise and dispose of said real and personal estate, or part thereof, at their will and pleasure, and the proceeds, rents and income shall be devoted exclusively to the charitable and benevolent purposes of the order of Royal Arcanum.

HISTORY: How. 4570;—CL 1897, 8022;—CL 1915, 10494;—CL 1929, 10699;—CL 1948, 457.436.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.437 Erection of building; capital stock, creation, shares.

Sec. 7. Any corporation formed in pursuance of this act may erect and own such suitable edifice, building or hall, as such corporation shall seem proper, with convenient rooms for the meetings of the councils of the order of Royal Arcanum, and for that purpose may create a capital stock of not more than 10,000 dollars, to be divided into shares of not more than 10 dollars each.

HISTORY: How. 4571;—CL 1897, 8023;—CL 1915, 10495;—CL 1929, 10700;—CL 1948, 457.437.

457.438 Governing law; amendment of act.

Sec. 8. All corporations formed under this act shall be subjected [subject] to the provisions of chapter 130 of the Compiled Laws of this state, so far as the same may be applicable to corporations formed under this act and the legislature may alter or amend this act at any time.

HISTORY: How. 4572;—CL 1897, 8024;—CL 1915, 10496;—CL 1929, 10701;—CL 1948, 457.438.

NOTE: Ch. 130 of CL 1871, above referred to, included the following provisions which have not been repealed or reenacted: Compilers' §§ 450.504 to 450.525.

See notes under Sec. 1 of this act.

457.439 Amendment of articles; procedure.

Sec. 9. Every corporation organized or existing under the provisions of this act may at any regular meeting or at any meeting duly called for that purpose, amend its articles of association in any manner not inconsistent with the provisions of this act, but such amendment shall not become operative until a copy of such amendment, signed by the presiding officer and the secretary of the corporation shall have been recorded as is provided herein for the recording of original articles of association when such amendment shall have the same force and effect as though included in the original articles.

HISTORY: Add. 1895, p. 552, Act 255, Eff. Aug. 30;—CL 1897, 8025;—CL 1915, 10497;—CL 1929, 10702;—CL 1948, 457.439.

Act 143, 1881, p. 127; Imd. Eff. May 11.

AN ACT to provide for the incorporation of "subordinate tents of the Knights of the Maccabees of the World," and the great camp thereof for the state of Michigan.

The People of the State of Michigan enact:

457.451 Subordinate tents of Knights of Maccabees of the World; incorporation, procedure.

Sec. 1. Any subordinate tent of the Knights of the Maccabees of the World, duly organized and acting within this state, and in good standing with the great camp of said order within said state, and acting under the constitution thereof, may become a body corporate and politic in the manner following:

First, At some regular review of said tent, a resolution shall be put to vote of the members present, expressing the desire of said tent to be incorporated and directing the officers thereof to perfect such incorporation, and if such resolution shall receive a 2/3 vote of the members present, it shall be declared carried, otherwise lost;

Second, On such resolution being so passed, the sir knight commander and sir knight record keeper shall prepare articles of association under their hands and the seal of the tent, setting forth the number of persons then in good standing in the tent desiring incorporation, the name by which the tent is known, the date of its organization, and the period for which is incorporated, not exceeding 30 years.

Third, A copy of such articles of association shall be filed with the county clerk of the county within which such tent holds its stated meetings, and shall by him be recorded together with the affidavit hereafter named, by such clerk in a book to be kept for that purpose;

Fourth, On the execution of said articles of association, and before the filing thereof with the county clerk the sir knight record keeper of such tent shall annex thereto his affidavit stating that he is a member in good standing of such tent and occupies the position of record keeper therein and that the resolution, a copy of which shall be set forth at length in such affidavit, was regularly passed at a regular review of said tent and received a 2/3 majority of the members present, and that to the best of his knowledge and belief the statements made in the articles of association are true and that said tent is organized and acting under the constitution of the great camp of the Knights of the Maccabees of the World for Michigan.

HISTORY: How. 4573;—Am. 1883, p. 85, Act 89, Imd. Eff. May 11;—CL 1897, 8026;—CL 1915, 10498;—CL 1929, 10703;—CL 1948, 457.451.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.452 Subordinate tents; body corporate, powers; certified copy of articles as evidence.

Sec. 2. When the foregoing requirements are complied with, the tent shall be a body corporate by the name expressed in such articles, and by that name shall be a person in the law capable of suing and being sued in courts, and of taking and holding property of every kind the same as natural persons, and a copy of said articles of association, duly certified by the clerk of the county in whose possession they are, shall be conclusive evidence in all courts and places, of the existence and due incorporation of such tent.

HISTORY: How. 4574;—Am. 1883, p. 85, Act 89, Imd. Eff. May 11;—CL 1897, 8027;—CL 1915, 10499;—CL 1929, 10704;—CL 1948, 457.452.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.453 Great camp; declaration of incorporation; powers, control over subordinate tents.

Sec. 3. The present great camp of the Knights of the Maccabees of the World for Michigan, incorporated June 11 A.D. 1881 under the act of which this act is amendatory, is hereby declared to be duly and regularly incorporated, capable of suing and being sued, and of holding and transferring property, and to have sole jurisdiction over and control of all subordinate tents heretofore organized or that may be hereafter or-

ganized in the state of Michigan and bearing the name or title of the Knights of the Maccabees of the World, subject only to the constitution and laws of the order.

HISTORY: How. 4575;—Am. 1883, p. 86, Act 89, Imd. Eff. May 11;—CL 1897, 8028;—CL 1915, 10500;—CL 1929, 10706;—CL 1948, 457.453.

457.454 Great camp; property, disposition, control.

Sec. 4. The property, real and personal, of said great camp of Michigan Maccabees, and any incorporation formed under this act shall be held, disposed of, managed and controlled by such persons and in such manner as the majority of the members shall from time to time determine in accordance with the constitution and laws of the order.

HISTORY: How. 4576;—Am. 1883, p. 86, Act 89, Imd. Eff. May 11;—CL 1897, 8029;—CL 1915, 10501;—CL 1929, 10706;—CL 1948, 457.454.

457.455 Control of property and business.

Sec. 5. The management, direction and control of the property and business of such corporations shall be vested in such of its officers and persons as a majority of the members present and acting thereon shall from time to time determine.

HISTORY: How. 4577;—CL 1897, 8030;—CL 1915, 10502;—CL 1929, 10707;—CL 1948, 457.455.

Act 163, 1893, p. 263; Eff. Aug. 28.

AN ACT to provide for the incorporation of the Uniform Division of the Knights of the Maccabees.

The People of the State of Michigan enact:

457.461 Uniform Rank of Knights of Maccabees; incorporation.

Sec. 1. That the grand division and subordinate divisions of the Uniform Rank of the Knights of the Maccabees of the state of Michigan, may be incorporated in pursuance of the provisions of this act.

HISTORY: CL 1897, 8031;—CL 1915, 10503;—CL 1929, 10708;—CL 1948, 457.461.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.462 Incorporators; articles of association, execution, contents.

Sec. 2. Any 10 or more persons, residents of this state being members of the grand or any subordinate division of the Uniform Rank of the Knights of the Maccabees of the state of Michigan, desirous to become incorporated may make and execute articles of association, under their hands and seals, which articles of association shall be acknowledged before some officer authorized by law to take acknowledgments of deeds and shall set forth:

First, The names of the person associating in the first instance and their places of residence;

Second, The corporate name by which such association shall be known in the law, and the place of its business office;

Third, The object and purpose of such association, which shall be to promote the general welfare of the fraternity known as the grand division of the Uniform Rank Knights of the Maccabees, and the period for which it is incorporated, not exceeding 30 years.

HISTORY: CL 1897, 8032;—CL 1915, 10504;—CL 1929, 10709;—CL 1948, 457.462.

457.463 Articles and laws; filing; body corporate, powers.

Sec. 3. A copy of said articles of association together with a copy of the laws of said grand division, shall be filed with the secretary of the state, and thereupon the persons who shall have signed such articles of association, their associates and successors shall

be a body politic and corporate by the name expressed in such articles of association, and by that name they and their successors shall have succession, and shall be persons in the law capable to purchase, take, receive, hold, and enjoy to them and their successors, estates real and personal, of suing and being sued, and to have a common seal, which may be altered or changed at their pleasure: Provided, That the value of such real and personal estate shall not exceed the sum of 10,000 dollars, said corporation shall have full power to make and establish rules, regulations and laws for regulating and governing all the affairs and business of said corporation not repugnant to the constitution and laws of this state or the United States, and to designate, elect or appoint from its members such officers, under such name and style as shall be in accordance with its laws.

HISTORY: CL 1897, 8033;—CL 1915, 10505;—CL 1929, 10710;—CL 1948, 457.463.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

Act 120, 1891, p. 138; Imd. Eff. Jun. 5.

AN ACT to provide for the incorporation of the great hive and subordinate hives of the Ladies of the Maccabees of the state of Michigan.

The People of the State of Michigan enact:

457.471 Great hive of Ladies of Maccabees; incorporation.

Sec. 1. That the great hive of the Ladies of the Maccabees of the state of Michigan and any subordinate hives duly chartered by such great hive pursuant to the provisions of the constitution and laws of said great hive, may become a body corporate and politic in the manner following:

First, At some regular review of such great hive held pursuant to the constitution and laws thereof, a resolution shall be adopted by a vote of 2/3 of all the members present, expressing the desire and determination of such great hive to become incorporated and directing the great executive committee to perfect such incorporation.

Second, On such resolution being so passed, the great executive committee shall prepare articles of association, under their hands and the seal of such great hive, setting forth the number, name and location of all subordinate hives then in good standing, under the jurisdiction of such great hive, the name by which the great hive is known, the date of its organization, a copy of the resolution mentioned in the first subdivision of this act, the corporate name by which the great hive shall be known in law, the object and purpose of the association, and the period for which it is incorporated, not exceeding 30 years, to which shall be appended a copy of the constitution, laws and by-laws of the great hive.

Third, The great recorder shall make and annex to such articles of association, an affidavit stating the official position occupied in the great hive by the several members of the executive committee, that the resolution, a copy of which is set out in the articles of association, was duly passed at a review of said great hive held pursuant to the constitution and that the same was passed by a 2/3 vote of all the members present, that all the statements in said articles of association are true to the best of her knowledge, information and belief, and that the constitution, laws and by-laws of such great hive, a copy of which is appended to such articles of association, has been duly adopted by such great hive.

Fourth, A copy of such articles of association with all the papers mentioned in the second subdivision of this act and of the affidavit of said great recorder, by her duly attested, shall be filed in the office of the secretary of state and shall be recorded by said secretary in a book to be kept by him for that purpose.

HISTORY: CL 1897, 8034;—CL 1915, 10506;—CL 1929, 10711;—CL 1948, 457.471.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.472 Great hive; body corporate, powers; articles, certified copy as evidence.

Sec. 2. When all the foregoing requirements are complied with the great hive of the Ladies of the Maccabees of the state of Michigan, shall be a body corporate and politic, by the name expressed in such article of association and by that name shall be in law capable of suing, and being sued, in all the courts of this state, with full power and authority to transact the business of said association, pursuant to the constitution, laws and by-laws thereof, and said articles of association or a copy thereof, duly attested by the secretary of state, under the great seal thereof, shall be prima facie evidence in all the courts of this state, of the existence and incorporation of said great hive of the Ladies of the Maccabees.

HISTORY: CL 1897, 8035;—CL 1915, 10507;—CL 1929, 10712;—CL 1948, 457.472.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.473 Great hive; amendment of constitution and by-laws.

Sec. 3. The great hive of the Ladies of the Maccabees is hereby authorized to amend its constitution, laws and by-laws, at any regular review of said great hive, after its incorporation, but such amendments shall not be inconsistent with the object and purpose of such association as stated in its articles of association and such constitution, laws and by-laws, shall be in force from and after the filing with the secretary of state of an attested copy thereof, under the hand of the great recorder and the seal of said great hive.

HISTORY: CL 1897, 8036;—CL 1915, 10508;—CL 1929, 10713;—CL 1948, 457.473.

457.474 Subordinate hive; incorporation, certified copy of articles as evidence.

Sec. 4. Any subordinate hive, now chartered, or which may hereafter be chartered, by the great hive of the Ladies of the Maccabees of the state of Michigan, may become incorporated and be a body corporate and politic, by passing, by a 2/3 vote of all the members present, at any regular review, of such subordinate hive, a like resolution, as provided in section 1 of this act, executing similar articles of association, under the hands of its executive committee, and the seal of the hive, and appending thereto the affidavit of its recorder, setting forth the official character of the several members of *it executive committee, that said resolution was passed at a regular review, and received the affirmative votes of 2/3 of all the members present, and filing the same with the county clerk of the county in which such subordinate hive shall be located, and causing such articles of association and said affidavit to be recorded by such clerk in a book to be kept by him for that purpose and a copy of said articles of association duly certified by such county clerk, shall be prima facie evidence in all [the] courts of this state, of the existence and incorporation of such subordinate hive.

HISTORY: CL 1897, 8037;—CL 1915, 10509;—CL 1929, 10714;—CL 1948, 457.474.

*NOTE: It is evident the word "it" should be "its".

457.475 Property; holding and disposition; control of business.

Sec. 5. Every corporation formed pursuant to this act may take and hold personal and real property, so far as the same shall be necessary for the proper purposes of the organization, not exceeding 10,000 dollars, in value, and may convey, dispose of, mortgage, and deal with the same, as may be determined by the constitution, laws and by-

laws of such great hive, or of such subordinate hive, as the case may be. The management, direction and control of the property and business of such corporations shall be vested in such officers as the constitution and laws of the great hive may direct.

HISTORY: CL 1897, 8038;—CL 1915, 10510;—CL 1929, 10715;—CL 1948, 457.475.

Act 16, 1875, p. 15; Eff. Aug. 3.

AN ACT to provide for the incorporation of tribes and councils of the Improved Order of Red Men, and to repeal chapter 122 of the Compiled Laws, being an act to provide for the incorporation of societies of Pocahontas tribes of Improved Order of Red Men.

The People of the State of Michigan enact:

457.481 Improved Order of Red Men; incorporation.

Sec. 1. That the great council and subordinate tribes of the Improved Order of Red Men of the state of Michigan may be incorporated in pursuance of the provisions of this act.

HISTORY: How. 4542;—CL 1897, 8039;—CL 1915, 10511;—CL 1929, 10716;—CL 1948, 457.481.

FORMER ACT: Act 102 of 1869, being CL 1871, 3253 to 3256.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.482 Great council; incorporators; articles of association, execution, contents.

Sec. 2. Any 10 or more persons, residents of this state, being members of any great council of the Improved Order of Red Men of the state of Michigan, desirous to become incorporated, may make and execute articles of association, under their hands and seals, which articles of association shall be acknowledged before some officer authorized by law to take acknowledgment of deeds, and shall set forth:

First, The names of the persons associating in the first instance, and their places of residence;

Second, The corporate name by which such association shall be known in the law, and the place of its business office;

Third, The object and purpose of such association, which shall be to promote the general welfare of the fraternity known as the "Improved Order of Red Men," and the period for which it is incorporated, not exceeding 30 years.

HISTORY: How. 4543;—CL 1897, 8040;—CL 1915, 10512;—CL 1929, 10717;—CL 1948, 457.482.

457.483 Great council; articles, charter and constitution, filing; body corporate, powers.

Sec. 3. A copy of said articles of association, together with a copy of the charter and constitution of said great council, shall be filed with the secretary of state, and thereupon the persons who shall have signed such articles of association, their associates and successors, shall be a body politic and corporate, by the name expressed in such articles of association, and by that name they and their successors shall have succession, and shall be persons in the law, capable to purchase, take, receive, hold and enjoy, to them and their successors, estates real and personal, of suing and being sued and to have a common seal, which may be altered or changed at their pleasure: Provided, That the value of such real and personal estate shall not exceed the sum of 10,000 dollars, and that they and their successors shall have power to give, grant, sell, lease, demise and dispose of said real and personal estate, or part thereof, at their will and pleasure, and the proceeds, rents, and incomes shall be devoted exclusively to the charitable and benevolent purposes of the Improved Order of Red Men. Said corpora-

tion shall have full power to make and establish rules, regulations and by-laws for regulating and governing all the affairs and business of said corporation not repugnant to the constitution and laws of this state or of the United States, and to designate, elect, or appoint from its members such officers, under such name and style as shall be in accordance with the constitution of the great council of the United States.

HISTORY: How. 4544;—CL 1897, 8041;—CL 1915, 10513;—CL 1929, 10718;—CL 1948, 457.483.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923.

457.484 Great Council; certified copy of articles as evidence.

Sec. 4. A copy of the record of such articles of association, under the seal of the state, duly certified according to law, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such corporation.

HISTORY: How. 4545;—CL 1897, 8042;—CL 1915, 10514;—CL 1929, 10719;—CL 1948, 457.484.

457.485 Subordinate tribes; chartering; existing subordinate tribes; regulation.

Sec. 5. Such corporation, when duly formed, shall have power to institute and charter subordinate tribes of said order within this state, and from time to time to make, ordain, constitute and establish such general laws and by-laws, ordinances and regulations for the government of such subordinate tribes not repugnant to law or to the constitution or regulations of the great council of the Improved Order of Red Men of the United States, as to them shall seem proper and necessary, and in case of violation or non-compliance with such ordinances, by-laws and regulations, to revoke and annul the charter granted to such subordinate tribes; Provided, That the existing subordinate tribes heretofore duly chartered by the great council of Michigan or of the United States shall be subject to the control of the said great council under this act as heretofore, and in the same manner and to the same extent as those that may hereafter be instituted and chartered under this act.

HISTORY: How. 4546;—CL 1897, 8043;—CL 1915, 10515;—CL 1929, 10720;—CL 1948, 457.485.

457.486 Subordinate tribes; incorporation; body corporate, powers; certified copy of articles as evidence.

Sec. 6. Any 7 or more persons, residents of this state, being members of a tribe of Improved Order of Red Men, having been duly chartered by the great council of the Improved Order of Red Men of this state, desirous to become incorporated, may make and execute articles of association under their hands and seals, specifying, as provided in article 2 of this act, and file a copy of such articles with the clerk of the county in which such corporation shall be formed, which shall be recorded by such clerk in a book to be kept in his office for that purpose; and thereupon the persons who shall have signed said articles of association, their associates and successors, shall be a body politic and corporate, by the name expressed in such articles of association; and by that name they and their successors shall have succession, and shall be persons in the law, capable to purchase, hold, enjoy, grant, sell, give, lease and demise real and personal estate, of suing and being sued, and may have a common seal, and change and alter the same at pleasure; and a certified copy of the record of such articles of association under the seal of the county where the said record is kept, shall be received as prima-facie evidence in all courts of this state of the existence and due incorporation of such corporation: Provided, That the value of such real and personal estate shall not exceed the sum of 10,000 dollars, and that they and their successors shall have authority and power to give, grant, sell, lease, demise, and dispose of said real and personal estate or part thereof, at their will and pleasure, and the proceeds, rents and income shall be devoted exclusively to the charitable and benevolent purposes of the Improved Order of Red Men.

HISTORY: How. 4547;—CL 1897, 8044;—CL 1915, 10516;—CL 1929, 10721;—CL 1948, 457.486.

457.487 Erection of building; capital stock, creation, shares; cemetery.

Sec. 7. Any corporation formed in pursuance of this act may erect and own such suitable edifice, building or hall as to such corporation shall seem proper, with convenient rooms for the meetings of the tribes or councils of the Improved Order of Red Men; and for that purpose may create a capital stock of not more than 10,000 dollars, to be divided into shares of not more than 10 dollars each; and any such corporation may take, purchase, hold and own such suitable lot or parcel of ground as may be convenient for the purpose of a cemetery, and may make all lawful rules and regulations for the disposition of lots and the burial of the dead therein as to such corporation may seem proper.

HISTORY: How. 4548;—CL 1897, 8045;—CL 1915, 10517;—CL 1929, 10722;—CL 1948, 457.487.

457.488 Governing law; amendment of act.

Sec. 8. All corporations formed under this act shall be subject to the provisions of chapter 130 of the Compiled Laws of this state, so far as the same may be applicable to corporations formed under this act, and the legislature may alter or amend this act at any time.

HISTORY: How. 4549;—CL 1897, 8046;—CL 1915, 10518;—CL 1929, 10723;—CL 1948, 457.488.

NOTE: Ch. 130 of CL 1871, above referred to, included the following provisions which have not been repealed or reenacted: Compilers' §§ 450.504 to 450.525.

See notes under Sec. 1 of this act.

Sec. 9. (This was a repeal section.)

HISTORY: How. 4550;—CL 1915, 10519;—CL 1929, 10724;—Rep. 1945, p. 403, Act 267, Imd. Eff. May 25.

ACT REPEALED: Act 102, 1869, CL 1871, 3253-3256.

Act 83, 1887, p. 90; Imd. Eff. Apr. 22.

AN ACT to provide for the incorporation of lodges of the Ancient Order of United Workmen.

The People of the State of Michigan enact:

457.501 Lodges of Ancient Order of United Workmen; incorporation.

Sec. 1. That grand lodges and subordinate lodges of the Ancient Order of United Workmen of the state of Michigan may be incorporated in pursuance of the provisions of this act.

HISTORY: How. 4577x;—CL 1897, 8047;—CL 1915, 10520;—CL 1929, 10725;—CL 1948, 457.501.

FRATERNAL BENEFIT SOCIETIES: Excepted from the provisions of Act 327, 1931, see Compilers' § 450.3.

Reports, see Compilers' § 450.81.

See Ch. IV of Pt. III of Act 256 of 1917, insurance code, being Compilers' §§ 500.128, 500.8001 et seq.; in particular, Compilers' § 500.8094.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.133 et seq.

457.502 Grand lodge; incorporators; articles of association, contents.

Sec. 2. Any 10 or more persons, residents of this state, being members of a grand lodge of the Ancient Order of United Workmen of the state of Michigan, that has been duly chartered by the supreme lodge of the said order, and including in their number the grand master workman, the grand recorder and the grand receiver of said grand lodge, desiring to become incorporated, may make and sign articles of association, setting forth their names, official titles, and place of residence, the corporate name by which the association shall be known in the law, the place of its business office, the period for which it is incorporated, not exceeding 30 years, and the purposes of the association, which shall be to promote the general welfare of the fraternity known as the

Ancient Order of United Workmen, to improve the mental, moral and social condition of the members of said fraternity, and to provide for the relief of the families and heirs of deceased members of the said fraternity.

HISTORY: How. 4577y;—CL 1897, 8048;—CL 1915, 10520;—CL 1929, 10726;—CL 1948, 457.502.

CITED: *Faurot v. Swan*, 155 Mich. 284, 285, 118 N.W. 955.

457.503 Grand lodge; articles, acknowledgement, filing; body corporate, powers.

Sec. 3. Such articles of association shall be acknowledged before a notary public, and a copy thereof shall be filed with the secretary of state, and thereupon the persons who shall have signed such articles of association, their associates and successors, shall be a body politic and corporate by the name expressed in such articles of association, and by that name they and their successors shall have succession, and shall be persons in the law capable to sue and be sued, to have a common seal, which may be altered or changed at their pleasure, to receive, hold and enjoy, for themselves and their successors, estates, real and personal, and to give, grant, sell, lease, demise and dispose of such estates: Provided, That such real estate, and the proceeds, rents and incomes thereof shall be devoted exclusively to the charitable and benevolent purposes of the fraternity known as the Ancient Order of United Workmen. Said corporation shall have full power to make and establish rules, regulations and by-laws not repugnant to the constitution and laws of the United States or of this state, of the supreme lodge of the Ancient Order of United Workmen, and to designate, elect or appoint from its members, such officers, under such name and style as shall be in accordance with the constitution and laws of said supreme lodge. And said corporation shall have power to create, hold and disburse beneficiary, relief, guaranty, general or other funds for the benefit of sick or disabled members or of members of the families of deceased members of subordinate lodges of the Ancient Order of United Workmen, or of persons related to such members by blood, or who shall be dependent upon such members; to enter into arrangements or agreements with the supreme lodge or with the supreme lodge relief board, whereby, in the event of an unusual number of deaths occurring in any 1 year among the members of the lodges subordinate to the jurisdiction of said grand lodge, or of any other grand lodge, or of the supreme lodge of the said order, said grand lodge may afford aid from its guaranty fund, or may itself receive aid, as the case may require; and to levy assessments upon members of subordinate lodges for the purpose of raising the beneficiary, relief, guaranty, general or other funds, and of carrying out such arrangements with the supreme lodge or with the supreme lodge relief board: Provided, That nothing in this section shall be construed as giving to a grand lodge power to make assessments for the purpose of paying sick benefits.

HISTORY: How. 4577z;—CL 1897, 8049;—Am. 1901, p. 276, Act 192, Eff. Sept. 5;—CL 1915, 10522;—CL 1929, 10727;—CL 1948, 457.503.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.504 Grand lodge; certified copy of articles as evidence.

Sec. 4. A copy of the record of such articles of association, under the seal of the state, duly certified according to law, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such corporation.

HISTORY: How. 4577z-1;—CL 1897, 8050;—CL 1915, 10523;—CL 1929, 10728;—CL 1948, 457.504.

457.505 Subordinate lodges; chartering; existing lodges; regulation.

Sec. 5. Such corporation when formed shall have power to institute and charter subordinate lodges within this state, and from time to time to make, ordain, constitute and establish such general laws and by-laws, ordinances and regulations, for the government of such subordinate lodges, not repugnant to law or to the constitution and regulations of the grand lodge or of the supreme lodge, as shall seem to it necessary and proper, and in case of non-compliance with such general laws, by-laws, ordinances,

and regulations, to revoke and annul the charter granted to any such subordinate lodge: Provided, however, That the existing subordinate lodges heretofore duly chartered by the grand lodge of Michigan, or the supreme lodge, shall be subject to the control of the said grand lodge as heretofore, and in the same manner and to the same extent as those which may hereafter be chartered under this act.

HISTORY: How. 4577z-2;—CL 1897, 8051;—CL 1915, 10524;—CL 1929, 10729;—CL 1948, 457.505.

457.506 Subordinate lodges; incorporation.

Sec. 6. Any 10 or more persons, residents of this state, being members in good standing of any subordinate lodge of the Ancient Order of United Workmen, and including in their number the master workman, the recorder and the receiver of such lodge, duly chartered by a grand lodge of this state or by the supreme lodge, desiring to become incorporated, may make and sign articles of association, specifying as provided in the second section of this act.

HISTORY: How. 4577z-3;—CL 1897, 8052;—CL 1915, 10525;—CL 1929, 10730;—CL 1948, 457.506.

457.507 Subordinate lodges; articles, acknowledgement, filing, recording; body corporate, powers.

Sec. 7. Such articles shall be acknowledged before a notary public, and a copy thereof shall be filed with the clerk of the county in which such corporation shall be formed, which shall be recorded by such clerk in a book to be kept in his office for that purpose; and thereupon the persons who shall have signed such articles of association, their associates and successors, shall be a body politic and corporate by the name expressed in such articles of association, and by that name they and their successors shall have succession, and shall be persons in the law capable to sue and be sued, to have a common seal which may be altered or changed at their pleasure, to purchase, take, receive, hold and enjoy, for themselves and their successors, estates, real and personal, and to give, grant, sell, lease, demise and dispose of such estates: Provided, That the value of such real estate, exclusive of the building authorized by the ninth section of this act, shall not exceed the sum of 5,000 dollars, and that the proceeds, rents and incomes thereof shall be devoted exclusively to the charitable and benevolent purposes of the fraternity known as the Ancient Order of United Workmen.

HISTORY: How. 4577z-4;—CL 1897, 8053;—CL 1915, 10526;—CL 1929, 10731;—CL 1948, 457.507.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and CCR 105.

457.508 Subordinate lodges; certified copy of articles as evidence.

Sec. 8. A certified copy of the records [record] of such articles of association, under the seal of the county where the record is kept, shall be received as prima facie evidence in all courts in this state of the existence and due incorporation of such corporation.

HISTORY: How. 4577z-5;—CL 1897, 8054;—CL 1915, 10527;—CL 1929, 10732;—CL 1948, 457.506.

457.509 Subordinate lodges; erection of building; capital stock, creation, shares.

Sec. 9. Any corporation other than a grand lodge formed in pursuance of this act, may erect and own such edifice, building or hall, as it shall deem proper, with convenient rooms for the meetings of lodges of the order, and for that purpose may create a capital stock of not more than 50,000 dollars, to be divided into shares of not more than 100 dollars each.

HISTORY: How. 4577z-6;—CL 1897, 8055;—CL 1915, 10528;—CL 1929, 10733;—CL 1948, 457.509.

457.510 Surrender of corporate rights; re-incorporation; effect.

Sec. 10. Any grand or subordinate lodge which shall have been incorporated before this act takes effect as a law, under the provisions of chapter 118 of the general statutes of the state of Michigan in force, compiled and annotated by Andrew Howell, entitled, "An act to provide for the incorporation of co-operative and mutual benefit

associations," approved April third, in the year of our Lord 1869, may by a vote of the members of such lodge at any regular meeting thereof, surrender its corporate rights, powers and liabilities, but such surrender shall not in any manner affect any suits which may be pending, or any rights which any person may have acquired by virtue of such incorporation; but before such surrender shall be valid, a certificate of the proper officers, under the seal of such lodge, shall be filed with the secretary of state, and also with the county clerk of the county in which such lodge may be, certifying that such lodge has voted to surrender its corporate rights; and any such lodge having so surrendered its corporate rights may be again incorporated, in conformity with the provisions of this act: Provided, That all members of the corporate body that has surrendered its corporate rights shall, by virtue of such re-incorporation, and the payment of the first beneficiary assessment made by the re-incorporated body be entitled to all the rights and benefits flowing therefrom, and the beneficiary certificate [certificates] held by them shall be treated and considered by the re-incorporated body as of its own issuance, and shall be, so far as the member is concerned, of the same force and effect as if issued by the re-incorporated body.

HISTORY: How. 4577z-7;—CL 1897, 8056;—CL 1915, 10529;—CL 1929, 10734;—CL 1948, 457.510.

NOTE: Act 104 of 1869, above referred to, is CL 1915, 9646 to 9652, rep. 1921, p. 186, Act 84, being CL 1929, 10134.

457.511 Insurance business.

Sec. 11. Corporations formed in pursuance of this act shall not be considered as engaged in the business of life insurance, nor shall they be subject to the provision of the statutes relating to life insurance or mutual benefit companies, associations or corporations.

HISTORY: How. 4577z-8;—CL 1897, 8057;—CL 1915, 10530;—CL 1929, 10735;—CL 1948, 457.511.

457.512 Money or benefit to be paid; exemptions.

Sec. 12. The money or other benefit, relief, aid or sick benefit fund to be paid, provided or rendered by any corporation formed in pursuance of this act, shall not be liable to attachment, garnishment or other process and shall not be seized, taken, appropriated or applied by any legal or equitable process or by operation of law, to pay any debt or liability of the deceased member, or of any certificate holder, or of any beneficiary named in any certificate, or of any person who may have any rights thereunder.

HISTORY: Add. 1899, p. 182, Act 130, Imd. Eff. June 15;—CL 1915, 10531;—CL 1929, 10736;—CL 1948, 457.512.

Act 136, 1891, p. 166; Eff. Oct. 2.

AN ACT to provide for the incorporation of the high and subordinate courts of the Independent Order of Foresters for the state of Michigan.

The People of the State of Michigan enact:

457.531 Independent Order of Foresters; incorporation.

Sec. 1. That the high and subordinate courts of the Independent Order of Foresters of the state of Michigan may be incorporated in pursuance of the provisions of this act.

HISTORY: CL 1897, 8058;—CL 1915, 10532;—CL 1929, 10737;—CL 1948, 457.531.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.532 High court; incorporators; articles of association, execution, contents.

Sec. 2. Any 10 or more persons, residents of this state, being members of the high and subordinate courts of the Independent Order of Foresters, of the state of Michigan, desirous to be [sic] become incorporated, may make and execute articles of incorporation under their hands and seal, which articles of association shall be acknowl-

edged, before some officer authorized by law to take acknowledgments of deeds, and shall set forth,

First, The names of the persons associating in the first instance, and their places of residence.

Second, The corporate names by which such association shall be known in the law, and the place of its business office;

Third, The object and purpose of such association, which shall be to promote the general welfare of the fraternity known as the high court of the Independent Order of Foresters and the period for which it is incorporated, not exceeding 30 years.

HISTORY: CL 1897, 8059;—CL 1915, 10533;—CL 1929, 10738;—CL 1948, 457.532.

457.533 High court; articles, charter and constitution, filing; body corporate, powers.

Sec. 3. A copy of said articles of association, together with a copy of the charter and constitution of said high court, shall be filed with the secretary of state, and thereupon the persons who shall have signed such articles of association, their associates and successors, shall be a body politic and corporate by the name expressed in such articles of association, and by that name they and their successors, shall have succession, and shall be persons in the law capable to purchase, take, receive, hold and enjoy to them and their successors, estates, real and personal, of suing and being sued, and to have a common seal, which may be altered or changed at their pleasure: Provided, That the value of such real and personal estate shall not exceed the sum of 10,000 dollars, and that they and their successors shall have power to give, grant, sell, lease, demise and dispose of said real and personal estate, or part thereof, at their will and pleasure, and the proceeds, rents and incomes shall be devoted exclusively to the charitable and benevolent purposes of the high court of the Independent Order of Foresters. Said corporation to have full power to make and establish rules, regulations and by-laws for regulating and governing all the affairs and business of said corporation not repugnant to the constitution and laws of this state or of the United States, and to designate, elect, or appoint, from its members, such officers, under such name and style as shall be in accordance with the constitution or the laws of the supreme court of the Independent Order of Foresters.

HISTORY: CL 1897, 8060;—CL 1915, 10534;—CL 1929, 10739;—CL 1948, 457.533.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.534 High court; certified copy of articles as evidence.

Sec. 4. A copy of the record of such articles of association, under the seal of the state, duly certified, according to law, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such corporation.

HISTORY: CL 1897, 8061;—CL 1915, 10535;—CL 1929, 10740;—CL 1948, 457.534.

457.535 Subordinate courts; chartering; existing courts, regulation.

Sec. 5. Such corporation, when duly formed, shall have power to institute and charter subordinate courts of said order within this state, and from time to time to make, ordain, constitute and establish such general laws and by-laws, ordinances and regulations for the government of such subordinate courts not repugnant to the law or to the constitution or regulations of the high court and the supreme court of the Independent Order of Foresters as to them shall seem proper and necessary; and in case of violation or non-compliance with such ordinances, by-laws and regulations, to revoke and annul the charter granted to such subordinate courts: Provided, That the existing subordi-

nate courts heretofore duly chartered by the high court of Michigan or the supreme court, shall be subject to the control of the said high court under this act as heretofore, and in the same manner and to the same extent as those that may be hereafter instituted and chartered under this act.

HISTORY: CL 1897, 8062;—CL 1915, 10536;—CL 1929, 10741;—CL 1948, 457.535.

457.536 Subordinate courts; incorporation; body corporate, powers; certified copy of articles as evidence.

Sec. 6. Any 9 or more persons, residents of this state, being members of any subordinate court, having been duly chartered by the high court of this state, desirous to become incorporated, may make and execute articles of association under their hands and seal, specifying as provided in article 2 of this act, and file a copy of such articles with the clerk of the county in which such corporation shall be formed, which shall be recorded by such clerk in a book to be kept in his office for that purpose; and thereupon the persons who shall have signed such articles of association, their associates and successors, shall be a body politic and corporate by the name expressed in such articles of incorporation, and by that name they and their successors shall have succession, and shall be persons in the law capable to purchase, hold, and enjoy, grant, sell, give, lease and demise real and personal estate, of suing and being sued, and may have a common seal and change and alter the same at pleasure, and a certified copy of the record of such articles of association, under seal of the county where the record is kept, shall be received as prima facie evidence in all courts in this state of the existence and due incorporation of such incorporation: Provided, That the value of such real and personal estate shall not exceed the sum of 2,000 dollars, and that they and their successors shall have authority and power to give, grant, sell, lease, demise and dispose of said real and personal estate, or part thereof at their will and pleasure, and the proceeds, rents and incomes shall be devoted exclusively to the charitable and benevolent purposes of the Independent Order of Foresters.

HISTORY: CL 1897, 8063;—CL 1915, 10537;—CL 1929, 10742;—CL 1948, 457.536.

457.537 Erection of building; capital stock, creation, shares.

Sec. 7. Any corporation formed in pursuance of this act may erect and own such suitable edifice, building or hall as to such corporation shall seem proper, with convenient rooms for the meetings of the courts of the Independent Order of Foresters, and for that purpose may create a capital stock of not more than 10,000 dollars to be divided into shares of not more than 10 dollars each.

HISTORY: CL 1897, 8064;—CL 1915, 10538;—CL 1929, 10743;—CL 1948, 457.537.

457.538 Governing law; amendment of act.

Sec. 8. All corporations formed under this act shall be [subject] subjected to the provisions of chapter 130 of the Compiled Laws of this state, so far as the same may be applicable to corporations formed under this act, and the legislature may alter and amend this act at any time.

HISTORY: CL 1897, 8065;—CL 1915, 10539;—CL 1929, 10744;—CL 1948, 457.538.

NOTE: Ch. 130 of CL 1871, above referred to, included the following provisions which have not been repealed or reenacted. Compilers' §§ 450.504 to 450.525.

See notes under Sec. 1 of this act.

Act 116, 1889, p. 130; Eff. Oct. 2.

AN ACT to provide for the incorporation of subordinate courts of the Ancient Order of Foresters.

The People of the State of Michigan enact:

457.541 Ancient Order of Foresters; incorporation, procedure.

Sec. 1. That any subordinate court of the Ancient Order of Foresters duly organized within this state, under and pursuant to the provisions of the constitution and laws of the Ancient Order of Foresters' friendly society may become a body corporate and politic in the manner following:

First, At some regular court of such order a resolution shall be put to vote of the members thereof expressing the desire and determination of said court to be incorporated, and directing the officers thereof to perfect such incorporation, and if such resolution receives a 2/3 vote of the members present it shall be declared passed, otherwise lost;

Second, On such resolution being so passed, the worthy chief ranger and the recording secretary shall prepare articles of association under their hands and the seal of the court, setting forth the number of persons then in good standing in the court desiring incorporation, the name by which the court is known, the date of its organization, a copy of the resolution mentioned in the first subdivision of this act, the corporate name by which the court shall be known in the law, the object and purpose [purposes] of the association, which shall in no way conflict or be inconsistent with the object and purpose [purposes] of the Ancient Order of Foresters' friendly society as stated in its constitution, and the period for which it is incorporated, not exceeding 30 years;

Third, A copy of such articles of association shall be filed with the county clerk of the county in which such corporation shall be formed, and shall be recorded, with the affidavit hereafter named by such clerk, in a book to be kept by him for that purpose;

Fourth, The worthy chief ranger and the recording secretary executing such articles of association or incorporation shall make and annex thereto, before filing, an affidavit stating that they are respectively members of and occupy the official positions above named in said court; that the resolution, a copy of which is set out in the articles of association, was duly passed at a regular meeting of said court, and received a 2/3 majority of all members present, and that all the statements in said articles of association are true, to the best to their and each of their knowledge and belief, and that said court is organized and acting under the constitution of the Ancient Order of Foresters' friendly society.

HISTORY: How. 4577a;—CL 1897, 8066;—CL 1915, 10540;—CL 1929, 10745;—CL 1948, 457.541.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.542 Body corporate; powers; certified copy of articles as evidence.

Sec. 2. When all the foregoing requirements are complied with, the subordinate court shall be a body corporate and politic by the name expressed in such articles of association, and by that name shall be a person in law capable of suing and being sued, with full power and authority to transact the business of said association, and a copy of said articles of association and affidavit, duly certified by the clerk in whose custody the same may be, under the seal of the proper county, shall be prima facie evidence in all the courts of this state of the existence and incorporation of said subordinate court.

HISTORY: How. 4577b;—CL 1897, 8067;—CL 1915, 10541;—CL 1929, 10746;—CL 1948, 457.542.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.543 Property; holding, disposition.

Sec. 3. Every corporation formed pursuant to the provisions of this act, may take and hold personal and real property, so far as may be necessary for the proper purposes of the organization, not exceeding 50,000 dollars in amount, and convey, dispose of and deal with the same as it may from time to time determine by a 2/3 vote of

members present at any regular meeting and voting thereon at any annual meeting or at any special meeting called especially for that purpose.

HISTORY: How. 4577c;—CL 1897, 8068;—CL 1915, 10542;—CL 1929, 10747;—CL 1948, 457.543.

457.544 Property and business; management and control.

Sec. 4. The management, direction and control of the property and business of such corporation shall be vested in such of its officers and persons, as the constitution and by-laws of such subordinate court may direct, but when no special rule exists, then as a 2/3 majority of the members present at any regular meeting and acting thereon shall from time to time determine.

HISTORY: How. 4577d;—CL 1897, 8069;—CL 1915, 10543;—CL 1929, 10748;—CL 1948, 457.544.

Act 1, 1897, p. 3; Imd. Eff. Jan. 21.

AN ACT to provide for the incorporation of grand and subordinate courts of the Foresters of America of the state of Michigan.

The People of the State of Michigan enact:

457.551 Foresters of America; incorporation.

Sec. 1. That the grand and subordinate courts of the Foresters of America of the state of Michigan may be incorporated in pursuance of the provisions of this act.

HISTORY: CL 1897, 8070;—CL 1915, 10544;—CL 1929, 10749;—CL 1948, 457.551.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.552 Grand court; incorporators; articles of association, execution, contents.

Sec. 2. Any 7 or more persons, resident of this state, being members of the grand court of the "Foresters of America," of the state of Michigan, desirous of being incorporated, may make and execute articles of association, under their hands and seals, which said articles of association shall be acknowledged before some officer of the state having authority to take acknowledgment of deeds, and shall set forth:

First, The names of persons associating in the first place and their place of residence.

Second, The corporate name by which such association shall be known in law, and the place of its business office.

Third, The object and purpose of such association shall be to promote the general welfare of the fraternity, known as the "Foresters of America," and the period for which it is incorporated not exceeding 30 years.

HISTORY: CL 1897, 8071;—CL 1915, 10545;—CL 1929, 10750;—CL 1948, 457.552.

457.553 Grand court; articles, charter and constitution, filing; body corporate, powers; certified copy of articles as evidence.

Sec. 3. A copy of said articles of association, together with a copy of the charter and constitution of said grand court, shall be filed with the secretary of state and thereupon the persons who shall have signed such articles of association, their associates and successors, shall be a body politic and corporate, by the name expressed in such articles of association, and by that name they and their successors shall have succession and shall be persons in law capable of suing and being sued and they and their successors may have a common seal, which may be changed and altered at their pleas-

ure and a copy of said articles of association, under seal of the state, duly certified to according to law shall be received as prima facie evidence in all courts of the state of the existence and due incorporation of such grand court.

HISTORY: CL 1897, 8072;—CL 1915, 10546;—CL 1929, 10751;—CL 1948, 457.553.
SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.554 Grand court; property, holding, disposition.

Sec. 4. Such grand court when incorporated pursuant to the provisions of this act may take and hold personal and real property, so far as may be necessary for the proper purposes of the organization, not exceeding 50,000 dollars in amount and convey, dispose of, and deal with the same as it may from time to time determine by a majority vote of members present and voting thereon.

HISTORY: CL 1897, 8073;—CL 1915, 10547;—CL 1929, 10752;—CL 1948, 457.554.

457.555 Subordinate courts; chartering; existing courts; regulation.

Sec. 5. Such grand court when properly incorporated shall have power to institute and charter subordinate courts within this state and from time to time make, alter or rescind such constitution, general laws or by-laws as the grand court shall judge proper for the government of such subordinate courts, not repugnant to the laws of the state: Provided, That the existing subordinate courts heretofore duly chartered by the grand court shall be subject to the grand court under this act, as heretofore, in the same manner and to the same extent. Provided further, That in case the incorporators shall by death, resignation or for other cause under the rules of the grand court, become ineligible to act in such capacity, their successors may from time to time be elected by the grand court.

HISTORY: CL 1897, 8074;—CL 1915, 10548;—CL 1929, 10753;—CL 1948, 457.555.

457.556 Subordinate courts; incorporation; body corporate, powers; certified copy of articles as evidence.

Sec. 6. Any 7 or more persons, residents of this state, being members of a subordinate court of the "Foresters of America" having been duly chartered by the grand court, desirous to become incorporated, may make and execute articles of association, specifying as provided in section 2 of this act, and file a copy of the same with the clerk of the county in which such corporation shall be formed, which shall be recorded by such clerk in a book kept for that purpose, and thereupon the persons who shall have signed said articles of association, their associates and successors shall be a body politic and corporate, by the name expressed in such articles of association and by that name they and their successors, shall be persons in law capable to purchase, hold, enjoy, grant, sell, give, lease, and demise real and personal estate; of suing and being sued, and may have a common seal, and change and alter the same at pleasure; and a certified copy of the record of such articles of association, under the seal of the county where the said record is kept shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such subordinate courts. Provided: Said corporation shall be limited to the powers and provisions of section 4 of this act, regarding real and personal estate, and the proceeds thereof under the laws of the grand court and may elect from its members such officers, under such name and style as shall be in accordance with its constitution.

HISTORY: CL 1897, 8075;—CL 1915, 10549;—CL 1929, 10754;—CL 1948, 457.556.

457.557 Governing law; amendment of act.

Sec. 7. All corporations formed under this act shall be subject to the provisions of chapter 150 of the Compiled Laws of this state, so far as the same shall be applicable to corporations formed under this act; and the legislature may alter or amend this act at any time.

HISTORY: CL 1897, 8076;—CL 1915, 10550;—CL 1929, 10755;—CL 1948, 457.557.

NOTE: The reference to Chap. 150 of CL 1871, apparently was intended to be Chap. 130 of CL 1871, which included the following provisions that have not been repealed or reenacted: Compilers' §§ 450.504 to 450.525. Compare Compilers' § 457.538.

See notes under Sec. 1 of this act.

457.558 Business office; change of location.

Sec. 8. The location of the business office of the grand court "Foresters of America" may be changed at any time upon filing a written notice of such change in the office of the secretary of state within 20 days from the time of the change of such location.

HISTORY: CL 1897, 8077;—CL 1915, 10551;—CL 1929, 10756;—CL 1948, 457.558.

457.559 Erection of building; capital stock, creation, shares.

Sec. 9. Any corporation formed under this act may erect and own such suitable edifice, building and hall as to such corporation shall seem proper with convenient rooms for the meeting of the courts of the "Foresters of America" and for that purpose may create a capital stock of not more than 25,000 dollars to be divided into shares of not more than 25 dollars each.

HISTORY: CL 1897, 8078;—CL 1915, 10552;—CL 1929, 10757;—CL 1948, 457.559.

Act 26, 1875, p. 23; Eff. Aug. 3.

AN ACT to provide for the incorporation of the Independent Order of Philanthropists of the state of Michigan.

The People of the State of Michigan enact:

457.571 Independent Order of Philanthropists; incorporation.

Sec. 1. That grand and subordinate lodges of the Independent Order of Philanthropists of the state of Michigan, may be incorporated in pursuance of the provisions of this act.

HISTORY: How. 4559;—CL 1897, 8083;—CL 1915, 10557;—CL 1929, 10758;—CL 1948, 457.571.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.572 Grand lodge; incorporators; articles, execution, contents.

Sec. 2. That any 10 or more persons, with their associates and successors, shall constitute the grand lodge of the Independent Order of Philanthropists, of the state of Michigan; and they are hereby authorized to make and execute, under their hands and seals, articles of association, which said articles of association shall be acknowledged before some officer of this state having authority to make [take] acknowledgments of deeds, and shall set forth:

First, The names of persons so associating in the first instance, and their places of residence;

Second, The corporate name by which such association shall be known in the law, and the place of its business office;

Third, The object and purpose of such association, which shall be to promote the general welfare of the fraternity known as the Independent Order of Philanthropists, of the state of Michigan, and the period for which it is incorporated, not exceeding 30 years.

HISTORY: How. 4560;—CL 1897, 8084;—CL 1915, 10558;—CL 1929, 10759;—CL 1948, 457.572.

457.573 Grand lodge; articles and constitution, filing; body corporate, powers.

Sec. 3. A copy of said articles of association, together with a copy of the constitution of said grand lodge, shall be filed with the secretary of state, and thereupon the persons who shall have signed such articles of association, and their associates, and succes-

sors shall be a body politic and corporate under the name of the grand lodge of the Independent Order of Philanthropists, of the state of Michigan, and by that name they and their associates shall have succession, and shall be persons in the law, capable to purchase, take, receive, hold, and enjoy, to them, and their successors, estates real and personal, of suing, and being sued, and they and their successors may have a common seal, which may be changed and altered at their pleasure: Provided, That the value of such real and personal estate shall not exceed the sum of 50,000 dollars, and that they, and their successors, shall have authority and power to give, grant, sell, lease, demise, and dispose of said real estate, or part thereof, at their will and pleasure, and the proceeds, rents, and incomes, shall be devoted exclusively to the charitable and benevolent purposes of the Independent Order of Philanthropists, of the state of Michigan. Said corporation shall have full power and authority to make and establish rules, regulations, and by-laws for regulating and governing all the affairs and business of said corporation, according to the laws of this state and the United States, and to designate, elect, or appoint, from its members, such officers, under such name and style as shall be in accordance with the customs of their order.

HISTORY: How. 4561;—CL 1897, 8085;—CL 1915, 10559;—CL 1929, 10760;—CL 1948, 457.573.
SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.574 Grand lodge; certified copy of articles as evidence.

Sec. 4. A copy of the record of said articles of association, under the seal of the state, duly certified, according to law, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such corporation.

HISTORY: How. 4562;—CL 1897, 8086;—CL 1915, 10560;—CL 1929, 10761;—CL 1948, 457.574.

457.575 Subordinate lodges; chartering, regulation.

Sec. 5. Such corporation, when duly formed, shall have power to institute and charter subordinate lodges within this state, and from time to time to make, ordain, constitute, and establish such constitution, general laws, and by-laws, ordinances, and regulations, as it shall judge proper for the regulation and government of such subordinate lodges, not repugnant to the laws of this state.

HISTORY: How. 4563;—CL 1897, 8087;—CL 1915, 10561;—CL 1929, 10762;—CL 1948, 457.575.

457.576 Governing law; amendment of act.

Sec. 6. All corporations formed under this act shall be subject to the provisions of chapter 130 of the Compiled Laws of 1871, so far as the same may be applicable to corporations formed under this act; and the legislature may alter and amend this act at any time.

HISTORY: How. 4564;—CL 1897, 8088;—CL 1915, 10562;—CL 1929, 10763;—CL 1948, 457.576.

NOTE: Ch. 130 of CL 1871, above referred to, included the following provisions which have not been repealed or reenacted: Compilers' §§ 450.504 to 450.525.

See notes under Sec. 1 of this act.

Act 78, 1891, p. 82; Eff. Oct. 2.

AN ACT to provide that the grand and subordinate castles and the commanderies of the Knights of the Golden Eagle of the state of Michigan may be incorporated.

The People of the State of Michigan enact:

457.581 Knights of Golden Eagle; incorporation.

Sec. 1. That grand and subordinate castles and commanderies of the Knights of the Golden Eagle, of the state of Michigan, may be incorporated in pursuance of the provisions of this act.

HISTORY: CL 1897, 8089;—CL 1915, 10563;—CL 1929, 10764;—CL 1948, 457.581.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.582 Grand castle; incorporators; articles of association, execution, contents.

Sec. 2. Any 5 or more persons, residents of this state, being members of any grand castle of the Knights of the Golden Eagle of the state of Michigan, who desire to become incorporated, may make and execute articles of association, under their hands and seals, which said articles of association shall be acknowledged before some officer of the state having authority to take acknowledgment of deeds, and shall set forth:

First, The names of persons associating in the first instance, and their places of residence;

Second, The corporate name by which such association shall be known in law, and the place of its business;

Third, The object and purpose of such association, which shall be to promote the general welfare of the fraternity, known as the Knights of the Golden Eagle and the period for which it is incorporated, not exceeding 30 years.

HISTORY: CL 1897, 8090;—CL 1915, 10564;—CL 1929, 10765;—CL 1948, 457.582.

457.583 Grand castle; articles, charter and constitution; body corporate, powers.

Sec. 3. A copy of said articles of association, together with a copy of the charter and constitution of said grand castle, shall be filed with the secretary of state, and thereupon the persons who shall have signed the articles of association, their associates and successors, shall be a body politic and corporate, by the name expressed in such articles of association, and by that name, they and their successors shall have succession, shall be person in the law, capable to purchase, take, receive, hold and enjoy to them and their successors estates real and personal, of suing and being sued, and they and their successors may have a common seal, which may be changed and altered at their pleasure: Provided, That the value of said real and personal estate shall not exceed the sum of 50,000 dollars, and that they and their successors shall have authority and power to give, grant, sell, lease, demise and dispose of said real and personal estate, or any part thereof, at their will and pleasure, and the proceeds, rents, and incomes, shall be devoted exclusively to charitable and benevolent purposes of the Knights of the Golden Eagle. Said corporation shall have full power and authority to make and establish rules, regulations and by-laws for regulating and governing all the affairs and business of said corporations, according to the laws of this state, and the United States, and to designate, elect, or appoint from its members such officers, under such name and style as shall be in accordance with the constitution of the grand castle.

HISTORY: CL 1897, 8091;—CL 1915, 10565;—CL 1929, 10766;—CL 1948, 457.583.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.584 Grand castle; certified copy of articles as evidence.

Sec. 4. A copy of the record of such articles of associa- [association] under the seal of the state, duly certified according to law, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such corporation.

HISTORY: CL 1897, 8092;—CL 1915, 10566;—CL 1929, 10767;—CL 1948, 457.584.

457.585 Subordinate castles; chartering; existing castles; regulation.

Sec. 5. Such corporation when duly formed, shall have power to institute and charter subordinate castles and branches within this state, and from time to time to make, ordain, constitute and establish such constitution, general laws and by-laws, ordinances and regulations as the grand castle shall deem proper for the regulation and government of such subordinate castles or branches not repugnant to the laws of this

state: Provided, however, That the existing subordinate castle or branches heretofore duly chartered [chartered] by the grand castle, shall be subject to the control of the grand castle, under this act, as heretofore, and in the same manner and to the same extent, as those that may be [hereafter] hereinafter instituted and chartered under this act: Provided further, That in case the corporators or persons, associating in the first instance, shall by death, resignation, or for other cause, under the rules of the grand castles become ineligible to act in such capacity, their successors may, from time to time be appointed by the grand castles.

HISTORY: CL 1897, 8093;—CL 1915, 10567;—CL 1929, 10768;—CL 1948, 457.585.

457.586 Subordinate castles; incorporation; body corporate, powers; certified copy of articles as evidence.

Sec. 6. Any 5 or more persons, residents of this state, being members of a subordinate castle of the Knights of the Golden Eagle, having been duly chartered by the grand castle, who desire to become incorporated, may make and execute articles of association, specifying as provided in section 2 of this act, and file a copy of the same with the clerk of the county in which such corporation shall be formed which shall be recorded by such clerk, in a book to be kept in his office for that purpose; and thereupon the persons who shall have signed said articles of association, their associates and successors, shall be a body politic and corporate, by the name expressed in such articles of association and by that name they and their successors shall have succession, and shall be persons in the law capable to purchase, hold, enjoy, grant, sell, give, lease and demise, real and personal estate; of suing and being sued, and may have a common seal and change and alter the same at pleasure; and a certified copy of the record of such articles of association under the seal of the county where the said record is kept, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation: Provided, Said corporation shall be limited to the powers and provisions of section 3 of this act, regarding real and personal estate, and the proceeds thereof, under the rules and regulations of the grand castle, and may elect or appoint from among its members such officers under such names and style as shall be in accordance with its constitution.

HISTORY: CL 1897, 8094;—CL 1915, 10568;—CL 1929, 10769;—CL 1948, 457.586.
SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.587 Erection of building; capital stock, creation, shares; cemetery.

Sec. 7. Any corporation formed in pursuance of this act may erect and own such suitable edifice, buildings or hall, as to such corporation shall seem proper, with convenient rooms for the meetings of the fraternity of the Knights of the Golden Eagle, and for that purpose may create a capital stock of not more than 50,000 dollars to be divided into shares of not more than 25 dollars each; and any such corporation may take, purchase, hold and own such suitable lot or parcel of ground as may be convenient for the purpose of a cemetery, and may make all lawful rules and regulations for the disposition of lots, and the burial of the dead therein as to such corporation may seem proper.

HISTORY: CL 1897, 8095;—CL 1915, 10569;—CL 1929, 10770;—CL 1948, 457.587.

457.588 Commanderies; incorporation.

Sec. 8. Any grand commanderies of the Knights of the Golden Eagle of the state of Michigan, and subordinate commanders thereof, having been duly chartered, may be incorporated in like manner as grand and subordinate castles of the Knights of the Golden Eagle and enjoy the same powers and privileges and benefits under the provisions of this act.

HISTORY: CL 1897, 8096;—CL 1915, 10570;—CL 1929, 10771;—CL 1948, 457.588.

457.589 Governing law; amendment of act.

Sec. 9. All corporations formed under this act shall be subject to the provisions of chapter 73 of the Compiled Laws of this state, so far as the same may be applicable to corporations formed under this act; and the legislature may alter or amend this act at any time.

HISTORY: CL 1897, 8097;—CL 1915, 10571;—CL 1929, 10772;—CL 1948, 457.589.

NOTE: Ch. 73 of CL 1857, above referred to, included the following provisions which have not been repealed or reenacted: Compilers' §§ 450.504 to 450.525.

See notes under Sec. 1 of this act.

457.590 Business offices; change of location.

Sec. 10. The location of the business offices of the grand castles and commanderies of the Knights of the Golden Eagle or either of them may be changed at any time, upon filing a written notice of such change in the office of the secretary of state, within 20 days from the time of the change of such location.

HISTORY: CL 1897, 8098;—CL 1915, 10572;—CL 1929, 10773;—CL 1948, 457.590.

Act 106, 1891, p. 122; Eff. Oct. 2.

AN ACT to provide for the incorporation of the supreme temple, grand temples and primary societies of the Legion of the Cross, and to define their objects and prescribe their powers.

The People of the State of Michigan enact:

457.601 Legion of Cross; incorporation.

Sec. 1. That the supreme temple, grand temples and primary societies of the Legion of the Cross may be incorporated in pursuance of the provisions of this act.

HISTORY: CL 1897, 8099;—CL 1915, 10573;—CL 1929, 10774;—CL 1948, 457.601.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.602 Supreme temple; incorporators; articles of association, execution, contents.

Sec. 2. Any 10 or more members of the Legion of the Cross, residing in this state, and who are officers or representatives in the supreme temple of said order, desiring to become incorporated, may make and execute under their hands and seals, and acknowledge before some officer authorized by law to take acknowledgments to deeds, articles of association, which shall set forth:

First, The names, and official position in the supreme temple, of the persons so associating, and their respective places of residence;

Second, The corporate name of the association, which shall be the Supreme Temple of the Legion of the Cross, and the place where its business office is located; and

Third, The object and purpose of such association, which shall be to manage, control, govern, organize, institute and charter grand temples and primary societies of the order, for social, moral and benevolent purposes; and the period of incorporation, which shall not exceed 30 years.

HISTORY: CL 1897, 8100;—CL 1915, 10574;—CL 1929, 10775;—CL 1948, 457.602.

457.603 Grand temple; incorporators; articles, execution, contents.

Sec. 3. Any 10 or more members of said order, residing in this state, who are officers or representatives in any grand temple of said order, desiring to become incorporated, shall make, execute and acknowledge, in the manner and form prescribed in section 2 of this act, articles of association which shall set forth:

First, The names and official positions in the grand temple, of the persons so associating, and their places of residence;

Second, The corporate name of the association, which shall be such as has been granted by the supreme temple; and the place where its business office is located; and

Third, The object and purpose of such association, which shall be to manage, control, govern, organize, institute and charter primary societies of said order within its territorial jurisdiction, in accordance with the constitution and laws of the order, for social, moral and benevolent purposes; and the period of the corporation, which shall not exceed 30 years.

HISTORY: CL 1897, 8101;—CL 1915, 10575;—CL 1929, 10778;—CL 1948, 457.603.

457.604 Primary society; incorporators; articles, execution, contents.

Sec. 4. Any 10 or more members of any primary society of said order, residing in this state, desiring to be incorporated, shall make, execute and acknowledge, in manner and form prescribed in section 2 of this act, articles of association, which shall set forth;

First, The names of the persons associating in the first instance, and their places of residence;

Second, The corporate name of the association which shall be such as shall have been designated in its charter; and the place where its business office is located; and

Third, The objects and purpose of the association, which shall be for social, moral and benevolent purposes; and the period of its incorporation, which shall not exceed 30 years.

HISTORY: CL 1897, 8102;—CL 1915, 10576;—CL 1929, 10777;—CL 1948, 457.604.

457.605 Articles; filing, recording; body corporate, powers; certified copy of articles as evidence.

Sec. 5. The articles of any such association shall be filed and recorded in the office of the secretary of state, and a copy of the record thereof duly certified by such secretary, together with the certificate, shall be filed and recorded in the office of the clerk of the county where the business office of the association is located, and thereupon the persons so associating therein, their associates and successors, shall be a body corporate and politic, by the name expressed in such articles, and by that name they and their associates and successors shall have succession and shall be capable of suing and being sued, and shall have a common seal to be altered at pleasure, in such manner as the constitution or laws of the order shall prescribe. Such corporation may take, purchase, receive, hold and enjoy real, personal and mixed property, not exceeding in amount 150,000 dollars; and may give, grant, mortgage, sell, lease, devise and dispose of all or any part of such property at pleasure, and the rents, profits and proceeds shall be devoted exclusively to the benevolent purposes of the said order. A copy of such articles of association and certificate, as recorded by the county clerk, duly certified by such clerk, shall be prima facie evidence in all courts and tribunals, of the due incorporation of such association.

HISTORY: CL 1897, 8103;—CL 1915, 10577;—CL 1929, 10778;—CL 1948, 457.605.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.606 Supreme temple; powers.

Sec. 6. The supreme temple shall have full power to make, ordain, establish, enact, modify, revise, amend and repeal a constitution, laws, by-laws, rules and regulations for the government of the supreme temple, of all grand temples and primary societies of the order, and the governmental departments of such temples, not repugnant to the constitution and laws of the United States, and of this state; and to designate, elect or appoint officers of the supreme temple, of grand temples and primary societies under such name and styles as shall be prescribed in the constitution of the order, and to des-

ignate the mode and time of electing or appointing such officers, and for their suspension or removal, and for the mode of accepting, organizing, instituting and chartering grand temples and primary societies of the order, and suspending and revoking any charter so granted. It shall have power to create and organize for itself, its grand temples and primary societies, legislative, executive and judicial departments of government, and to prescribe the powers and duties of each, and to create, manage and disburse, and provide for the creation, management and disbursement by grand temples and primary societies of mutual benefit or relief funds, to be expended in case of the death, sickness, distress, total disability, or arrival at the age of expectancy of life, of members, under such laws, rules and regulations as the supreme legislative department shall adopt, and as shall be ratified by a 2/3 majority of the beneficiary members of the whole order.

HISTORY: CL 1897, 8104;—CL 1915, 10578;—CL 1929, 10779;—CL 1948, 457.806.

457.607 Supreme temple; only one to be incorporated; approval of articles of subordinate bodies.

Sec. 7. No more than 1 association shall be incorporated under this act as the supreme temple of the Legion of the Cross, and the articles of association of any grand temple or primary society of said order shall not be accepted for record in the office of the secretary of state, unless the same shall have indorsed thereon the approval of the supreme temple of said order, by the supreme presiding officer and supreme secretary, attested by the seal of the supreme temple.

HISTORY: CL 1897, 8105;—CL 1915, 10579;—CL 1929, 10780;—CL 1948, 457.807.

457.608 Erection of building; library; governing law.

Sec. 8. Any corporation formed under this act may erect and use a suitable edifice of its own design, for its own use, and may maintain a library. Such corporation shall be subject to the provisions of chapter 130 of Howell's annotated statutes of this state, so far as the same may be applicable.

HISTORY: CL 1897, 8106;—CL 1915, 10580;—CL 1929, 10781;—CL 1948, 457.808.

NOTE: The reference to Ch. 130 of How. apparently was intended to be Ch. 130 of CL 1871, which included the following provisions which have not been repealed or reenacted: Compilers' §§ 450.504 to 450.525. Compare Compilers' §§ 457.538 and 457.578.

See notes under Sec. 1 of this act.

Act 39, 1893, p. 39; Imd. Eff. Apr. 19.

AN ACT to provide for the incorporation of supreme and subordinate senates of the Knights of the Ancient Essenic Order.

The People of the State of Michigan enact:

457.621 Knights of Essenic Order; incorporation.

Sec. 1. That the supreme and subordinate senates of the Knights of the Ancient Essenic Order of the state of Michigan may be incorporated in pursuance with the provisions of this act.

HISTORY: CL 1897, 8107;—CL 1915, 10581;—CL 1929, 10782;—CL 1948, 457.821.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.622 Supreme senate; incorporators; articles of association, execution, contents.

Sec. 2. Any 9 or more persons, residents of this state, being members of any supreme senate of the Knights of the Ancient Essenic Order of the state of Michigan, and desiring to become incorporated may make and execute articles of association under their hands and seals which said articles of association shall be acknowledged before some

officer of the state, having authority to take acknowledgment of deeds and shall set forth:

First, The names of the persons associating in the first instance and their places of residence;

Second, The corporate name by which such association shall be known in the law, and the place of its business office;

Third, The object and purpose of such association shall be to promote the social advancement of its members in accordance with the laws of this state, the general welfare of the fraternity known as the Knights of the Ancient Essenic Order; and the period, for which it is incorporated, not exceeding 30 years.

HISTORY: CL 1897, 8108;—CL 1915, 10582;—CL 1929, 10783;—CL 1948, 457.622.

457.623 Supreme senate; articles, charter and constitution, filing; body corporate, powers.

Sec. 3. A copy of said articles of association, together with a copy of the charter and constitution of said supreme senate, shall be filed with the secretary of state, and thereupon the persons who shall have signed such articles of association, their associates and successors, shall be a body politic and corporate, by the name expressed in the articles of association, and by that name they and their successors shall have succession, and shall be persons in the law, capable to purchase, take, receive, hold and enjoy to them and their successors, estates real and personal, of suing and being sued, and they and their successors may have a common seal which may be changed and altered at their pleasure: Provided, That the value of such real and personal estate shall not exceed the sum of 50,000 dollars, and that they and their successors shall have authority and power to give, grant, sell, lease, demise and dispose of said real and personal estate or any part thereof, at their will and pleasure and the proceeds, rents and income shall be devoted exclusively to beneficent and benevolent purposes of the Knights of the Ancient Essenic Order. Said corporation shall have full power and authority to make and establish rules, regulations and by-laws, for regulating and governing all the affairs and business of said corporation, according to the laws of this state and the United States and to designate, elect or appoint from its members such officers under such name and style as shall be in accordance with the constitution of the supreme senate.

HISTORY: CL 1897, 8109;—CL 1915, 10583;—CL 1929, 10784;—CL 1948, 457.623.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.624 Supreme senate; certified copy of articles as evidence.

Sec. 4. A copy of the record of such articles of association, under the seal of the state, duly certified according to law, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such corporation.

HISTORY: CL 1897, 8110;—CL 1915, 10584;—CL 1929, 10785;—CL 1948, 457.624.

457.625 Subordinate senates; chartering; existing senates; regulation.

Sec. 5. Such corporation when duly formed, shall have power to institute and charter subordinate senates within the state and from time to time to make, ordain, constitute, and establish such constitution, laws and by-laws, ordinances and regulations, as the supreme senate shall judge proper for the regulation and government of such subordinate senates, not repugnant to the laws of this state: Provided, That the existing subordinate senates, heretofore duly chartered by the supreme senate, shall be subject to the control of the supreme senate, under this act as heretofore, and in the same manner and to the same extent, as those that may be hereafter instituted and chartered under this act: Provided, further, That in case the incorporators or persons, associating in the first instance, shall by death, resignation or for other cause, under the rules

of the supreme senate, become ineligible to act in such capacity their successors may, from time to time, be appointed by the supreme senate.

HISTORY: CL 1897, 8111;—CL 1915, 10585;—CL 1929, 10786;—CL 1948, 457.625.

457.626 Subordinate senates; incorporation; body corporate, powers; certified copy of articles as evidence.

Sec. 6. Any 9 or more persons, residents of this state, being members of a subordinate lodge of the Knights of the Ancient Essenic Order, having been duly chartered by the supreme senate, being desirous to become incorporated, may make and execute articles of association specifying as in section 2, of this act, and file a copy of the same with the clerk of the county in which such corporation shall be formed, which shall be recorded by such clerk, in a book to be kept in his office for that purpose; and thereupon the persons, who shall have signed said articles of association, their associates and successors shall be a body politic and corporate, by the name expressed in such articles of association, and by that name they and their successors, shall have succession, and shall be persons in law capable to purchase, hold, enjoy, grant, sell, give, lease and demise real and personal estate; of suing and being sued, and may have a common seal and change and alter the same at pleasure; and a certified copy of the record of such articles of association, under the seal of the county, where the said record is kept, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such corporation: Provided, Said corporation shall be limited to the powers and provisions of section 3 of this act, regarding real and personal estate, and the proceeds thereof, under the rules and regulations of the supreme senate and may elect or appoint from among its members such officers, under such name and style, as shall be in accordance with the constitution.

HISTORY: CL 1897, 8112;—CL 1915, 10586;—CL 1929, 10787;—CL 1948, 457.626.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.627 Erection of building; capital stock, creation, shares; cemetery.

Sec. 7. Any corporation formed in pursuance of this act, may erect and own a suitable edifice, buildings or hall, as to such corporation shall seem proper, with convenient rooms for the meetings of the fraternity of the Knights of the Ancient Essenic Order; and for that purpose may create a capital stock of not more than 50,000 dollars, to be divided into shares of not more than 25 dollars each; and any such corporation may take, purchase, hold and own such suitable lot or parcel of ground as may be convenient for the purpose of a cemetery, and may make all lawful rules and regulations for the disposition of the lots and the burial of the dead therein, as to such corporation may seem proper.

HISTORY: CL 1897, 8113;—CL 1915, 10587;—CL 1929, 10788;—CL 1948, 457.627.

457.628 Encampments; incorporation, powers.

Sec. 8. Any grand encampment of the Knights of the Ancient Essenic Order of the state of Michigan, and any subordinate encampment thereof, having been duly chartered, may be incorporated in like manner as grand and subordinate senate of the Knights of the Ancient Essenic Order, and enjoy the same powers and privileges and benefits under the provisions of this act.

HISTORY: CL 1897, 8114;—CL 1915, 10588;—CL 1929, 10789;—CL 1948, 457.628.

457.629 Governing law; amendment of act.

Sec. 9. All corporations formed under this act shall be subject to the provisions of chapter 73 of the Compiled Laws of 1871 of the state, so far as the same may be applicable to corporations formed under this act, and the legislature may alter or amend this act at any time.

HISTORY: CL 1897, 8115;—CL 1915, 10589;—CL 1929, 10790;—CL 1948, 457.629.

NOTE: The reference to Ch. 73 of CL 1871 apparently was intended to be to Ch. 73 of CL 1857, or to Ch. 130 of CL 1871, which included the following provisions that have not been repealed or reenacted: Compilers' §§ 450.504 to 450.525. Compare Compilers' §§ 457.538 and 457.576.

See notes under Sec. 1 of this act.

Act 49, 1893, p. 52; Eff. Aug. 28.

AN ACT to provide for the incorporation of the supreme commandery and subordinate commanderies of the United Friends of Michigan.

The People of the State of Michigan enact:

457.631 United Friends; incorporation.

Sec. 1. That the supreme commandery of United Friends of Michigan and any subordinate commandery duly chartered by such supreme commandery, pursuant to the provisions of the constitution and laws of said supreme commandery, may become a body corporate and politic in the manner following:

First, At some meeting of the executive committee which shall be composed of 6 members, citizens of the United States, of said supreme commandery, held pursuant to the constitution and laws thereof, a resolution shall be adopted by a vote of 2/3 of said executive committee, expressing the desire and determination of such supreme commandery to become incorporated;

Second, On such resolution being passed, the executive committee shall prepare articles of association, under their hands and the seal of such supreme commandery, setting forth the number, name and location of all subordinate commanderies then in good standing, under the jurisdiction of such supreme commandery, the name by which the supreme commandery is known, the date of its organization, a copy of the resolution mentioned in the first subdivision of this act, the corporate name by which the supreme commandery shall be known in law; the object and purpose of the association is fraternal insurance, to be conducted under the laws controlling life insurance in this state, in which no insurance shall hereafter be taken on a person under 18 or over 50 years of age, and the period for which it is incorporated, not exceeding 30 years, to which shall be appended a copy of the constitution and laws of the supreme commandery;

Third, The supreme secretary shall make and annex to such articles of association, an affidavit stating the official position occupied in the supreme commandery by the several members of the executive committee, that the resolution, a copy of which is set out in the articles of association, was duly passed at a meeting of the executive committee, held pursuant to the constitution, and that the same was passed by a 2/3 vote of all of said executive committee, that all the statements in said articles of association are true to the best of his knowledge and belief, and that the constitution and laws of such supreme commandery, a copy of which is appended to said articles of association, has been adopted by such supreme commandery;

Fourth, A copy of such articles of association, with all the papers mentioned in the second subdivision of this act, and of the affidavit of said supreme secretary, by him duly attested, shall be filed in the office of the secretary of state, and shall be recorded by said secretary in a book to be kept by him for that purpose.

HISTORY: CL 1897, 8116;—CL 1915, 10591;—CL 1929, 10791;—CL 1948, 457.631.

FRATERNAL BENEFIT SOCIETIES: Excepted from the provisions of Act 327, 1931, see Compilers' § 450.3.

Reports, see Compilers' § 450.81.

See Ch. IV of Pt. III of Act 256 of 1917, insurance code, being Compilers' §§ 500.128, 500.8001 et seq.; in particular Compilers' § 500.8094.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.632 Supreme commandery; body corporate, powers; articles or certified copy as evidence.

Sec. 2. When all the foregoing requirements are complied with, the supreme commandery of United Friends of Michigan, shall be a body corporate and politic, by name expressed in such articles of association and by that name shall be in law capable of suing and being sued, in all the courts of this state, with full power and authority to transact the business of said association, pursuant to the constitution and laws thereof, and said articles of association or a copy thereof duly attested by the secretary of state, under the great seal thereof, shall be prima facie evidence in all the courts of this state, of the existence and incorporation of said supreme commandery of United Friends of Michigan.

HISTORY: CL 1897, 8117;—CL 1915, 10591;—CL 1929, 10792;—CL 1948, 457.632.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.633 Supreme commandery; amendment of constitution and laws.

Sec. 3. The supreme commandery of United Friends of Michigan is hereby authorized to amend its constitution and laws at any regular meeting of said supreme commandery or at a special meeting called for that purpose, after its incorporation, but such amendments shall not be inconsistent with the objects and purposes of such association as stated in its articles of association, and such constitution and laws shall be in force from and after the filing with the secretary of state of an attested copy thereof, under the hand of the supreme secretary and the seal of said supreme commandery.

HISTORY: CL 1897, 8118;—CL 1915, 10592;—CL 1929, 10793;—CL 1948, 457.633.

457.634 Subordinate commanderies; chartering; existing commanderies; regulation.

Sec. 4. Such association, when duly formed, shall have power to institute and charter subordinate commanderies of said order within this state, and from time to time to make, ordain, constitute such general laws, by-laws and regulations for the government of such subordinate commanderies not repugnant to law or to the constitution or regulations of the supreme commandery as to them shall seem proper and necessary; and in the case of the violation or non-compliance with such general laws, by-laws and regulations, to revoke and annul the charter granted to such subordinate commandery: Provided, That the existing subordinate commanderies heretofore duly instituted and chartered by the supreme commandery shall be subject to the control of said supreme commandery under this act as heretofore, and in the same manner and to the same extent as those that may be hereafter instituted and chartered under this act.

HISTORY: CL 1897, 8119;—CL 1915, 10593;—CL 1929, 10794;—CL 1948, 457.634.

457.635 Subordinate commanderies; incorporation; certified copy of articles as evidence.

Sec. 5. Any subordinate commandery now chartered, or which may hereafter be chartered, by the supreme commandery of the United Friends of Michigan, may become incorporated and a body corporate and politic, by passing, by a 2/3 vote of all the members present, at any regular meeting of such subordinate commandery, a like resolution, as provided in section 1 of this act, executing similar articles of association, under the hands of its commander, secretary and trustee, and the seal of the commandery, and appending thereto the affidavit of its secretary, setting forth the official character of the several officers, that said resolution was passed at a regular meeting, and received the affirmative vote of 2/3 of all the members present and filing the same with the county clerk of the county in which such subordinate commandery shall be located, and causing such articles of association and said affidavit to be recorded by such clerk in a book to be kept by him for that purpose, and a copy of said articles of association duly certified by such county clerk, shall be prima facie evidence in all the

courts of this state, of the existence and incorporation of such subordinate commandery.

HISTORY: CL 1897, 8120;—CL 1915, 10594;—CL 1929, 10795;—CL 1948, 457.635.

457.636 Property; holding, disposition; control of business.

Sec. 6. Every corporation formed pursuant to this act may take and hold personal and real property, so far as the same shall be necessary for the proper purposes of the organization, not exceeding 10,000 dollars, in value, and may convey, dispose of, mortgage, and deal with the same, as may be determined by the constitution, laws and by-laws of such supreme commandery, or of such subordinate commandery, as the case may be. The management, direction and control of the property and business of such corporations shall be vested in such officers as the constitution and laws of the supreme commandery may direct.

HISTORY: CL 1897, 8121;—CL 1915, 10595;—CL 1929, 10796;—CL 1948, 457.636.

Act 78, 1893, p. 79; Imd. Eff. May 12.

AN ACT to provide for the incorporation of the state grand lodge and subordinate lodges of the Order of Hermann's Sons in the state of Michigan.

The People of the State of Michigan enact:

457.641 Order of Hermann's Sons; grand lodge, incorporation, procedure.

Sec. 1. That the state grand lodge of the order of Hermann's Sons in the state of Michigan that now is or may hereafter be duly instituted or organized within this state under and pursuant to the provisions of the constitution and laws of the national grand lodge of said order may become a body corporate and politic in the manner following:

First, At some regular session of such grand lodge held under and pursuant to the constitution and laws thereof, a resolution shall be put to vote of the members thereof expressing the desire and determination of said grand lodge to be incorporated and directing the proper officers thereof to perfect such incorporation pursuant to this act; and if such resolution receive a majority vote of the members present it shall be declared passed, otherwise lost;

Second, On such resolution being passed the grand president and grand secretary of said grand lodge shall prepare articles of association under their hands and the seal of the grand lodge, setting forth the number of persons then under the jurisdiction of such grand lodge, the name of the grand lodge desiring incorporation; the date of its organization, a copy from the records of said grand lodge of the resolution mentioned in subdivision first of this section, the corporate name of said grand lodge by which it shall be known in the law, the general objects and purposes of the order, and the period for which it is to be incorporated which shall not exceed 30 years;

Third, Such articles of association shall be acknowledged by the officers executing the same and shall have annexed thereto the affidavit of the grand president and the grand secretary that they are members of and occupying respectively the official positions named in such grand lodge; that the resolution, a copy of which is contained in said articles of association, was duly passed at a regular meeting of said grand lodge, and received a majority vote of the members present; that the statements in said articles of association are true to the best of their knowledge and belief; and that said grand lodge was duly instituted and is acting pursuant to the constitution and laws thereof and of the national grand lodge of said order;

Fourth, Said articles of association with such affidavit annexed thereto, shall be filed and recorded in the office of the secretary of state; and thereupon said grand lodge

shall be a body corporate and politic under the name expressed in said articles of association, and by that name shall be a person in the law, capable of suing and being sued, and of transacting all the business of said order necessary, proper or incidental to the carrying out of its objects and purposes pursuant to its constitution and laws and the constitution and laws of the national grand lodge of said order, not inconsistent herewith nor with the constitution and laws of the United States or of this state. The objects and purposes of association [associations] organized hereunder shall be the development of social and fraternal feeling among members thereof and to provide for fraternal and mutual life insurance and fraternal benefits and assistance for the members thereof and their families.

HISTORY: CL 1897, 8122;—CL 1915, 10596;—CL 1929, 10797;—CL 1948, 457.641.

FRATERNAL BENEFIT SOCIETIES: Excepted from the provisions of Act 327, 1931, see Compilers' § 450.3.

Reports, see Compilers' § 450.81.

See Ch. IV of Pt. III of Act 256 of 1917, insurance code, being Compilers' §§ 500.128, 500.8001 et seq.; in particular Compilers' § 500.5094.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.133 et seq.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.642 Hermann's Sons, grand lodge; powers.

Sec. 2. Such grand lodge, so incorporated, shall have power to create, hold and disburse beneficiary, relief, general or other funds for the benefit of sick or disabled members or of the families and heirs of deceased members of subordinate lodges of said order, and to levy assessments or dues upon the members of said order for that purpose under the constitution and laws of said order or of the national grand lodge of said order. But such corporation shall be considered as engaged in the business of life insurance and shall be subject to the provisions of the statutes of this state relating to mutual benefit companies, associations or corporations.

HISTORY: CL 1897, 8123;—CL 1915, 10597;—CL 1929, 10798;—CL 1948, 457.642.

457.643 Subordinate lodges; incorporation, procedure.

Sec. 3. Any subordinate lodges of the said order of Sons of Hermann that now are or may hereafter be duly instituted or organized within this state under and pursuant to the provisions of the constitution and laws of the said order, may become incorporated under this act in the manner following:

First, At some regular meeting of such subordinate lodge, a resolution shall be put to vote of the members thereof, expressing the desire and determination of said lodge to be incorporated, and directing the proper officers thereof to perfect such incorporation pursuant to this act; and if such resolution receive a majority vote of the members present it shall be declared passed, otherwise lost;

Second, On such resolution being passed the president and secretary of such subordinate lodge shall prepare articles of association under their hands, and the seal of such lodge, setting forth the then number of members thereof in good standing, the name of such lodge desiring incorporation, the date of its organization or institution, a true copy from its records of the resolution mentioned in subdivision first of this section, the corporate name of such lodge by which it shall be known in the law, the place where the said lodge is located and the period for which it is to be incorporated, which shall not exceed 30 years.

Third, Such articles of association shall be acknowledged by the officers executing the same and shall have annexed thereto the affidavit of the president and secretary of the said lodge that they are members thereof and occupying respectively the official positions named therein; that the resolution a copy of which is contained in said articles of association was duly passed at a regular meeting of said lodge and received a majority vote of the members present; that the statements in said articles of association are true to the best of their knowledge and belief, and that said lodge was duly instituted and is acting under the constitution and rules of said order;

Fourth, Said articles of association with said affidavit shall be executed in duplicate, as above provided, 1 of which shall be filed and recorded in the office of the secretary of state and the other of which shall be filed and recorded in the office of the county clerk of the county in which said lodge is located. And thereupon said lodge shall be and become a body corporate and politic under the name expressed in such articles of association and by that name shall be a person in the law, capable of suing and being sued and of transacting all the business of said order necessary, proper or incidental to the carrying out of the objects and purposes of said order pursuant to its constitution and laws not inconsistent with the constitution and laws of the United States or of this state.

HISTORY: CL 1897, 8124;—CL 1915, 10598;—CL 1929, 10799;—CL 1948, 457.643.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.644 Property; holding, disposition.

Sec. 4. Corporations formed pursuant to this act may take and hold personal and real property so far as may be necessary for the proper purposes of said order; and may manage, direct, control, encumber, dispose of and deal with the same in such manner as may be by the constitution and laws of said order determined from time to time.

HISTORY: CL 1897, 8125;—CL 1915, 10599;—CL 1929, 10800;—CL 1948, 457.644.

457.645 Certified copy of articles as evidence.

Sec. 5. A copy of the articles of association of any corporation organized under this act and of the affidavit annexed thereto, certified by the secretary of state or by the county clerk of the county wherein the same may have been filed, shall be received as prima facie evidence in all courts of this state of the contents thereof and of the existence and due incorporation of such corporation.

HISTORY: CL 1897, 8126;—CL 1915, 10600;—CL 1929, 10801;—CL 1948, 457.645.

457.646 Governing law; amendment of act.

Sec. 6. All corporations formed under this act shall be subject to the general provisions relating to corporations in this state contained in chapter 191 of Howell's annotated statutes of Michigan, so far as the same may be applicable to such corporations and not inconsistent with the provisions of this act, and the legislature may alter or amend this act at any time.

HISTORY: CL 1897, 8127;—CL 1915, 10601;—CL 1929, 10802;—CL 1948, 457.646.

NOTE: Ch. 191 of How., above referred to, included the following provisions which have not been repealed or reenacted: Compilers' §§ 450.504 to 450.525 and 450.631 et seq.

Also see notes under Sec. 1 of this act.

Act 208, 1895, p. 381; Imd. Eff. May 24.

AN ACT to provide for the incorporation of the grand temple and subordinate temples of the Rathbone Sisters of the state of Michigan.

The People of the State of Michigan enact:

457.651 Rathbone Sisters; incorporation of temples.

Sec. 1. That the grand temple and subordinate temples of Rathbone Sisters of the state of Michigan may be incorporated in pursuance of the provisions of this act.

HISTORY: CL 1897, 8010;—CL 1915, 10482;—CL 1929, 10803;—CL 1948, 457.651.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.652 Grand temple; incorporators; articles of association, execution, contents.

Sec. 2. Any 10 or more persons residents of the state, being members of the grand temple Rathbone Sisters of the state of Michigan, desirous to become incorporated, may make and execute articles of association, under their hands and seals, which articles of association shall be acknowledged before some officer authorized by law to take acknowledgments of deeds, and shall set forth:

First, The names of the persons associating in the first instance and their places of residence;

Second, The corporate name by which such association shall be known in the law, and the place of its business office;

Third, The object and purpose of such association, which shall be to promote the general welfare of the association known as the grand temple Rathbone Sisters, and the period for which it is incorporated, not exceeding 30 years.

HISTORY: CL 1897, 8011;—CL 1915, 10483;—CL 1929, 10804;—CL 1948, 457.652.

457.653 Grand temple; articles, charter and constitution, filing; body corporate, powers; taxation.

Sec. 3. A copy of said articles of association, together with a copy of the charter and constitution of said grand temple, shall be filed with the secretary of state, and thereupon the persons who shall have signed such articles of association, their associates and successors, shall be a body politic and corporate by the name expressed in such articles of association, and by that name they and their successors shall have succession, and shall be persons in the law, capable to purchase, take, receive, hold and enjoy, to them and their successors, estates, real and personal, of suing and being sued, and to have a common seal, which may be altered or changed at their pleasure; Provided, That the value of such real and personal estate shall not exceed the sum of 100,000 dollars, but such property, both real and personal, shall be subject to assessment and taxation for all purposes as other property is assessed and taxed, and that they and their successors shall have power to give, grant, sell, lease, demise and dispose of said real and personal estate, or part thereof, at their will and pleasure, and the proceeds, rents and incomes shall be devoted exclusively to the charitable and benevolent purposes of the grand temple Rathbone Sisters. Said corporation shall have full power to make and establish rules, regulations and by-laws for regulating and governing all the affairs and business of said corporation not repugnant to the constitution and laws of this state or of the United States, and to designate, elect, or appoint from its members such officers, under such name and style as shall be in accordance with the constitution of the supreme temple of the world.

HISTORY: CL 1897, 8012;—CL 1915, 10484;—CL 1929, 10805;—CL 1948, 457.653.

TAXATION: See Compilers' § 211.1 et seq.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 800.1920, 800.1923 and GCR 105.

457.654 Grand temple; certified copy of articles as evidence.

Sec. 4. A copy of the record of such articles of association, under the seal of this state, duly certified according to law, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such corporation.

HISTORY: CL 1897, 8013;—CL 1915, 10485;—CL 1929, 10806;—CL 1948, 457.654.

457.655 Subordinate temples; chartering; existing temples; regulation.

Sec. 5. Such corporation when duly formed shall have power to institute and charter subordinate temples of said order within this state, and from time to time ordain, constitute and establish such general laws and by-laws, ordinances and regulations for the government of such subordinate lodges, not repugnant to law or to the constitution or regulation of the supreme temple Rathbone Sisters, as to them shall seem proper and

necessary; and in case of violation or non-compliance with such ordinances, by-laws and regulations, to revoke and annul the charter granted to such subordinate temple: Provided, That the existing subordinate temple heretofore duly chartered by the grand temple of Michigan or of the world, shall be subject to the control of the said grand temple under this act as heretofore, and in the same manner, and to the same extent as those that may hereafter be instituted and chartered under this act.

HISTORY: CL 1897, 8014;—CL 1915, 10486;—CL 1929, 10807;—CL 1948, 457.655.

457.656 Subordinate temples; incorporation; body corporate, powers; certified copy of articles as evidence.

Sec. 6. Any 9 or more persons, residents of this state, being members of any subordinate temple, having been duly chartered by the grand temple of this state or of the supreme temple of the world, desirous to become incorporated, may make and execute articles of association under their hands and seals, specifying as provided in article 2 of this act, and file a copy of such articles with the clerk of the county in which such corporation shall be formed, which shall be recorded by such clerk in a book to be kept in his office for that purpose; and thereupon the persons who shall have signed said articles of association, their associates and successors shall be a body politic and corporate by the name expressed in such articles of association, and by that name they and their successors shall have succession, and shall be persons in the law, capable to purchase, hold, enjoy, grant, sell, give, lease and demise real and personal estate, of suing and being sued, and may have a common seal, and change and alter the same at pleasure; and a certified copy of the record of such articles of association, under the seal of the county where the said record is kept, shall be received as prima facie evidence in all courts in this state of the existence and due incorporation of such corporation: Provided, That the value of such real and personal estate shall not exceed the sum of 100,000 dollars, and that they and their successors shall have authority and power to give, grant, sell, lease, demise and dispose of said real and personal estate, or part thereof, at their will and pleasure, and the proceeds, rents and incomes shall be devoted exclusively to the charitable and benevolent purposes of the order of Rathbone Sisters.

HISTORY: CL 1897, 8015;—CL 1915, 10487;—CL 1929, 10808;—CL 1948, 457.656.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.657 Erection of building; capital stock, creation, shares; cemetery.

Sec. 7. Any corporation formed in pursuance of this act may erect and own such suitable edifice, building, or hall, as to such corporation shall seem proper, with convenient rooms for the meetings of the temples of the order of Rathbone Sisters; and for that purpose may create a capital stock of not more than 100,000 dollars, to be divided into shares of not more than 10 dollars each; and any such corporation may take, purchase, hold and own such suitable lot or parcel of ground as may be convenient for the purpose of a cemetery, and may make all lawful rules and regulations for the disposition of lots, and the burial of the dead therein, as to such corporation may seem proper: Provided, This act shall not be construed to affect municipal regulations in regard to cemeteries.

HISTORY: CL 1897, 8016;—CL 1915, 10488;—CL 1929, 10809;—CL 1948, 457.657.

Act 18, 1895, p. 99; Imd. Eff. Mar. 14.

AN ACT to provide that the supreme, grand and subordinate temples of the Mystic Order of the New Kaaba of the state of Michigan may be incorporated.

The People of the State of Michigan enact:

457.661 Mystic Order of New Kaaba; incorporation.

Sec. 1. That the supreme, grand and subordinate temples of the Mystic Order of the New Kaaba, of the state of Michigan, may be incorporated in pursuance of the provisions of this act.

HISTORY: CL 1897, 8128;—CL 1915, 10802;—CL 1929, 10810;—CL 1948, 457.661.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.662 Supreme temple; incorporators; articles, execution, contents.

Sec. 2. Any 5 or more persons, residents of this state, being members of the supreme temple of the Mystic Order of the New Kaaba who desire to be incorporated, may make and execute articles of association under their hands and seals which said articles of association shall be acknowledged before some officer of the state, having authority to take acknowledgment of deeds, and shall set forth therein.

First, The names of the persons associating in the first instance, and their places of residence;

Second, The corporate name by which such association shall be known in law, which shall be the supreme temple of the Mystic Order of the New Kaaba, and the place where its business office is located;

Third, The object and purpose of such association, which shall be to promote the general welfare of the order, known as the Mystic Order of the New Kaaba; and to manage, control, govern, organize, institute and charter the grand and subordinate temples of the order; and the period for which it is incorporated, not exceeding 30 years.

HISTORY: CL 1897, 8129;—CL 1915, 10803;—CL 1929, 10811;—CL 1948, 457.662.

457.663 Grand temple; incorporators; articles, execution, contents.

Sec. 3. Any 5 or more members of said order residing in this state, who are members of the grand temple of said order, desiring to become incorporated, shall make, execute and acknowledge in the manner and form prescribed in section 2 of this act, articles of association which shall set forth:

First, The names of the persons associating in the first instance and their places of residence;

Second, The corporate name of the association, which shall be such as has been granted it by the supreme temple, and the place where its business office is located; and

Third, The object and purpose of such association, which shall be to promote the general welfare of the order, known as the Mystic Order of the New Kaaba; and to manage, control, govern, organize, institute and charter subordinate temples of said order within its territorial jurisdiction, in accordance with the constitution and laws of said order prescribed by the supreme temple; and the period of the incorporation, which shall not exceed 30 years.

HISTORY: CL 1897, 8130;—CL 1915, 10804;—CL 1929, 10812;—CL 1948, 457.663.

457.664 Subordinate temple; incorporators; articles, execution, contents.

Sec. 4. Any 5 or more members of any subordinate temple of said order, residing in this state, desiring to be incorporated, shall make, execute and acknowledge, in manner and form as prescribed in section 2 of this act, articles of association, which shall set forth:

First, The names of the persons associating in the first instance, and their place of residence;

Second, The corporate name of the association, which shall be such as shall have been designated in its charter, and the place where its business office is located; and

Third, The object and purpose of the association, which shall be for social and moral purposes, and to promote the general welfare of the order known as the Mystic Order of the New Kaaba, and the period of its incorporation, which shall not exceed 30 years.

HISTORY: CL 1897, 8131;—CL 1915, 10806;—CL 1929, 10813;—CL 1948, 457.664.

457.665 Articles; filing, recording; body corporate, powers; certified copy of articles as evidence; taxation.

Sec. 5. The articles of any such association shall be recorded in the office of the secretary of state, and a copy of the record thereof duly certified by such secretary, together with such certificate, shall be filed and recorded in the office of the clerk of the county where the business office of such association or temple is located: Provided, A copy of the articles of association of subordinate temples shall be recorded only in the office of the county clerk where such subordinate temple is located; and thereupon, the persons so associating therein, their associates and successors, shall be a body politic and corporate, by the name expressed in their respective articles, and by their said name, they and their associates and successors shall have succession and shall be capable of suing and being sued, and shall have a common seal to be altered at pleasure, in such manner as the constitution or laws of the order shall prescribe. Such corporation may take, purchase, receive, hold and enjoy, real, personal and mixed property, not exceeding in amount 100,000 dollars; and may give, grant, mortgage, sell, lease, devise and dispose of all or any part of such property at pleasure, but no property of said association, or of any of the subordinate temples of said association, shall be exempt from taxation. A copy of any such articles of association and certificate so recorded by the county clerk, duly certified by said clerk, shall be prima facie evidence in all courts and tribunals of the due incorporation of such association.

HISTORY: CL 1897, 8132;—CL 1915, 10806;—CL 1929, 10814;—CL 1948, 457.665.

TAXATION: See Compilers' § 211.1 et seq.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.666 Supreme temple; powers.

Sec. 6. The supreme temple shall have full and exclusive power to make, ordain, establish, enact, modify, revise, amend and repeal a constitution, laws, by-laws, rules and regulations for the government of the supreme, grand and subordinate temples of the order, and the governmental departments of such temples, not repugnant to the constitution and laws of the United States, or of this state; and to designate, elect, or appoint officers of the supreme temple, to designate grand or subordinate temples, under such name and styles as shall be prescribed in the constitution and laws of the order, and to designate the mode and time of electing or appointing of officers of such temples, and for their suspension and removal, and for the mode of accepting, organizing, instituting and chartering grand and subordinate temples of the order; and suspending or revoking any charter so granted. It shall have power to create and organize for itself, its grand and subordinate temples and to prescribe the powers and duties of each; and to create, manage and disburse, and provide for the creation, management and disbursement by grand and subordinate temples, of all funds collected by such temples.

HISTORY: CL 1897, 8133;—CL 1915, 10807;—CL 1929, 10815;—CL 1948, 457.666.

457.667 Supreme temple; only one to be incorporated; approval of articles of subordinate bodies.

Sec. 7. No more than 1 association shall be incorporated under this act, as the supreme temple of the Mystic Order of the New Kaaba, and the articles of association of

any grand or subordinate temple of said order shall not be accepted for record in the office of the secretary of state, unless the same shall have endorsed thereon, the approval of the supreme temple of said order, by the supreme presiding officer and supreme secretary, duly attested by the seal of the supreme temple.

HISTORY: CL 1897, 8134;—CL 1915, 10808;—CL 1929, 10818;—CL 1948, 457.667.

Act 179, 1897, p. 228; Imd. Eff. May 29.

AN ACT to authorize the incorporation of the Lutheran Bund of the state of Michigan.

The People of the State of Michigan enact:

457.671 Lutheran Bund; incorporation.

Sec. 1. That the Lutheran Bund of the state of Michigan, may be incorporated in pursuance of the provisions of this act.

HISTORY: CL 1897, 8135;—CL 1915, 10809;—CL 1929, 10817;—CL 1948, 457.671.

FRATERNAL BENEFIT SOCIETIES: Excepted from the provisions of Act 327, 1931, see Compilers' § 450.3.

Reports, see Compilers' § 450.81.

See Ch. IV of Pt. III of Act 256 of 1917, insurance code, being Compilers' §§ 500.128, 500.8001 et seq.; in particular, Compilers' § 500.8094.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.133 et seq.

457.672 Incorporators; articles of association, execution, contents.

Sec. 2. Any 10 or more persons, residents, of this state, being members of said Lutheran Bund of the state of Michigan, including the president or vice-president, secretary and treasurer of said bund, may make and execute articles of association under their hands and seals, which articles of association shall be acknowledged before some officer authorized by law to take acknowledgments of deeds and shall set forth:

First, The names of the persons associating in the first instance and their places of residence;

Second, The corporate name by which such bund or association shall be known in the law;

Third, The names of the societies or associations associated together and at the time composing said bund;

Fourth, The object and purpose of such bund or association which shall be to promote the general welfare of the members of the bund, and to provide such visitation of the sick and afflicted members of the bund, and to provide such sick, death and funeral benefits for the members of the bund and their families, as may be from time to time provided by the constitution and by-laws of the bund;

Fifth, The period for which such bund is incorporated, which shall not exceed 30 years;

Sixth, The time and place where the next convention of such bund shall be held.

HISTORY: CL 1897, 8136;—Am. 1913, p. 93, Act 66, Eff. Aug. 14;—CL 1915, 10810;—CL 1929, 10818;—CL 1948, 457.672.

457.673 Articles, constitution, by-laws and resolution; filing; body corporate, powers; taxation.

Sec. 3. Said articles of association, together with a copy of the constitution and by-laws of said bund and of the resolution of said bund authorizing the incorporation thereof, said copies being duly certified by the president and secretary of said bund, shall be filed with the secretary of state of the state of Michigan. Thereupon the persons who shall have signed such articles of association, their associates and fellow members composing said bund, shall be a body politic and corporate by the name expressed in such articles of association, capable of taking, holding and disposing of real and personal property, of suing and being sued, of having a common seal which may

be altered or changed at their pleasure: Provided, That the value of such real estate shall not exceed 50,000 dollars, which shall be subject to general taxation.

HISTORY: CL 1897, 8137;—Am. 1913, p. 94, Act 68, Eff. Aug. 14;—CL 1915, 10611;—CL 1929, 10819;—CL 1948, 457.673.

TAXATION: See Compilers' § 211.1 et seq.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.674 Membership; delegates; rules; officers, duties; constitution, by-laws, amendment.

Sec. 4. The bund shall have power to receive into membership societies, either incorporated or unincorporated, existing either within or without the state of Michigan, and individuals residing either within or without the state of Michigan; and the bund shall have power to receive into membership individuals who are not affiliated with any local society: Provided, however, That only societies shall participate in the selection of delegates to the convention and only delegates shall vote for officers and trustees. All members of each local society, which is a member of the bund, shall thereby ipso facto be members of the bund: Provided, Such members originally possess and continue to possess the necessary qualifications. Such corporation shall have full power to change its constitution and by-laws, and make, establish and change rules and regulations, none of which shall be repugnant to any law of this state, for regulating and governing the affairs and business of said corporation, and for the admission and expulsion of members and societies composing the same, and for the organization and admission of new or additional societies to membership in said bund, and to designate, elect or appoint from among the members of the societies forming and belonging to such corporation such officers, with such duties as the constitution and by-laws of such corporation may from time to time prescribe. The constitution and by-laws of said corporation may be amended from time to time in such manner as may be provided by such corporation.

HISTORY: CL 1897, 8138;—Am. 1913, p. 94, Act 68, Eff. Aug. 14;—CL 1915, 10612;—CL 1929, 10820;—CL 1948, 457.674.

457.675 Reserve fund; loaning, investment and control.

Sec. 5. The bund shall have power to create a reserve fund for the purpose of providing against unforeseen contingencies and calamities, and to loan only to its own members upon real estate security or invest only in bonds issued by the state of Michigan or any political division or municipality thereof, such portions of said reserve fund as are not immediately required: Provided, however, The creation and amount of said reserve fund and directions regarding the investment of the same shall be under the exclusive control of the convention of delegates, although the convention of delegates may delegate under general directions the details of investment to such officers as they deem proper.

HISTORY: CL 1897, 8139;—Am. 1913, p. 94, Act 68, Eff. Aug. 14;—CL 1915, 10613;—CL 1929, 10821;—CL 1948, 457.675.

457.676 Control of affairs.

Sec. 6. The affairs of such corporation shall be controlled by a convention of delegates who shall be appointed or elected by the respective societies forming such corporation in such manner as the constitution and by-laws of such corporation shall provide, and the number of delegates which each society is entitled to send to such conventions, and the time and place of meeting of such conventions shall be as provided by the constitution and by-laws of said corporation. Subject to the action of such convention of delegates, the management of the affairs of said corporation may be placed in the control of such officers, trustees or other persons as may be provided by the constitution and by-laws of said corporation.

HISTORY: Add. 1913, p. 95, Act 68, Eff. Aug. 14;—CL 1915, 10614;—CL 1929, 10822;—CL 1948, 457.676.

457.677 Amendment of articles; procedure; evidence of existence.

Sec. 7. The articles of association may be amended by the vote of 2/3 of all the delegates present and voting at any convention of delegates; but the amendment shall only become effective when a copy thereof duly certified under the seal of the bund by the president and secretary to be a true copy of the amendment passed by the vote aforesaid, shall have been filed with the secretary of state of the state of Michigan. Copies of all amendments of the constitution and by-laws, duly certified under the seal of the bund by the president and secretary to have been made pursuant to law, shall be filed with the secretary of state of the state of Michigan before such amendments shall become effective. A copy of such articles of association and the amendments thereof, and a copy of the constitution and by-laws and resolution filed therewith, and all amendments of the constitution and by-laws, when duly certified to according to law under the seal of this state, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such corporation or bund, and of the contents and legal effects of said original instruments.

HISTORY: Add. 1913, p. 95, Act 66, Eff. Aug. 14;—CL 1915, 10615;—CL 1929, 10623;—CL 1948, 457.677.

Act 71, 1901, p. 103; Imd. Eff. Apr. 18.

AN ACT to provide for the incorporation of the grand council and subordinate councils of the Alliance Marquette of the state of Michigan.

The People of the State of Michigan enact:

457.681 Alliance Marquette; incorporation of councils.

Sec. 1. That the grand council and subordinate councils, of the Alliance Marquette of the state of Michigan may be incorporated in pursuance of the provisions of this act.

HISTORY: CL 1915, 10616;—CL 1929, 10624;—CL 1948, 457.681.

FRATERNAL BENEFIT SOCIETIES: Excepted from the provisions of Act 327, 1931, see Compilers' § 450.3.

Reports, see Compilers' § 450.81.

See Ch. IV of Pt. III of Act 256 of 1917, insurance code, being Compilers' §§ 500.128, 500.8001 et seq.; in particular, Compilers' § 500.8094.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.133 et seq.

457.682 Grand council; incorporators; articles, execution, contents.

Sec. 2. The 5 principal officers of the grand council of the Alliance Marquette of the state of Michigan desiring to become incorporated may make and execute articles of association under their hands and seals, which said articles of association shall be acknowledged before some officer of the state having authority to take acknowledgments of deeds, and shall set forth:

First. The names of the persons associating in the first instance and their places of residence;

Second. The corporate name by which such association shall be known;

Third. The place of its principal business office;

Fourth. The period for which it is incorporated not exceeding 30 years;

Fifth. The object and purpose of the association which may be charitable, social, benevolent and literary, and neither such purpose nor the condition of membership in such association shall include any requirement from the members to discriminate against any person in respect to civil rights because of religious belief or affiliation.

HISTORY: CL 1915, 10617;—CL 1929, 10625;—CL 1948, 457.682.

457.683 Grand council; French as official language; evidence.

Sec. 3. The French language may be adopted as the official language of such association, and all records and proceedings may be kept, and all meetings held in that language, and translations of any of the documents belonging to such association duly au-

thenticated as direct translations of such document, or of the original documents translated from the French into the English language shall be received whenever necessary in all courts of law within this state.

HISTORY: CL 1915, 10618;—CL 1929, 10626;—CL 1948, 457.683.

457.684 Grand council; articles and charter, filing; body corporate, powers.

Sec. 4. A copy of said articles of association, together with a copy of the charter of said grand council shall be filed with the secretary of state, and thereupon the persons who shall sign such articles of association, their associates and successors, shall be a body politic and corporate by the name expressed in such articles of association, and by that name they and their successors shall have succession and shall be persons in the law capable to purchase, take, receive, hold and enjoy to them and their successors estate real and personal, of suing and being sued, and they and their successors may have a common seal which may be changed and altered at their pleasure: Provided, That the value of such real and personal estate shall not exceed the sum of 50,000 dollars, and that they and their successors shall have the authority and power to give, grant, sell, lease, demise and dispose of said real and personal estate or part thereof at their will and pleasure, and the proceeds, rents and incomes shall be devoted exclusively to the purposes of such association as mentioned and defined by the constitution thereof. Said association shall have the full power and authority to make and establish rules and regulations for the governing of all the affairs and business of said association according to the laws of this state and the United States, and to designate, elect or appoint from its members such officers, under such name and styles as shall be in accordance with the constitution of the grand council.

HISTORY: CL 1915, 10619;—CL 1929, 10627;—CL 1948, 457.684.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.685 Grand council; certified copy of articles as evidence; subordinate councils, institution, regulation.

Sec. 5. A copy of the records of such articles of association under the seal of the state, duly certified according to law, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such association. Such association when duly formed shall have the power to institute and charter subordinate councils and from time to time to make, ordain, constitute and establish such constitution, general laws and by-laws as the grand council shall adjudge proper for the regulation and government of such subordinate councils not repugnant to the laws of this state.

HISTORY: CL 1915, 10620;—CL 1929, 10628;—CL 1948, 457.685.

457.686 Subordinate council; incorporation; body corporate, powers; certified copy of articles as evidence.

Sec. 6. Any number of persons, not less than 10, residents of this state being members of the subordinate council of the Alliance Marquette of the state of Michigan, having been duly chartered by the grand council thereof, desiring to become incorporated may make and execute articles of association specifying and providing as in section 2 of this act, and file a copy of the same with the clerk of the county in which such association shall be formed, which shall be recorded by such clerk in a book to be kept in his office for that purpose; and thereupon the persons who shall have signed said articles of association, their associates and successors shall be a body politic and corporate by the name expressed in such articles of association and provided by the grand council chartering such subordinate council, and by such name they and their successors shall have succession and shall be persons in the law capable to purchase, hold, enjoy, grant, sell, give, lease and demise real and personal estate, of suing and being sued, and may have a common seal and change and alter the same at pleasure, and

a certified copy of the record of such articles of association, under the seal of the county where such record is kept shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such corporation: Provided, Said association shall be limited to the powers and provisions of section 3 of this act regarding real and personal estate, and the proceeds thereof under the rules and regulations of the grand council, and may elect or appoint from among its members such officers under such name and style as shall be in accordance with the constitution of said grand council.

HISTORY: CL 1915, 10621;—CL 1929, 10629;—CL 1948, 457.686.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.687 Business offices; location; office of grand council, change in location.

Sec. 7. The business office of the grand council shall be located in the city of Saginaw, county of Saginaw, and state of Michigan, and subordinate councils shall have their business office where said subordinate council shall have been chartered and organized, but the location of the business office of the grand council may be changed at any time by said grand council upon filing a written notice of such change in the office of the secretary of state within 20 days from the time of the change of such location.

HISTORY: CL 1915, 10622;—CL 1929, 10630;—CL 1948, 457.687.

457.688 Insurance business; funeral benefits.

Sec. 8. Corporations in pursuance of this act shall not be considered as engaged in the business of life insurance, nor shall they be subject to the provisions of the statute relating to life insurance companies or associations: Provided, Nothing in this act contained shall permit the making of any contract of insurance except that societies organized hereunder may make provisions for the payment of a funeral benefit of not to exceed 200 dollars.

HISTORY: CL 1915, 10623;—CL 1929, 10631;—CL 1948, 457.688.

Act 80, 1909, p. 121; Eff. Sep. 1.

AN ACT to provide for the incorporation of lodges of the Kalevan Ritarit.

The People of the State of Michigan enact:

457.691 Kalevan Ritarit; incorporation.

Sec. 1. Any lodge of the Kalevan Ritarit organized within this state and having a charter from the Grand Lodge of the Kalevan Ritarit, may become incorporated under the provisions of this act.

HISTORY: CL 1915, 10633;—CL 1929, 10632;—CL 1948, 457.691.

GENERAL CORPORATION ACT: For provisions relating to corporations of this kind, see Compilers' § 450.133 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

457.692 Incorporators; articles of association, execution, contents.

Sec. 2. Any 12 or more persons, residents of this state, being members in good standing of a lodge of the Kalevan Ritarit, having competent authority from the grand lodge of the order, desirous of becoming incorporated, may make and execute articles of association, under their hands and seals, which articles of association shall be acknowledged before some officer authorized by law to take acknowledgments of deeds, and shall set forth:

First, The names of the persons associating in the first instance, and their places of residence;

Second, The corporate name by which such association shall be known in law, and the place of its business office;

Third, The object and purpose of such association shall be to promote the general welfare of the Kalevan Ritarit fraternity during the period for which it is incorporated, not exceeding 30 years.

HISTORY: CL 1915, 10634;—CL 1929, 10833;—CL 1948, 457.692.

457.693 Articles and charter; filing, recording; body corporate, powers.

Sec. 3. A copy of said articles of association, together with a copy of the charter of the Grand Lodge of Kalevan Ritarit, shall be filed with the county clerk of the county in which the corporation shall be formed, and shall be recorded by such clerk in a book kept in his office for that purpose, and a certified copy thereof shall be filed in the office of the secretary of state, and thereupon the persons who have signed such articles of association, their associates and successors shall be a body politic and corporate, by the name expressed in such articles of association, and by that name they and their successors shall have succession, and shall be persons in the law, capable to purchase, take, receive, hold and enjoy to them and their successors, estate, real, personal and mixed, of using and being used, and to have a common seal which may be altered or changed at their pleasure: Provided, That the value of such real, personal and mixed estate shall not exceed the sum of 50,000 dollars. They and their successors shall have power and authority to give, grant, bargain, sell, lease, release, demise and dispose of said real, personal and mixed estate or any part thereof at their will and pleasure, and the proceeds, rents, gains, profits and income shall be devoted to the protection and aid of its members and their families and to no other purpose.

HISTORY: CL 1915, 10635;—CL 1929, 10634;—CL 1948, 457.693.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.694 Rules and by-laws; officers.

Sec. 4. Every corporation organized under and in pursuance of this act shall have full power and authority to make and establish rules, regulations and by-laws for regulating and governing all the affairs and business of said corporation, not repugnant to nor inconsistent with the constitution, rules, regulations and edicts of the grand lodge of the order, or the constitution and laws of this state or of the United States, and may elect and appoint from its members such officers under such name and style as shall be in accordance with the constitution of the grand lodge of the order.

HISTORY: CL 1915, 10636;—CL 1929, 10635;—CL 1948, 457.694.

457.695 Articles; certified copy as evidence.

Sec. 5. A copy of the record of such articles of association under the seal of the county where the said record is kept, duly certified according to law, shall be received as prima facie evidence in all courts in this state of the existence and due incorporation of such corporation.

HISTORY: CL 1915, 10637;—CL 1929, 10636;—CL 1948, 457.695.

Act 55, 1917, p. 97; Eff. Aug. 10.

AN ACT to authorize the incorporation of grand and subordinate councils of the Eskimos.

The People of the State of Michigan enact:

457.701 Eskimos; incorporation of councils.

Sec. 1. The grand council and subordinate councils of the Eskimos may be incorporated in pursuance of the provisions of this act.

HISTORY: CL 1929, 10837;—CL 1948, 457.701.

FRATERNAL BENEFIT SOCIETIES: Excepted from the provisions of Act 327, 1931, see Compilers' § 450.3.

Reports, see Compilers' § 450.81.

See Ch. IV of Pt. III of Act 256 of 1917, insurance code, being Compilers' §§ 500.128, 500.8001 et seq.; in particular, Compilers' § 500.8094.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.133 et seq.

457.702 Grand council; incorporators; articles, execution, contents.

Sec. 2. The 5 principal officers of the grand council of the Eskimos of the state of Michigan desiring to become incorporated, may make and execute articles of association under their hands and seal, which said articles of association shall be acknowledged before some officer of the state having authority to take acknowledgments of deeds, and shall set forth:

First, The names of the persons associated in the first instance, and their place of residence;

Second, The corporate name by which such association shall be known;

Third, The place of its principal business office;

Fourth, The period for which it is incorporated, not exceeding 30 years;

Fifth, The object and purposes of the association, which shall be to protect and aid its members and their families, to promote the general welfare and the social and moral condition of its members, but neither such purposes nor condition of membership in such association shall include any requirements from the members to discriminate against any person in respect to civil rights because of religious belief or affiliation.

HISTORY: CL 1929, 10638;—CL 1948, 457.702.

457.703 Grand council; articles and constitution, filing; body corporate, powers.

Sec. 3. A copy of said articles of association together with a copy of the constitution of said association shall be filed with the secretary of state, and thereupon the persons who shall have signed said articles of association, their associates and successors, shall be a body corporate and politic, and known in the law and in fact by the name expressed in such articles of association, and by that name they and their successors shall have succession, and shall be a person in the law, capable of purchasing, taking, receiving, owning and enjoying, through them and their successors, estates real and personal, of suing and being sued, and to have a common seal which may be changed or altered at their pleasure, and they and their successors shall have power to give, grant, sell, demise and dispose of such real and personal estate, or part thereof, at their will and pleasure, and the proceeds, rents, and income shall be devoted exclusively to the purposes of such association, as mentioned and defined by the constitution thereof.

HISTORY: CL 1929, 10639;—CL 1948, 457.703.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.704 Grand council; rules; officers.

Sec. 4. Said association shall have full power and authority to make and establish rules and regulations for the governing of all the affairs and business of said association, according to the laws of this state and the United States, and to designate, elect or appoint from its members such officers, under such names and styles as shall be in accordance with the constitution of the grand council.

HISTORY: CL 1929, 10640;—CL 1948, 457.704.

457.705 Grand council; certified copy of articles as evidence; subordinate councils, institution, regulation.

Sec. 5. A copy of the records of such articles of association under seal of the state, duly certified according to law, shall be received as prima facie evidence in all courts of this state of the existence and due incorporation of such association; such association, when duly formed, shall have the power to institute and charter subordinate councils, and from time to time to make, ordain, constitute and establish such constitution, general laws and by-laws as the grand council shall adjudge proper for the or-

ganization and government of such subordinate councils not repugnant to the laws of this state.

HISTORY: CL 1929, 10841;—CL 1948, 457.705.

457.706 Subordinate councils; incorporation; body corporate, powers; certified copy of articles as evidence.

Sec. 6. Any number of persons, not less than 10, residents of this state, being members of a subordinate council of the Eskimos of the state of Michigan, having been duly chartered by the grand council thereof, desiring to become incorporated, may make and execute articles of association, specifying and providing as in section 2 of this act, and file a copy of the same with the clerk of the county in which such association shall be formed, which shall be recorded by such clerk in a book to be kept in his office for that purpose; and thereupon, the persons who shall have signed such articles of association, their associates and successors shall be a body politic and corporate, known by the name expressed in said articles of association, and provided by the grand council chartering such subordinate council, and by such name they and their associates shall have succession, and shall be persons in the law capable to purchase, give, lease and demise real and personal estate, of suing and being sued, and may have a common seal, and may change and alter the same at their pleasure; and a certified copy of such articles of association, under the seal of the county where the records are kept, shall be received as prima facie evidence in all courts in this state of the existence and due incorporation of such association: Provided, That said association shall be limited to the powers and provisions of section 3 of this act, regarding real and personal estate and the proceeds thereof under the rules and regulations of the grand council, and may elect or appoint from among its members such officers under such name and style as shall be in accordance with the constitution of such grand council.

HISTORY: CL 1929, 10842;—CL 1948, 457.706.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

457.707 Business offices; location; office of grand council, change of location.

Sec. 7. The business office of the grand council shall be located in the village of L'Anse, county of Baraga, and state of Michigan, and subordinate councils shall have their business office where said subordinate council shall have been chartered and organized, and the location of the business office of the grand council may be changed at any time by said grand council, upon filing a written notice of such change in the office of the secretary of state within 20 days from the time of the change from such location.

HISTORY: CL 1929, 10843;—CL 1948, 457.707.

457.708 Insurance business; funeral benefits.

Sec. 8. Corporations in pursuance of this act shall not be considered as engaged in the business of life insurance, nor shall they be subject to the provisions of the statute relating to life insurance companies or associations: Provided, Nothing in this act contained shall permit the making of any contract of insurance except that associations hereunder may make provisions for the payment of a funeral benefit not to exceed 200 dollars.

HISTORY: CL 1929, 10844;—CL 1948, 457.708.

CHAPTER 458. ECCLESIASTICAL CORPORATIONS

ROMAN CATHOLIC BISHOPS

Act 207 of 1867

- 458.1 Conveyance to Roman Catholic archbishop, bishops or administrators in trust for certain purposes.
- 458.2 Roman Catholic archbishop, bishops or administrators; powers in administering property.

METHODIST CHURCHES, CHANGE OF NAME

Act 189 of 1941

- 458.11 Methodist churches; change of name.
- 458.12 Methodist churches; amendment of articles of incorporation to effect change.

METHODIST EPISCOPAL CHURCHES

Act 11 of 1899

- 458.21 Methodist Episcopal church; incorporators.
- 458.22 Articles and certificate of consent; execution.
- 458.23 Articles and certificate of consent; contents, form.
- 458.24 Articles and certificate of consent; execution, acknowledgement, recording; body corporate, powers.
- 458.25 Church government; ecclesiastical polity.
- 458.26 Management of temporalities; trustees.
- 458.27 Powers of corporation and board of trustees; rights of ministers and presiding elders.
- 458.28 Amendment of articles; procedure.
- 458.29 Sale of realty; procedure, proceeds; abandoned property.
- 458.30 Reincorporation under act.
- 458.31 Construction of inconsistent acts.
- 458.32 Trustees; evidence of authority.
- 458.33 Extension of corporate life; procedure.

WESLEYAN METHODIST CHURCHES

Act 27 of 1905

- 458.41 Wesleyan Methodist church; incorporators.
- 458.42 Articles of association; execution.
- 458.43 Articles; contents, form.
- 458.44 Articles; execution, recording; body corporate, powers.
- 458.45 Church government; ecclesiastical polity.
- 458.46 Board of trustees; election, term, vacancies; secular affairs.
- 458.47 Board of trustees; election in certain case; dissolution, conference legal successor; sale of property.
- 458.48 By-laws.
- 458.49 Powers of corporation; rights of ministers.
- 458.50 Amendment of articles; procedure.
- 458.51 Sale or mortgage of real estate for re-investment or to pay debts; title, passing to annual conference.
- 458.52 Reincorporation under act; procedure.
- 458.53 Construction of inconsistent acts.
- 458.54 Trustees; evidence of authority.
- 458.55 Extension of corporate life; procedure.

METHODIST PROTESTANT CHURCHES

Act 26 of 1907

- 458.61 Methodist Protestant church; incorporators.
- 458.62 Articles of association; execution.
- 458.63 Articles; contents, form.
- 458.64 Articles; recording, fee; body corporate, powers.
- 458.65 Church government; ecclesiastical polity.
- 458.66 Secular affairs; management; board of trustees, election, term.
- 458.67 Powers of corporation; execution of legal documents; rights of ministers.
- 458.68 Powers of trustees; disposition of realty.
- 458.69 Title; passing to annual conference; license to sell; dissolution of corporation.
- 458.70 Service of process.
- 458.71 Amendment of articles; procedure.
- 458.72 Reincorporation under act; procedure.
- 458.73 Construction of inconsistent acts.
- 458.74 Trustees; evidence of authority.

FREE METHODIST CHURCHES

Act 29 of 1901

- 458.81 Free Methodist church; incorporators.
- 458.82 Articles of association and certificate of consent; execution.
- 458.83 Articles and certificate of consent; contents, form.
- 458.84 Articles and certificate of consent; execution, acknowledgement, recording; body corporate, powers.
- 458.85 Church government; ecclesiastical polity.
- 458.86 Secular affairs, management; board of trustees, election, term, vacancies.
- 458.87 Powers of corporation; execution of legal documents; rights of ministers and district elders.
- 458.88 Amendment of articles; procedure.
- 458.89 Sale or mortgage of real estate to pay debts or for re-investment; title, passing to annual conference; license to sell; procedure.
- 458.90 Reincorporation under act; procedure.
- 458.91 Construction of inconsistent acts.
- 458.92 Trustees; evidence of authority.
- 458.93 Extension of corporate life; procedure.

BAPTIST CHURCHES

Act 54 of 1899

- 458.101 Baptist church; incorporation, procedure; body corporate, powers.
- 458.102 Trustees; qualifications, election.
- 458.103 Trustees; term of office.
- 458.104 Trustees; subject to control of church; purchase and sale of realty.
- 458.105 Trustees; powers.
- 458.106 Trustees; corporate powers; taxation.
- 458.107 Trustees; election in certain case; dissolution, convention legal successor.
- 458.108 Reincorporation under act; procedure.
- 458.109 Reincorporation under act; certificate of dissolution, execution, recording; new corporation, powers and obligations.

- 458.110 Reincorporation under act; amendment of articles, procedure.
- 458.111 Amendment of articles.
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BAPTIST CONVENTION
Act 42 of 1842

- 458.151 Baptist convention; incorporation, objects.
- 458.152 Membership.
- 458.153 First meeting, calling; annual meeting.
- 458.154 First meeting; election of officers and directors; terms of office; board of managers; powers of convention.
- 458.155 Powers of corporation; legal successor to certain dissolved corporations.
- 458.156 Donations; use.
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DISSOLUTION OF BAPTIST ECCLESIASTICAL SOCIETIES
Act 32 of 1929

- 458.171 Meeting of incorporated society; calling.
- 458.172 Meeting of incorporated society; question put to vote; dissolution of society; property, passing to incorporated church.

PRESBYTERIAN CHURCHES
Act 265 of 1909

- 458.201 United Presbyterian church; articles, adoption; first board of trustees.
- 458.202 Certificate; execution, contents.
- 458.203 Certificate; signature, acknowledgment, recording, form; body corporate.
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- 458.205 Powers of corporation.
- 458.206 Trustees; election, term, qualifications.
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- 458.208 Trustees; temporary vacancies.
- 458.209 Title; passing to presbytery; sale of property; dissolution of corporation.
- 458.211 Amendment of articles; procedure.
- 458.212 Reincorporation under act; procedure.
- 458.213 Trustees; evidence of authority.

PROTESTANT EPISCOPAL CHURCHES
Act 40 of 1899

- 458.251 Protestant Episcopal church; incorporation, procedure; body corporate.
- 458.252 Protestant Episcopal church; articles, contents; name; location; vestry members.
- 458.253 Articles; recording; acquisition of title to property.
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- 458.255 Subsequent meetings; right to vote; annual and special meetings, notice; election of vestry members, classification; rector to preside; records.
- 458.256 Wardens; secretary, treasurer; meetings of vestry, presiding officer, quorum, vacancy.
- 458.257 Powers of vestry; owner of pew or slip.
- 458.258 Record of proceedings; inspection, evidence.

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- 458.260 Amendment of articles, procedure; existing amendments declared valid.
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- 458.262 Reorganization and incorporation under act, procedure; officers.
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PROTESTANT EPISCOPAL BISHOPS
Act 223 of 1913

- 458.271 Conveyances to bishops of Protestant Episcopal church in trust for certain purposes.
- 458.272 Conditions under which legal title vests in bishop even though not named in conveyance.
- 458.273 Authority of bishop to make conveyance; approval required.

CONGREGATIONAL CHURCHES
Act 53 of 1901

- 458.301 Congregational church; incorporators; articles, execution, contents.
- 458.302 Trustees; election, qualifications, terms; articles and certificate of election, recording; body corporate, name.
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CONSOLIDATION OF CONGREGATIONAL CHURCH AND ITS ECCLESIASTICAL SOCIETY
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DISSOLUTION OF CONGREGATIONAL ECCLESIASTICAL SOCIETIES
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- 458.351 Meeting of incorporated society; calling.
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- 458.353 Repeal; saving clause.

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Act 82 of 1899

- 458.401 Reformed church; incorporators; articles in triplicate, filing; body corporate.
- 458.402 Articles; contents.
- 458.403 Powers of trustees.
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CHRISTIAN REFORMED CHURCHES

Act 148 of 1901

- 458.421 Christian Reformed church; trustees; articles, execution, filing; body corporate.
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Act 225 of 1899

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UNITED MISSIONARY CHURCHES

Act 265 of 1949

- 458.521 Applicability of act.
 458.522 United Missionary churches; incorporation; change of name in articles.
 458.523 United Missionary churches; organization, number of persons.
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 458.526 United Missionary churches; triplicate articles, delivery to corporation and securities commission; fees; filing.
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 458.531 United Missionary churches; sale of real estate, authorization; proceeds.
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 458.533 United Missionary churches; amending articles, acknowledgment, certificate, recording.
 458.534 United Missionary churches; suits or proceedings.
 458.535 United Missionary churches; execution of obligations or contracts by acting trustees, validity.
 458.536 Act repealed; rights saved.

Act 207, 1867, p. 288; Eff. Jun. 27.

AN ACT to authorize the Roman Catholic archbishop of Detroit, Michigan, and the Roman Catholic bishops of Michigan, and their successors in office, and certain other persons, to hold property for the use or benefit of the church; to authorize the borrowing of money; to authorize the execution of contracts and agreements, and the administration of property held by them; and to authorize the exercise of any and all powers relating to the temporalities of the church. Am. 1937, p. 487, Act 270, Imd. Eff. Jul. 22;—Am. 1954, p. 3, Act 1, Imd. Eff. Feb. 4.

The People of the State of Michigan enact:

458.1 Conveyance to Roman Catholic archbishop, bishops or administrators in trust for certain purposes.

Sec. 1. All gifts, grants, deeds, wills and other conveyances, wherein or whereby any lands, tenements or other property within this state have been given, bequeathed, devised or granted, or in any manner conveyed by any person or persons whatever, unto

any person or persons, by the name, style or title of Roman Catholic or Catholic bishop of the diocese of Bardstown, Kentucky, and his successors, or to the Roman Catholic bishop or Catholic bishop of Cincinnati, Ohio, and his successors in office, or to the Roman Catholic or Catholic archbishop of Detroit, or to the Roman Catholic or Catholic bishop of Detroit, or administrator of Detroit, and his successors, or to the Roman Catholic or Catholic bishop of Sault Ste. Marie, or administrator of Sault Ste. Marie, and his successors, or to the Roman Catholic or Catholic bishop of Marquette, or administrator of Marquette, and his successors, or to the Roman Catholic bishop or Catholic bishop of the diocese of Grand Rapids, or administrator of Grand Rapids, and his successors in office, or to any person in his own name as Roman Catholic bishop of the diocese of Grand Rapids, his heirs and assigns, or to the Roman Catholic bishop or Catholic bishop of the diocese of Lansing, or administrator of Lansing, and his successors, or to the Roman Catholic bishop or Catholic bishop of the diocese of Saginaw, or administrator of Saginaw, and his successors, or to any other person or persons, upon the trust expressed or implied, to take, hold and receive the same for the use and benefit of any religious congregation of Roman Catholics, or for the support, aid and maintenance of any hospital, almshouse, school, seminary, church, parsonage, or for the burial grounds, or other religious, educational or charitable purposes, within this state: and all such gifts, grants, deeds, wills, devises and bequests and other conveyances which may hereafter be made, shall be sufficient and effectual in law to vest the legal title of, in and to said lands and tenements or other property, in such grantee, donee or devisee, in the present archbishop of the diocese of Detroit, or administrator, and in the present bishops or administrators of the Roman Catholic dioceses within the state of Michigan, in their respective dioceses, and in the persons who after them may become Roman Catholic archbishop of the diocese of Detroit, and Roman Catholic bishops of said dioceses, and in the successors of said Roman Catholic archbishop and Roman Catholic bishops forever, in trust, for the uses and purposes for which the said property is or may be hereafter acquired, granted, bequeathed, or devised, and in no other person or persons whatever: Provided, That it shall be necessary in relation to all gifts, grants, deeds, wills and other conveyances heretofore made as aforesaid, that the person or persons to whom the same were made, or to such persons as they may have conveyed to, if living, shall release their estate or interests therein to the said Roman Catholic archbishop of the diocese of Detroit, and to the said Roman Catholic bishops in the state of Michigan within their respective dioceses: And provided further, That nothing in this act shall be taken or construed to give or grant to the said Roman Catholic archbishop and Roman Catholic bishops, or administrators of the said dioceses of the state of Michigan, or their successors, the right to hold real estate in trust for any society except for charitable, religious, educational and literary purposes, or for burial grounds, as provided for by this act.

HISTORY: CL 1871, 3124;—How. 4727;—CL 1897, 8310;—CL 1915, 10909;—Am. 1927, p. 226, Act 149, Eff. Sep. 5;—CL 1929, 10845;—Am. 1937, p. 487, Act 270, Imd. Eff. Jul. 22;—Am. 1938, Ex. Ses., p. 7, Act 4, Imd. Eff. Sep. 8;—CL 1948, 458.1;—Am. 1954, p. 3, Act 1, Imd. Eff. Feb. 4.

458.2 Roman Catholic archbishop, bishops or administrators; powers in administering property.

Sec. 2. The archbishop of the Roman Catholic archdiocese of Detroit and the several bishops of the Roman Catholic dioceses within the state of Michigan and their successors in office, and administrators of the Roman Catholic dioceses within the state of Michigan, for the purpose of administering the property held by them respectively under this act and in respect thereto, are declared to have and to have had power:

(a) To enter into any and all lawful contracts in respect of the property held by them;

(b) To sue and be sued, complain and defend, in any court, or to be a party to any proceedings before any board, tribunal, commission, or any other public body;

(c) For the purposes of the Roman Catholic church to acquire, purchase, hold, convey, lease, mortgage, and in every way deal in real and personal property of all kinds without limitation; the power to hold real and personal estate shall include the power to take the same by gift, devise or bequest, and upon trusts, either express or implied;

(d) For the purposes of the Roman Catholic church to borrow money and to give promissory notes therefor, and to secure the payment thereof by mortgage or other lien upon real or personal property; to issue, sell or pledge bonds, notes, bills of exchange, debentures and other obligations and evidences of church indebtedness; and to guarantee, purchase, hold, sell, assign or otherwise dispose of the stock, bonds, or securities of corporations;

(e) To appoint agents and attorneys in fact;

(f) To exercise without limitation of the foregoing, any and all powers relating to the temporalities of the Roman Catholic church vested in such archbishop or bishop or administrator by virtue of his office.

HISTORY: Add. 1941, p. 129, Act 105, Imd. Eff. May 20;—CL 1948, 458.2;—Am. 1954, p. 4, Act 1, Imd. Eff. Feb. 4.

Act 189, 1941, p. 285; Imd. Eff. Jun. 16.

AN ACT to correct the name of certain churches.

The People of the State of Michigan enact:

458.11 Methodist churches; change of name.

Sec. 1. This act shall be applicable to the corporations hereinbefore incorporated under any general or special act as a Methodist Episcopal Church or Methodist Protestant Church.

HISTORY: CL 1948, 458.11.

458.12 Methodist churches; amendment of articles of incorporation to effect change.

Sec. 2. The articles of association of any ecclesiastical corporation heretofore incorporated under any general or special act of this state as a Methodist Episcopal Church or as a Methodist Protestant Church in the name of which the word "Episcopal" or the word "Protestant" appears after the word "Methodist" are hereby amended by deleting from the name of each of such corporations the word "Episcopal" or the word "Protestant" as the case may be. Such change in the name of any such corporation shall become operative ipso facto upon the effective date of this act without the filing of any amendment to the articles of association of any such corporation.

HISTORY: CL 1948, 458.12.

Sec. 3. (This was a repeal section.)

HISTORY: Rep. 1945, p. 409, Act 267, Imd. Eff. May 25.

Act 11, 1899, p. 10; Imd. Eff. Mar. 2.

AN ACT for the organization of corporate Methodist Episcopal churches.

The People of the State of Michigan enact:

458.21 Methodist Episcopal church; incorporators.

Sec. 1. That it shall be lawful for any number of members of the Methodist Episcopal church of full age, not less than 9, with the consent of the presiding elder of the

district in which the proposed church is to be located, to organize and procure the incorporation of a Methodist Episcopal church.

HISTORY: CL 1915, 10915;—CL 1929, 10846;—CL 1948, 458.21.

FORMER ACT: Act 110 of 1895.

GENERAL CORPORATION ACT: For provisions relating to ecclesiastical corporations, see Compilers' §§ 450.159 et seq. and 450.175 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

TAX EXEMPTIONS: See Compilers' §§ 211.7 subd. 5 and 211.9.

458.22 Articles and certificate of consent; execution.

Sec. 2. The persons desiring to organize such church shall execute and acknowledge, before any person authorized to take acknowledgement of deeds, articles of association in writing, whereby they shall agree to organize a church, which shall be governed by the discipline, rules and usages of the Methodist Episcopal church. To such articles of association there shall be attached a certificate by the presiding elder of the district in which said church is to be located that the said church was organized by and with the consent of said presiding elder.

HISTORY: CL 1915, 10916;—CL 1929, 10847;—CL 1948, 458.22.

458.23 Articles and certificate of consent; contents, form.

Sec. 3. Said articles of association shall contain the following items: First, The name of said church; Second, The township, village or city, and the county in which said church shall be located; Third, The time for which said corporation shall be created; Fourth, An agreement to worship and labor together according to the discipline, rules and usages of the Methodist Episcopal church. Said articles may be in the following form:

We, the undersigned, desiring to become incorporated under the provisions of act number of the public acts of 1899, entitled "An act for the organization of corporate Methodist Episcopal churches," do hereby make, execute and adopt the following articles of association, to wit:

First, The name assumed by this corporation, and by which it shall be known in law, is "The Methodist Episcopal church;"

Second, The location of said church shall be in the of county of and state of Michigan;

Third, The time for which said corporation shall be created shall not exceed 30 years from, the date of its organization;

Fourth, The members of said church shall worship and labor together according to the discipline, rules and usages of the Methodist Episcopal church in the United States of America, as from time to time authorized and declared by the general conference of said church and the annual conference within whose bounds said corporation is situated.

In witness whereof, we, the parties hereby associating for the purpose of giving legal effect to these articles, hereunto sign our names and places of residence.

Done at the of, county of, and state of Michigan, this day of, A.D. 189....

(Signatures.)

(Residences.)

STATE OF MICHIGAN, }
County of } SS.

On this day of, A. D. before me, a in and for said county, personally appeared, known to me to be the persons named in, and who executed the foregoing instrument, and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

I, presiding elder of the district, of the annual conference of the Methodist Episcopal church, the same being the district in which the church mentioned in the foregoing articles of association is to be, or is now located, do hereby certify that such church was organized by and with my consent and concurrence.

Dated at, Mich., A. D. 189

.....
Presiding Elder.

HISTORY: CL 1915, 10917;—CL 1929, 10648;—CL 1948, 458.23.

458.24 Articles and certificate of consent; execution, acknowledgement, recording; body corporate, powers.

Sec. 4. Said articles of association shall be executed in duplicate, and acknowledged before some officer authorized by law to take acknowledgment of deeds. One of such duplicate copies shall be retained by such corporation and 1 copy shall be recorded in the office of the county clerk of the county, where such corporation is formed. When said articles of association and said certificate of the presiding elder shall have been recorded or left for record in the office of the said county clerk, the said persons so signing said articles of association, and their associates and fellow members of said church, and all who may thereafter become members of said church according to the discipline, rules and usages of the Methodist Episcopal church, shall thereby become, and thenceforth be, a body politic or corporation, by the name expressed in said articles of association, with all the powers, rights and privileges appertaining to religious corporations by the laws of this state.

HISTORY: CL 1915, 10918;—CL 1929, 10649;—CL 1948, 458.24.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 800.1920, 800.1923 and GCR 105.

458.25 Church government; ecclesiastical polity.

Sec. 5. Said church, when so organized, shall be subject in all matters of church government and ecclesiastical polity to the discipline, usage and ministerial appointments of the Methodist Episcopal church in the United States of America, as from time to time authorized and declared by the general conference of said church and the annual conference within whose bounds such corporation may be situated.

HISTORY: CL 1915, 10919;—CL 1929, 10850;—CL 1948, 458.25.

458.26 Management of temporalities; trustees.

Sec. 6. The temporalities of said church shall be managed by a board of trustees consisting of not less than 3, nor more than 9 members, to be elected by said corporation, the said trustees to hold their office for the term of 1 year, or until their successors shall be elected and duly qualified. Vacancies in said board may be filled at any time for the balance of the unexpired term by an election as in other cases.

HISTORY: Am. 1901, p. 14, Act 9, Imd. Eff. Feb. 20;—CL 1915, 10620;—CL 1929, 10851;—CL 1948, 458.26.

458.27 Powers of corporation and board of trustees; rights of ministers and presiding elders.

Sec. 7. Said corporation may have a seal and alter the same at pleasure; it may in its corporate name sue and be sued in all courts and places; it shall have power to acquire, hold, sell and convey property, both real and personal, in accordance with this act, and it may recover and hold the debts, demands, rights, privileges and all property, whether real or personal, of whatsoever sort it may be, belonging or appertaining to said church, in whatever manner the same may have been acquired, and in whose hands soever the same may be held, the same as if the right and title had originally been vested in said corporation. The board of trustees may authorize certain of the officers of said board to affix the corporate name and the seal of the corporation, and to execute and attest conveyances, notes, obligations, acquittances and all other necessary legal documents. It may sell, mortgage and dispose of its personal property; and

may mortgage and incur its real estate, but not for the current expenses of the church. It may hold so much land as may be needful for the proper purposes of said church and its parsonage. Said corporation shall at all times permit such ministers, belonging to the Methodist Episcopal church, as shall from time to time be duly authorized by the general conference of said church, or by the annual conference within whose bounds the said corporation may be, to preach and expound God's holy word therein; and shall permit pastors and presiding elders, duly appointed to execute the discipline of said Methodist Episcopal church, to administer the sacraments therein.

HISTORY: CL 1915, 10921;—CL 1929, 10852;—CL 1948, 458.27.

458.28 Amendment of articles; procedure.

Sec. 8. It shall be lawful for any church organized under the provisions of this act, by a 2/3 vote of the quarterly conference of said church, to alter or amend its articles of association in any manner not inconsistent with the provisions of this act or the book of discipline of the Methodist Episcopal church; and such alteration or amendment shall become operative when 2/3 of all the members of the quarterly conference shall execute amended articles and the said amended articles are acknowledged in the same manner as stated in section 3 of this act, and the presiding elder has affixed his certificate thereto, as provided in said section, and the same has been recorded or left for record, as provided in section 4 of this act.

HISTORY: CL 1915, 10922;—CL 1929, 10853;—CL 1948, 458.28.

458.29 Sale of realty; procedure, proceeds; abandoned property.

Sec. 9. Whenever it shall become necessary, for the payment of debts or with a view of reinvestment, to make a sale of any real estate belonging to said church, the quarterly conference of said church may, by a vote of a majority of all the members of said quarterly conference and the consent of the pastor of said church and of the presiding elder of the district of which such church may or shall be a part, authorize a sale of said real estate by the trustees of said church, with such limitations and restrictions as the quarterly conference may judge necessary and impose; and the trustees of said church, when so authorized, may sell and convey said property, and with the proceeds of such sale pay the debts of such corporation, or reinvest the said proceeds by the purchase or improvement of other property for the same uses and deeded to the corporation in the same manner as provided in section 7 of this act, as said trustees may be directed by the quarterly conference: Provided, That in all cases the proceeds of such sale, after the payment of debts, if any, if not applied to the purchase or improvement of other property as aforesaid, shall be held by such corporation subject to the order of the annual conference within the bounds of which such property is located. In all cases where property belonging to any church incorporated under the provisions of this act has been abandoned, and is no longer used for the purpose for which said property was acquired, or said corporation has dissolved, or has ceased to exist, the title to the said property belonging to said corporation shall pass to the annual conference within the bounds of which said property is located; and said annual conference may, by such officer or committee as said annual conference may designate for that purpose, apply to the circuit court in chancery, for the county in which such property may be, for license to sell the same; and such license may be granted by said court after such notice of said application as the court may direct; and thereupon said property may be sold, and the proceeds of such sale applied or used as said annual conference may direct.

HISTORY: CL 1915, 10923;—CL 1929, 10854;—CL 1948, 458.29.

458.30 Reincorporation under act.

Sec. 10. Any Methodist Episcopal church heretofore incorporated, or the trustees of which have heretofore exercised the powers of a body corporate, may by a 2/3 vote of

the members of the quarterly conference, place itself under the provisions of this act, the same as if originally incorporated under it, by 2/3 of the members of said quarterly conference executing articles of association as provided in section 3 of this act, and the presiding elder affixing his certificate thereto, as provided in said section, and recording the same, as provided in section 4 of this act.

HISTORY: CL 1915, 10924;—CL 1929, 10855;—CL 1948, 458.30.

458.31 Construction of inconsistent acts.

Sec. 11. In all proceedings or suits that may arise, or be brought in any of the courts of this state, touching, or in any way concerning, churches that may be incorporated under this act, or which by vote of the quarterly conference thereof may have placed themselves under its provisions, all other acts or parts of acts inconsistent herewith shall be interpreted and construed in such manner as to give full force and effect to all the provisions of this act, and to all the rights and privileges granted by this act to churches incorporated or placed thereunder.

HISTORY: CL 1915, 10925;—CL 1929, 10856;—CL 1948, 458.31.

458.32 Trustees; evidence of authority.

Sec. 12. It is further provided that the execution by the acting trustees of said corporation, in proper form, of any deed, mortgage, note, bond, or other obligation or contract of said corporation, shall be prima facie evidence of the proper appointment of said trustees and that the necessary steps have been taken to give them full authority to make such transaction.

HISTORY: CL 1915, 10926;—CL 1929, 10857;—CL 1948, 458.32.

458.33 Extension of corporate life; procedure.

Sec. 13. Any corporation organized under the provisions of this act whose corporate existence is about to expire by limitation may extend its corporate existence from time to time for a term not exceeding 30 years, by causing to be recorded in the office of the clerk of the county where such corporation is located, a copy of a resolution expressing a desire to so extend its corporate existence, which resolution shall be adopted by such corporation at a meeting called for the purpose by the pastor of the church or the presiding elder of the district within which said corporation is located. When such resolution is left for record with the clerk of the county within which said corporation is located it shall be duly attested by the pastor of the church or the presiding elder of the district. Upon the leaving of such resolution for record, as above specified, with the attestation as above specified, the corporate existence of such body shall be extended in accordance with the terms of such resolution for a term not exceeding 30 years from the date of the expiration of its former term, and all rights of property and of contract shall remain unimpaired and the corporate identity of such body shall remain unchanged.

HISTORY: CL 1915, 10927;—CL 1929, 10858;—CL 1948, 458.33.

Act 27, 1905, p. 39; Imd. Eff. Mar. 22.

AN ACT to provide for the incorporation of Wesleyan Methodist churches.

The People of the State of Michigan enact:

458.41 Wesleyan Methodist church; incorporators.

Sec. 1. It shall be lawful for any number of members of the Wesleyan Methodist connection (or church), of full age, not less than 5, to organize and procure the incorporation of a Wesleyan Methodist church.

HISTORY: CL 1915, 11044;—CL 1929, 10859;—CL 1948, 458.41.

GENERAL CORPORATION ACT: For provisions relating to ecclesiastical corporations, see Compilers' §§ 450.159 et seq. and 450.178 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

TAX EXEMPTIONS: See Compilers' §§ 211.7 subd. 5 and 211.9.

458.42 Articles of association; execution.

Sec. 2. The persons desiring to organize such church shall execute and acknowledge, before any person authorized to take acknowledgment of deeds, articles of association in writing, whereby they shall agree to organize a church, which shall be governed by the discipline, rules and usages of the Wesleyan Methodist connection (or church).

HISTORY: CL 1915, 11045;—CL 1929, 10660;—CL 1948, 458.42.

458.43 Articles; contents, form.

Sec. 3. Said articles of association shall contain the following items: First, the name of said church; second, the township, village or city, and the county in which said church shall be located; third, the time for which said corporation shall be created; fourth, an agreement to worship and labor together according to the discipline, rules and usages of the Wesleyan Methodist connection (or church). Said articles may be in the following form:

We, the undersigned, desiring to become incorporated under the provisions of act number of the public acts of 1905, entitled "An act to provide for the incorporation of Wesleyan Methodist churches," do hereby make, execute and adopt the following articles of association, to wit:

First, The name assumed by this corporation, and by which it shall be known in law, is "The Wesleyan Methodist Church;"

Second, The location of said church shall be in the of, county of, and state of Michigan;

Third, The time for which said corporation shall be created shall not exceed 30 years from, the date of its organization;

Fourth, The members of said church shall worship and labor together according to the discipline, rules and usages of the Wesleyan Methodist connection (or church) of America, as from time to time authorized and declared by the general conference of said connection and the annual conference within whose bounds said corporation is situated.

In witness whereof, we, the parties hereby associating, for the purpose of giving legal effect to these articles, hereunto sign our names and places of residence.

Done at the of, county of and state of Michigan this day of, A.D. 19....

(Signatures.)

(Residences.)

State of Michigan,

County of

On this day of A. D. 19, before me, a, in and for said county, personally appeared, known to me to be the persons named in, and who executed the foregoing instrument, and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

.....
.....

HISTORY: CL 1915, 11046;—CL 1929, 10661;—CL 1948, 458.43.

458.44 Articles; execution, recording; body corporate, powers.

Sec. 4. Said articles of association shall be executed in duplicate, and acknowledged before some officer authorized by law to take acknowledgment of deeds. One of such

duplicate copies shall be retained by such corporation and 1 copy shall be recorded in the office of the county clerk of the county where such corporation is formed. When said articles of association shall have been recorded or left for record in the office of said county clerk, the said persons so signing the said articles of association, and their associates and fellow members of said church, and all who may thereafter become members of said church, according to the discipline, rules and usages of the Wesleyan Methodist connection (or church), shall thereby become, and thenceforth be, a body politic or corporation, by the name expressed in said articles of association, with all the powers, rights and privileges appertaining to religious corporations by the laws of this state.

HISTORY: CL 1915, 11047;—CL 1929, 10862;—CL 1948, 458.44.

458.45 Church government; ecclesiastical polity.

Sec. 5. Said church, when so organized, shall be subject in all matters of church government and ecclesiastical polity to the discipline, usages and ministerial appointments of the Wesleyan Methodist connection (or church) of America, as from time to time authorized and declared by the general conference of said connection and the annual conference within whose bounds such corporation may be situated.

HISTORY: CL 1915, 11048;—CL 1929, 10863;—CL 1948, 458.45.

458.46 Board of trustees; election, term, vacancies; secular affairs.

Sec. 6. The secular affairs of such church shall be managed by a board of trustees, consisting of not less than 3 nor more than 9 members, to be elected by ballot by said corporation from the membership of the church. The said trustees shall hold office for such term as the said church shall decide upon, and until their successors are elected, unless they cease to be members of said church, in which case they shall also cease to be trustees. Vacancies in said board may be filled at any time for the balance of the term, by an election as in other cases.

HISTORY: CL 1915, 11049;—CL 1929, 10864;—CL 1948, 458.46.

458.47 Board of trustees; election in certain case; dissolution, conference legal successor; sale of property.

Sec. 7. If it shall happen that any church organized under the provisions of this act shall, from any cause, be found at any time without trustees, such church shall not for that cause lose its corporate existence, but such church may at any time proceed to elect trustees, as provided in this act: Provided, That whenever any corporation organized under the provisions of this act shall be dissolved by the death of all its members, or by the loss of so many of them that it is thereby rendered unable to do any corporate act or to restore itself by proceeding to elect trustees, as provided in this act, the annual conference, within whose bounds such corporation may be situated, shall be held and deemed to be the legal successor of such corporation and shall succeed to, and be vested with, all property rights which were in such corporation at the time it was dissolved; and said annual conference may, by such officer or committee as said annual conference may designate for that purpose, apply to the circuit court in chancery, for the county in which such property may be, for license to sell the same; and such license may be granted by said court after such notice of said application as the court may direct; and thereupon said property may be sold, and the proceeds of such sale applied or used as said annual conference may direct.

HISTORY: CL 1915, 11050;—CL 1929, 10865;—CL 1948, 458.47.

458.48 By-laws.

Sec. 8. The persons forming such corporation may adopt by-laws, and execute and acknowledge them in the same manner as the articles of association above provided for, and such by-laws shall be recorded in the office of the county clerk of the county in which the corporation is located. Such by-laws shall prescribe the qualifications of

members; the manner in which persons are to become members, or cease to be such; the officers of such corporation; their official titles; their term of office; the manner of their election and removal from office; their official duties; the time and manner of calling and holding meetings; the manner and condition under which personal property and real estate may be acquired, held and disposed of, and such other by-laws as may be deemed necessary for the management of the affairs of such corporation. Such by-laws shall also prescribe the manner in which they may be altered, amended or repealed.

HISTORY: CL 1915, 11051;—CL 1929, 10866;—CL 1948, 458.48.

458.49 Powers of corporation; rights of ministers.

Sec. 9. Said corporation may have a seal and alter the same at pleasure; it may, in its corporate name, sue and be sued in all courts and places; it shall have power to acquire, hold, sell and convey property, both real and personal, in accordance with this act, and it may recover and hold the debts, demands, rights, privileges, and all property, whether real or personal, of whatever sort it may be, belonging or appertaining to said church, in whatever manner the same may have been acquired, and in whose hands soever the same may be held, the same as if the right and title had originally been invested in said corporation. It may sell (but not mortgage) or otherwise dispose of its personal property. And it may, under restrictions hereinafter provided, sell, mortgage, or otherwise dispose of or encumber its real estate, but not for current expenses. It may hold so much land as may be needful for the proper purposes of said church and its parsonage. It may also hold for a period not to exceed 10 years, real estate, which may be conveyed or devised to it or to said trustees to be sold and the proceeds to be used in any way for the benefit of said church, as directed in the conveyance or will. Said corporation shall at all times permit such ministers belonging to the Wesleyan Methodist church, as shall from time to time be duly authorized by the general conference of said connection (or church) or by the annual conference, within whose bounds the said corporation may be, to preach and expound God's holy word therein; and shall permit pastors duly appointed to execute the discipline of the Wesleyan Methodist connection, and to administer the sacraments therein.

HISTORY: CL 1915, 11052;—CL 1929, 10867;—CL 1948, 458.49.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

458.50 Amendment of articles; procedure.

Sec. 10. It shall be lawful for any church organized under the provisions of this act, by a 2/3 vote of the members of the same, who are present and voting, to alter and amend its articles of association, or its by-laws, in any manner not inconsistent with the provisions of this act, or the discipline of the Wesleyan Methodist connection; and such alteration or amendment shall become operative when 2/3 of the voting members present shall authorize the board of trustees to execute and acknowledge the amended article or articles in the same manner as stated for the original articles, and the same has or have been recorded, or left for record, in the office of the county clerk as provided in section 4 of this act.

HISTORY: CL 1915, 11053;—CL 1929, 10868;—CL 1948, 458.50.

458.51 Sale or mortgage of real estate for re-investment or to pay debts; title, passing to annual conference.

Sec. 11. When it shall become necessary for the payment of debts, or with a view to re-investment, to make a sale or mortgage of any real estate belonging to said church, the members of the church, by a 2/3 majority of the same, who are present and voting, may authorize a sale or mortgage of said real estate by the trustees of said church, who, when so authorized, may sell and convey or mortgage said property, and with the proceeds of such sale or mortgage pay the debts of such corporation, or re-invest the

said proceeds by the purchase or improvement of other property for the same uses and deeded to the corporation in the same manner as provided in section 9 of this act, as said trustees may be directed by the church. In all cases where property belonging to any church incorporated under the provisions of this act has been abandoned and is no longer used for the purpose for which said property was acquired, or said corporation has dissolved, or has ceased to exist, the title to said property belonging to said corporation, together with all property rights which were in such corporation at the time it was dissolved, shall pass to the annual conference within the bounds of which said property is located, and said annual conference may proceed as in section 7 of this act.

HISTORY: CL 1915, 11054;—CL 1929, 10869;—CL 1948, 458.51.

458.52 Reincorporation under act; procedure.

Sec. 12. Any Wesleyan Methodist church heretofore incorporated, or the trustees of which have heretofore exercised the powers of a body corporate, may by a 2/3 vote of the members of the society, present and voting, place itself under the provisions of this act, the same as if originally incorporated under it, by 2/3 of the members present and voting executing articles of association as provided in section 3 of this act, and recording the same, as provided in section 4 of this act.

HISTORY: CL 1915, 11055;—CL 1929, 10870;—CL 1948, 458.52.

458.53 Construction of inconsistent acts.

Sec. 13. In all proceedings or suits that may arise, or be brought in any of the courts of this state, touching, or in any way concerning churches that may be incorporated under this act, or which by vote of the members of the society thereof may have placed themselves under its provisions, all other acts or parts of acts inconsistent herewith shall be interpreted and construed in such manner as to give full force and effect to all the provisions of this act, and to all the rights and privileges granted by this act to churches incorporated or placed thereunder.

HISTORY: CL 1915, 11056;—CL 1929, 10871;—CL 1948, 458.53.

458.54 Trustees; evidence of authority.

Sec. 14. It is further provided that the execution by the acting trustees of said corporation, in proper form, of any deed, mortgage, note, bond, or other obligation or contract of said corporation, shall be prima facie evidence of the proper appointment of said trustees, and that the necessary steps have been taken to give them full authority to make such transaction.

HISTORY: CL 1915, 11057;—CL 1929, 10872;—CL 1948, 458.54.

458.55 Extension of corporate life; procedure.

Sec. 15. Any corporation organized under the provisions of this act, whose corporate existence is about to expire by limitation, may extend its corporate existence from time to time for a term not exceeding 30 years, by causing to be recorded in the office of the clerk of the county where such corporation is located, a copy of a resolution expressing a desire to so extend its corporate existence, which resolution shall be adopted by such corporation at a meeting called for the purpose by the pastor of the church. When such resolution is left for record with the clerk of the county, within which said corporation is located, it shall be duly attested by the pastor of the church. Upon the leaving of such resolution for record, as above specified, with the attestation as above specified, the corporate existence of such body shall be extended in accordance with the terms of such resolution for a term not exceeding 30 years from the date of the expiration of its former term, and all rights of property and of contract shall remain unimpaired and the corporate identity of such body shall remain unchanged.

HISTORY: CL 1915, 11058;—CL 1929, 10873;—CL 1948, 458.55.

Act 26, 1907, p. 27; Imd. Eff. Mar. 20.

AN ACT to provide for the incorporation of Methodist Protestant churches.

The People of the State of Michigan enact:

458.61 Methodist Protestant church; incorporators.

Sec. 1. It shall be lawful for any number of persons of full age, not less than 5, residing within the bounds of the charge in which the proposed church is to be located, to organize and procure the incorporation of a Methodist Protestant church.

HISTORY: CL 1915, 11059;—CL 1929, 10874;—CL 1948, 458.61.

FORMER ACT: Act 138 of 1897.

GENERAL CORPORATION ACT: For provisions relating to ecclesiastical corporations, see Compilers' §§ 450.159 et seq. and 450.175 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

TAX EXEMPTIONS: See Compilers' §§ 211.7 subd. 5 and 211.9.

458.62 Articles of association; execution.

Sec. 2. The persons desiring to organize such church, shall execute and acknowledge before any person authorized to take acknowledgments of deeds, articles of association, in writing, whereby they shall agree to organize a church which shall be governed by the discipline, rules and usages of the Methodist Protestant church.

HISTORY: CL 1915, 11060;—CL 1929, 10875;—CL 1948, 458.62.

458.63 Articles; contents, form.

Sec. 3. Said articles of association shall contain the following items:

First, The name of said church;

Second, The township, village or city and the county in which it shall be located;

Third, An agreement to worship and labor together according to the discipline, rules and usages of the Methodist Protestant church. Said articles may be in the following form: We, the undersigned, desiring to become incorporated under the provisions of act number of the public acts of, entitled "An act to provide for the incorporation of Methodist Protestant churches," do hereby make, execute and adopt the following articles of association, to-wit:

First, The name assumed by this corporation, and by which it shall be known in law, is "The Methodist Protestant church;"

Second, The location of said church shall be in the of, county of and state of Michigan;

Third, The members of said church shall worship and labor together, according to the discipline, rules and usages of the Methodist Protestant church, as from time to time authorized and declared by the general conference of said church, and the annual conference within whose bounds said corporation is situated;

Fourth, The trustees of this corporation shall be in number. At the first election of trustees of said church under these articles trustees shall be elected for a term of 1 year, trustees shall be elected for a term of 2 years, and trustees shall be elected for a term of 3 years, and trustees shall be elected at each annual election thereafter;

Fifth, The annual meeting of this society shall be held on of in each year, for the purpose of electing trustees, and transacting such other business as may properly come before it.

In witness whereof, we, the parties associating for the purpose of giving legal effect to these articles, hereunto sign our names and places of residence.

Done at the of county of and state of Michigan, this day of A.D.

(Signatures.)

(Residences.)

State of Michigan, }
County of } ss.

On this day of, A.D., before me, a
..... in and for said county, personally appeared, known to me to be
the persons named in and who executed the foregoing instrument, and severally ac-
knowledgeed that they executed the same freely and for the intents and purposes
therein mentioned.

.....
.....

HISTORY: CL 1915, 11061;—CL 1929, 10876;—CL 1948, 458.63.

458.64 Articles; recording, fee; body corporate, powers.

Sec. 4. Said articles of association shall be recorded in the office of the county clerk of the county wherein such church, or their place of worship, is located, such record to be made in a book provided by said clerk for that purpose; and such clerk shall be entitled to 10 cents for each folio for recording the same. When said articles of association shall have been recorded, the said persons so signing said articles of association, and their associates and fellow members of said church, and all who may thereafter become members of said church, according to the rules, usages and discipline of the Methodist Protestant church, shall thereby become and thenceforth be a body politic, or corporation, by the name expressed in the said articles of association, with all the powers, rights and privileges appertaining to religious corporations by the laws of this state.

HISTORY: CL 1915, 11062;—CL 1929, 10877;—CL 1948, 458.64.

458.65 Church government; ecclesiastical polity.

Sec. 5. Said church, when so organized, shall be in all matters of church government and ecclesiastical polity subject to the discipline, rules and usages, and ministerial appointments of the Methodist Protestant church, as from time to time authorized by the general conference of said church, and the annual conference within whose bounds said corporation may be situated.

HISTORY: CL 1915, 11063;—CL 1929, 10878;—CL 1948, 458.65.

458.66 Secular affairs; management; board of trustees, election, term.

Sec. 6. The secular affairs of said church shall be managed by a board of trustees, consisting of not less than 3, nor more than 9 members of the association, elected and organized according to the provisions of the discipline of the Methodist Protestant church, who shall hold office until their successors have been elected and entered upon the duties of the office.

HISTORY: CL 1915, 11064;—CL 1929, 10879;—CL 1948, 458.66.

458.67 Powers of corporation; execution of legal documents; rights of ministers.

Sec. 7. Said corporation may have a seal and alter the same at pleasure. It may in its corporate name, sue and be sued in all courts of this state. It shall have power to acquire, hold, sell or convey property, both real and personal, in accordance with this act, and it may hold and recover all debts, demands, rights, privileges and all property, whether real or personal, of whatsoever sort it may be, belonging or appertaining to said church in whatsoever manner the same may have been acquired, and in whose-soever hands the same may be held, the same as if the right and title had originally been vested in said corporation. The board of trustees may authorize certain officers of said board to affix the name and seal of said corporation, and to execute and attest conveyances, notes, obligations, acquittances and all necessary legal documents. It

may sell, mortgage or otherwise dispose of its personal property, and it may, under restrictions hereinafter provided, sell, mortgage or otherwise dispose of or encumber its real estate, but not for current expenses. It may hold so much land as may be needed for the proper purposes of the church and its parsonage. It may also hold for a period not to exceed 10 years, real estate, which may be conveyed or devised to it, or to said trustees, to be sold and the proceeds to be used in any way for the benefit of said church, as directed in the conveyance or will. Said corporation shall at all times permit all ministers belonging to the Methodist Protestant church, as shall from time to time be duly authorized by the annual conference, within whose bounds the said corporation may be, to preach and expound God's holy word therein, and shall permit presidents and pastors, duly appointed, to execute the discipline of the Methodist Protestant church and to administer the sacraments therein.

HISTORY: CL 1915, 11065;—CL 1929, 10880;—CL 1948, 458.67.

458.68 Powers of trustees; disposition of realty.

Sec. 8. The trustees shall have power, according to the terms and limitations of the discipline of the Methodist Protestant church, as from time to time authorized and declared by the general conference of said church, to purchase, build, repair, lease, sell, rent, mortgage, encumber or otherwise dispose of property: Provided, That in case of selling, mortgaging or otherwise encumbering or disposing of real estate, the consent of the president of the annual conference, within whose bounds the said corporation may be, shall be obtained: And Provided further, That in case the said president shall refuse, or withhold his consent to the selling, mortgaging, encumbering or disposing of real estate, appeal may be had to the said conference at its next session, and said appeal shall be final.

HISTORY: CL 1915, 11066;—CL 1929, 10881;—CL 1948, 458.68.

458.69 Title; passing to annual conference; license to sell; dissolution of corporation.

Sec. 9. In all cases where property belonging to any church society incorporated under the provisions of this act has been abandoned, or is no longer used for the purpose for which said property was acquired or for the benefit of said church society, and has not been conveyed by said society under the provisions of this act, or said corporation has dissolved or become extinct, the title to said property belonging to said corporation shall pass to the annual conference within whose bounds said property is located. And said annual conference may, by such officer or committee as said conference may designate for that purpose, apply to the circuit court for the county in which said property may be, for license to sell the same. And such license may be granted by said court, after such notice of said application, as the court may direct, and thereupon said property may be sold and the proceeds of such sale disposed of as provided in the book of discipline of the Methodist Protestant church; and said court, upon the hearing of said application, may dissolve said corporation when it shall appear by proof that said society has ceased to support a pastor, or perform the usual functions of a church, for a period of 2 years.

HISTORY: CL 1915, 11067;—CL 1929, 10882;—CL 1948, 458.69.

458.70 Service of process.

Sec. 10. In all suits or legal proceedings brought against corporations organized under the provisions of this act, process may be served upon the chairman or any member of the board of trustees.

HISTORY: CL 1915, 11068;—CL 1929, 10883;—CL 1948, 458.70.

SERVICE OF PROCESS: See also Compilers' §§ 600.1920, 600.1923 and GCR 105.

458.71 Amendment of articles; procedure.

Sec. 11. It shall be lawful for any church society incorporated under the provisions of this act, at a meeting called for that purpose, of which 4 weeks' notice shall have been given by announcement at a regular service, by a vote of 2/3 of all the qualified members present and voting, to amend its articles of association in any way not inconsistent with the provisions of this act, or the book of discipline of the Methodist Protestant church; and such amendment shall become operative when said amended articles are executed and acknowledged in the same manner as stated in sections 2 and 3 of this act and the same has been recorded, or left for record as provided in section 4 of this act.

HISTORY: CL 1915, 11069;—CL 1929, 10884;—CL 1948, 458.71.

458.72 Reincorporation under act; procedure.

Sec. 12. Any Methodist Protestant church society, heretofore incorporated, or the trustees of which have heretofore exercised the powers of a body corporate, may, by a 2/3 vote of its qualified members, place itself under the provisions of this act, the same as if originally incorporated under it, by 2/3 of the qualified members executing articles of association as hereinbefore provided and recording the same as also hereinbefore provided.

HISTORY: CL 1915, 11070;—CL 1929, 10885;—CL 1948, 458.72.

458.73 Construction of inconsistent acts.

Sec. 13. In all proceedings or suits that may arise or be brought in any of the courts of this state, touching or in any way concerning churches that may be incorporated under this act, or by a vote of the qualified members have placed themselves under its provisions, all other acts or parts of acts inconsistent herewith shall be interpreted and construed in such manner as to give full force and effect to all the provisions of this act, and to all the rights and privileges granted by this act to churches incorporated or placed thereunder.

HISTORY: CL 1915, 11071;—CL 1929, 10886;—CL 1948, 458.73.

458.74 Trustees; evidence of authority.

Sec. 14. It is further provided that the execution by the trustees of said corporation, of any deed, mortgage, note, bond or other obligation, or contract of said corporation in proper form shall be prima facie evidence of the proper appointment of said trustees; said proceedings having been authorized by the society and president as hereinbefore provided.

HISTORY: CL 1915, 11072;—CL 1929, 10887;—CL 1948, 458.74.

Act 29, 1901, p. 45; Imd. Eff. Mar. 26.

AN ACT to provide for the incorporation of Free Methodist churches.

The People of the State of Michigan enact:

458.81 Free Methodist church; incorporators.

Sec. 1. It shall be lawful for any number of members of the Free Methodist church, of full age, not less than 5, with the consent of the district elder of the district in which the proposed church is to be located, to organize and procure the incorporation of a Free Methodist church.

HISTORY: CL 1915, 11003;—CL 1929, 10888;—CL 1948, 458.81.

GENERAL CORPORATION ACT: For provisions relating to ecclesiastical corporations, see Compilers' §§ 450.159 et seq. and 450.178 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

TAX EXEMPTIONS: See Compilers' §§ 211.7 subd. 5 and 211.9.

458.82 Articles of association and certificate of consent; execution.

Sec. 2. The persons desiring to organize such church shall execute and acknowledge, before any person authorized to take acknowledgment of deeds, articles of association in writing, whereby they shall agree to organize a church, which shall be governed by the discipline, rules and usages of the Free Methodist church. To such articles of association there shall be attached a certificate by the district elder of the district in which said church is to be located, that the said church was organized by and with the consent of said district elder.

HISTORY: CL 1915, 11004;—CL 1929, 10889;—CL 1948, 458.82.

458.83 Articles and certificate of consent; contents, form.

Sec. 3. Said articles of association shall contain the following items: First, the name of said church; second, the township, village or city, and the county in which said church shall be located; third, the time for which corporation shall be created; fourth, an agreement to worship and labor together according to the discipline, rules and usages of the Free Methodist church. Said articles may be in the following form: We, the undersigned, desiring to become incorporated under the provisions of act number of the public acts of 1901, entitled "An act to provide for the incorporation of Free Methodist churches," do hereby make, execute and adopt the following articles of association, to wit:

First, The name assumed by this corporation, and by which it shall be known in law, is "The Free Methodist church;"

Second, The location of said church shall be in the, of, county of, and state of Michigan;

Third, The time for which said corporation shall be created shall not exceed 30 years from, the date of its organization;

Fourth, The members of said church shall worship and labor together according to the discipline, rules and usages of the Free Methodist church of North America, as from time to time authorized and declared by the general conference of said church and the annual conference within whose bounds said corporation is situated.

In witness whereof, we, the parties hereby associating for the purpose of giving legal effect to these articles, hereunto sign our names and places of residence.

Done at the of, county of, and state of Michigan, this day of, A.D. 19....

(Signatures)	}	(Residences.)
STATE OF MICHIGAN,	ss.	
County of		

On this day of, A.D. 19...., before me a in and for said county, personally appeared, known to me to be the persons named in, and who executed the foregoing instrument, and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

I,, district elder of the district, of the annual conference of the Free Methodist church, the same being the district in which the church mentioned in the foregoing articles of association is to be, or is now located, do hereby certify that such church was organized by and with my consent and concurrence.

Dated at, Mich.,, A.D. 19....

.....
District Elder.

HISTORY: CL 1915, 11005;—CL 1929, 10890;—CL 1948, 458.83.

458.84 Articles and certificate of consent; execution, acknowledgement, recording; body corporate, powers.

Sec. 4. Said articles of association shall be executed in duplicate, and acknowledged before some officer authorized by law to take acknowledgment of deeds. One of such duplicate copies shall be retained by such corporation, and 1 copy shall be recorded in the office of the county clerk of the county where such corporation is formed. When said articles of association and said certificate of the district elder shall have been recorded or left for record in the office of said county clerk, the said persons so signing the said articles of association, and their associates and fellow members of said church, and all who may thereafter become members of said church, according to the discipline, rules and usages of the Free Methodist church, shall thereby become, and thenceforth be a body politic or corporation, by the name expressed in said articles of association, with all the powers, rights and privileges appertaining to religious corporations by the laws of this state.

HISTORY: CL 1915, 11006;—CL 1929, 10891;—CL 1948, 458.84.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

458.85 Church government; ecclesiastical polity.

Sec. 5. Said church, when so organized, shall be subject in all matters of church government and ecclesiastical polity to the discipline, usages and ministerial appointments of the Free Methodist church of North America, as from time to time authorized and declared by the general conference of said church and the annual conference within whose bounds such corporation may be situated.

HISTORY: CL 1915, 11007;—CL 1929, 10892;—CL 1948, 458.85.

458.86 Secular affairs, management; board of trustees, election, term, vacancies.

Sec. 6. The secular affairs of such church shall be managed by a board of trustees consisting of not less than 3 nor more than 9 members, to be elected by said corporation from the membership of the church, the said trustees to hold their office for the term of 1 year. Vacancies in said board may be filled at any time for the balance of the term, by an election as in other cases.

HISTORY: CL 1915, 11008;—CL 1929, 10893;—CL 1948, 458.86.

458.87 Powers of corporation; execution of legal documents; rights of ministers and district elders.

Sec. 7. Said corporation may have a seal and alter the same at pleasure; it may, in its corporate name, sue and be sued in all courts and places; it shall have power to acquire, hold, sell and convey property, both real and personal, in accordance with this act, and it may recover and hold the debts, demands, rights, privileges, and all property, whether real or personal, of whatever sort it may be, belonging or appertaining to said church, in whatever manner the same may have been acquired, and in whose hands soever the same may be held, the same as if the right and title had originally been vested in said corporation.

The board of trustees may authorize certain of the officers of said board to affix the corporate name and seal of the corporation, and to execute and attest conveyances, notes, obligations, acquittances and all other legal documents.

It may sell (but not mortgage) or otherwise dispose of its personal property. And it may, under restrictions hereinafter provided, sell, mortgage, or otherwise dispose of or encumber its real estate, but not for current expenses. It may hold so much land as may be needful for the proper purposes of said church and its parsonages. It may also hold for a period not to exceed 10 years, real estate, which may be conveyed or de-

vised to it or to said trustees to be sold and the proceeds to be used in any way for the benefit of said church, as directed in the conveyance or will. Said corporation shall at all times permit such ministers belonging to the Free Methodist church as shall from time to time be duly authorized by the general conference of said church or by the annual conference, within whose bounds the said corporation may be, to preach and expound God's Holy Word therein; and shall permit pastors and district elders duly appointed to execute the discipline of said Free Methodist church, and to administer the sacraments therein.

HISTORY: CL 1915, 11009;—CL 1929, 10894;—CL 1948, 458.87.

458.88 Amendment of articles; procedure.

Sec. 8. It shall be lawful for any church organized under the provisions of this act, by a 2/3 vote of the official members of the society, to alter or amend its articles of association in any manner not inconsistent with the provisions of this act, or the book of discipline of the Free Methodist church; and such alteration or amendment shall become operative when 2/3 of all the official members of the society shall execute amended articles and the said amended articles are acknowledged in the same manner as stated in section 3 of this act, and the district elder has affixed his certificate thereto, as provided in said section, and the same has been recorded or left for record, as provided in section 4 of this act.

HISTORY: CL 1915, 11010;—CL 1929, 10895;—CL 1948, 458.88.

458.89 Sale or mortgage of real estate to pay debts or for re-investment; title, passing to annual conference; license to sell; procedure.

Sec. 9. When it shall become necessary for the payment of debts or with a view of re-investment, to make a sale or mortgage of any real estate belonging to said church, the members of the society, by a majority vote of the same, and the consent of the quarterly conference of the district in which the church is located, and with the approval of the district elder, may authorize a sale or mortgage of said real estate by the trustees of said church with such limitations and restrictions as the (district) quarterly conference may judge necessary and impose; and the trustees of said church, when so authorized, may sell and convey or mortgage said property, and with the proceeds of such sale or mortgage pay the debts of such corporation, or re-invest the said proceeds by the purchase or improvement of other property for the same uses and deeded to the corporation in the same manner as provided in section 7 of this act, as said trustees may be directed by the (district) quarterly conference: Provided, That in all cases the proceeds of such sale, after the payment of debts, if any, if not applied to the purchase or improvement of other property as aforesaid, shall be held, by such corporation, subject to the order of the annual conference within the bounds of which such church is located. In all cases where property belonging to any church incorporated under the provisions of this act has been abandoned and is no longer used for the purpose for which said property was acquired, or said corporation has dissolved, or has ceased to exist, the title to the said property belonging to said corporation shall pass to the annual conference within the bounds of which said property is located; and said annual conference may, by such officer or committee as said annual conference may designate for that purpose, apply to the circuit court in chancery, for the county in which such property may be, for license to sell the same; and such license may be granted by said court after such notice of said application as the court may direct; and thereupon said property may be sold, and the proceeds of such sale applied or used as said annual conference may direct.

HISTORY: CL 1915, 11011;—CL 1929, 10896;—CL 1948, 458.89.

458.90 Reincorporation under act; procedure.

Sec. 10. Any Free Methodist church heretofore incorporated, or the trustees of which have heretofore exercised the powers of a body corporate, may by a 2/3 vote of the members of the society, place itself under the provisions of this act, the same as if originally incorporated under it, by 2/3 of the members of said society executing articles of association as provided in section 3 of this act, and the district elder affixing his certificate thereto, as provided in said section, and recording the same, as provided in section 4 of this act.

HISTORY: CL 1915, 11012;—CL 1929, 10897;—CL 1948, 458.90.

458.91 Construction of inconsistent acts.

Sec. 11. In all proceedings or suits that may arise, or be brought in any of the courts of this state, touching, or in any way concerning, churches that may be incorporated under this act, or which by vote of the members of the society thereof may have placed themselves under its provisions, all other acts or parts of acts inconsistent herewith shall be interpreted and construed in such manner as to give full force and effect to all the provisions of this act, and to all the rights and privileges granted by this act to churches incorporated or placed thereunder.

HISTORY: CL 1915, 11013;—CL 1929, 10898;—CL 1948, 458.91.

458.92 Trustees; evidence of authority.

Sec. 12. It is further provided that the execution by the acting trustees of said corporation, in proper form, of any deed, mortgage, note, bond, or other obligation or contract of said corporation, shall be prima facie evidence of the proper appointment of said trustees, and that the necessary steps have been taken to give them full authority to make such transaction.

HISTORY: CL 1915, 11014;—CL 1929, 10899;—CL 1948, 458.92.

458.93 Extension of corporate life; procedure.

Sec. 13. Any corporation organized under the provisions of this act whose corporate existence is about to expire by limitation, may extend its corporate existence from time to time for a term not exceeding 30 years, by causing to be recorded in the office of the clerk of the county where such corporation is located, a copy of a resolution expressing a desire to so extend its corporate existence, which resolution shall be adopted by such corporation at a meeting called for the purpose by the pastor of the church or the district elder of the district within which said corporation is located. When such resolution is left for record with the clerk of the county within which said corporation is located, it shall be duly attested by the pastor of the church or the district elder of the district. Upon the leaving of such resolution for record, as above specified, with the attestation as above specified, the corporate existence of such body shall be extended in accordance with the terms of such resolution for a term not exceeding 30 years from the date of the expiration of its former term, and all rights of property and of contract shall remain unimpaired and the corporate identity of such body shall remain unchanged.

HISTORY: CL 1915, 11015;—CL 1929, 10900;—CL 1948, 458.93.

Act 54, 1899, p. 87; Imd. Eff. May 2.

AN ACT to provide for the incorporation of Baptist churches.

The People of the State of Michigan enact:

458.101 Baptist church; incorporation, procedure; body corporate, powers.

Sec. 1. That whenever a Baptist church shall desire to possess corporate powers and privileges, the members thereof present at any regular church or covenant meeting duly called as hereinafter provided, may by the vote of a majority of the members of such church then present, adopt articles of incorporation in accordance with the provisions of this act, and may thereupon proceed under the provisions of this act to elect the deacons or other persons whom the church may desire to act as its trustees, in number not less than 3 nor more than 9, and it shall then be the duty of the deacons or other persons so elected as trustees for said church, to proceed to execute and acknowledge before any person authorized to take acknowledgment of deeds, a certificate which shall contain:

First, The corporate name of the church;

Second, The township, city or village and county in which the church is located;

Third, The period for which the church is incorporated, which shall not exceed 30 years;

Fourth, A copy of the records of the vote or resolution of the church authorizing the preparation of the articles of association, as well as a like copy of the vote or resolutions of the church accepting or adopting such articles;

Fifth, A copy of the articles of association so adopted.

Such certificate shall be signed by the aforementioned deacons, or trustees, and when duly acknowledged by the signers thereof, shall be recorded in the office of the county clerk of the county named therein, and thereupon the deacons or trustees elected as herein provided, and their successors, together with the members of said church, shall become a corporation known by the name expressed in said certificate.

HISTORY: CL 1915, 10942;—CL 1929, 10901;—CL 1948, 458.101.

BAPTIST CONVENTION: See Act 42 of 1942, being Compilers' §§ 458.151 to 458.159.

AUXILIARY SOCIETIES: Provisions for dissolution, see Compilers' §§ 458.171 and 458.172.

GENERAL CORPORATION ACT: For provisions relating to ecclesiastical corporations, see Compilers' §§ 450.159 et seq. and 450.174 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

458.102 Trustees; qualifications, election.

Sec. 2. The deacons or other persons who shall serve the church as trustees under this act shall be citizens of the United States, 21 years of age or over when elected to office and shall be elected by ballot in accordance with the usage and custom of said church, or in such manner as may be provided in their articles of association.

HISTORY: CL 1915, 10943;—CL 1929, 10902;—CL 1948, 458.102.

458.103 Trustees; term of office.

Sec. 3. The deacons or other persons who may be elected as trustees shall hold their office for such length of time, and upon such conditions as the church may designate in their articles of association.

HISTORY: CL 1915, 10944;—CL 1929, 10903;—CL 1948, 458.103.

458.104 Trustees; subject to control of church; purchase and sale of realty.

Sec. 4. The trustees shall be subject, in all their official duties, to the control and direction of the church, and in case the church shall desire to buy, sell or lease real estate, then a notice declaring such desire and intention, which shall designate the property to be bought, sold or leased, shall be read at the regular church or covenant meeting next preceding the regular meeting, at which final action shall be taken authorizing such purchase, sale or lease; and after such authority shall have been so granted by the church, the trustees shall have full power to purchase, sell or lease such

real estate upon such terms and conditions as shall not be inconsistent with the instructions given by the church.

HISTORY: CL 1915, 10945;—CL 1929, 10904;—CL 1948, 458.104.

458.105 Trustees; powers.

Sec. 5. Such trustees may have a common seal, and may alter the same at pleasure; and they may take into their possession and custody all the temporalities of such church, whether the same shall consist of real or personal estate, and whether the same may have been given, granted or devised, directly or indirectly, to such church, or to any person or persons for their use.

HISTORY: CL 1915, 10946;—CL 1929, 10905;—CL 1948, 458.105.

458.106 Trustees; corporate powers; taxation.

Sec. 6. Such trustees may also, in their corporate name, sue and be sued in all courts and places; and they may recover and hold all the debts, demands, rights and privileges due to any church or churches for which they shall be trustees, together with all buildings, burying places, and all the estate and appurtenances belonging to such church or churches in whatsoever manner the same may have been acquired or in whose hands soever the same may be held, as fully as if the right and title thereto had been originally vested in said trustees. And they may hold in perpetuity, lease, sell or construct buildings upon such lands as may be lawfully acquired in the corporate name of such church or churches, or in the name of the trustees acting on behalf of such church or churches, the income from such property, if any, to be used exclusively for church finances. Any land so held by such church or churches, either in the corporate name of any such church or churches or in the name of the trustees on behalf of such church, which is used for purposes other than places of worship, schools, cemeteries, parsonages or other purposes connected directly with the object of such church as a house of worship, shall be subject to taxation the same as property which may be held by private individuals or corporate bodies organized for profit; and the title to any such property which shall be used for any purpose other than a place of worship, a school, a parsonage or a cemetery and the appurtenances thereto, and from which a profit shall be derived, shall not be held for a longer period than 15 years from the date when such church or the trustees thereof acquired such title.

HISTORY: CL 1915, 10947;—Am. 1917, p. 704, Act 274, Eff. Aug. 10;—CL 1929, 10906;—CL 1948, 458.106.

GIFTS, GRANTS OR DEVISES: Indefiniteness, see Act 280 of 1915, being Compilers' §§ 554.351 to 554.353; probate contested when done unnamed, see Act 207 of 1917, being Compilers' §§ 720.51 to 720.53; in perpetuity, restraint of alienation, see Act 373 of 1925, being Compilers' §§ 554.381 and 554.382.

SALE OF LAND: See Act 258 of 1925, being Compilers' §§ 554.401 to 554.404.

TAXATION: See Compilers' § 211.1 et seq.

458.107 Trustees; election in certain case; dissolution, convention legal successor.

Sec. 7. If it shall happen that any church organized under the provisions of this act shall, from any cause, be found at any time without trustees, such church shall not for that cause lose its corporate existence, but such church may at any time proceed to elect trustees, as provided in this act: Provided, That whenever any corporation organized under the provisions of this act shall be dissolved by the death of all its members, or by the loss of so many of them that it is thereby rendered unable to do any corporate act or to restore itself by proceeding to elect trustees, as provided in this act, the Baptist convention of the state of Michigan, a corporation organized and existing under an act of the legislature of the state of Michigan, entitled "An act to incorporate the Baptist convention of the state of Michigan," approved February sixteenth, A.D.

1842, and the statutes amendatory thereto, shall be held and deemed to be the legal successor of such corporation and shall succeed to, and be vested with, all property rights which were in such corporation at the time it was dissolved.

HISTORY: CL 1915, 10948;—CL 1929, 10907;—CL 1948, 458.107.

BAPTIST CONVENTION: See Act 42 of 1842, being Compilers' §§ 458.151 to 458.159.

458.108 Reincorporation under act; procedure.

Sec. 8. Any Baptist church or any Baptist church and society incorporated or organized under the laws of this state, may elect to dissolve their existing corporation and take corporate powers under this act: Provided, The consent of the majority of the members of said church or church and society who may be present at such meeting can be obtained at any regular church or covenant meeting of the church: Provided also, That notice shall be given to said church or church and society to meet with the church at its regular church or covenant meeting for the purpose of dissolving said corporation with a view of organizing under the provisions of this act, said notice to be given on the last 2 Sundays preceding the day on which the act of dissolution shall be taken.

HISTORY: CL 1915, 10949;—CL 1929, 10908;—CL 1948, 458.108.

458.109 Reincorporation under act; certificate of dissolution, execution, recording; new corporation, powers and obligations.

Sec. 9. If such consent for dissolving such corporation for the purposes as above mentioned shall be so obtained, then a certificate containing an account of such dissolution shall be executed and acknowledged by the presiding officer and secretary of said meeting, and be recorded in the office of the county clerk of the county where the original certificate of incorporation was recorded, and on compliance with the provisions of this act all the property, powers, privileges, duties, trusts and obligations of every kind possessed by or pertaining to the original corporation thus dissolved shall pass to and be possessed by the new organization.

HISTORY: CL 1915, 10950;—CL 1929, 10909;—CL 1948, 458.109.

458.110 Reincorporation under act; amendment of articles, procedure.

Sec. 10. At any time after such church shall have become duly organized under this act, it shall be lawful for any such church, at any regular meeting thereof, of which proper notice shall have been given, as hereinafter provided, by a vote of 2/3 of the members present at such meeting, to amend its articles of association in any manner not inconsistent with the provisions of this act, and such amendments shall become operative on filing a copy of the same, certified by the moderator or chairman and clerk of such meeting, and duly acknowledged by an officer authorized to take acknowledgment of deeds, with the clerk of the county in which such church is organized.

HISTORY: CL 1915, 10951;—CL 1929, 10910;—CL 1948, 458.110.

458.111 Amendment of articles.

Sec. 11. Whenever it shall be purposed to alter or amend the articles of association of any church organized under this act, such alteration or amendment shall not be adopted until the expiration of at least 3 weeks from the day of the meeting on which the same shall have been first introduced before the church, and such proposed alteration or amendment shall be reduced to writing, when it shall be introduced, and shall not be amended on the same day on which it shall be adopted.

HISTORY: CL 1915, 10952;—CL 1929, 10911;—CL 1948, 458.111.

458.112 Construction of inconsistent acts.

Sec. 12. In all cases which may arise in any of the courts of this state in connection with any church which may be incorporated under this act, and in all suits in law or equity to which any such church may be a party, all other acts or parts of acts incon-

sistent herewith shall be interpreted and construed in such a manner as to give full force to all the rights and privileges hereby granted or intended to be granted.

HISTORY: CL 1915, 10853;—CL 1929, 10912;—CL 1948, 458.112.

Act 42, 1842, p. 63; Eff. Mar. 19.

AN ACT to incorporate the Baptist Convention of the state of Michigan.

Whereas, certain persons have associated themselves together, under the name of "the Baptist Convention of the state of Michigan," for the purpose of disseminating the gospel, aiding home and foreign missions, promoting ministerial education, Sabbath school instruction, and the circulation of religious tracts, Therefore,

Be it enacted by the Senate and House of Representatives of the State of Michigan,

458.151 Baptist convention; incorporation, objects.

Sec. 1. That said association of which John Booth is president, and W. Taylor, R. Powell, J. I. Fulton, J. Hall, C. H. Swain, S. Goodman, J. O. Beardsall, M. Allen, J. S. Twiss, J. Knapp, J. Harris, D. B. Brown, E. Weaver and J. Michell are vice presidents; and R. C. Smith, treasurer; and D. B. Brown, auditor; and M. Sanford, secretary; and M. Pearsall, D. Barrett, N. G. Chase, C. L. Bacon, R. B. Rexford, W. S. Gregory, S. Chase, A. Wattles, J. Tenny, L. Moore, T. W. Merrill, M. B. Savage, A. Piper, T. Z. R. Jones, W. G. Wisner, E. Hodge, G. B. Day, W. B. Brown, A. Ten Broek, F. Darrow, D. Hendee, E. Comstock, C. B. Taylor, C. Eldred, C. P. Jacobs, R. Tiffany, E. H. Hamlin, H. D. Buttolph, L. H. Moore and B. G. Lewis, directors, is hereby constituted a body corporate by the name of the Michigan Baptist Convention. The object of this convention shall be:

First. To promote the preaching of the gospel and the establishment and maintenance of Baptist churches and Sunday schools within the state of Michigan.

Second. To encourage the educational interests of the denomination within the state.

Third. The disseminating of the gospel, aiding home and foreign missions, promoting ministerial education, Sabbath school instruction, and the circulation of religious tracts.

HISTORY: Am. 1905, p. 83, Act 60, Imd. Eff. April 19;—CL 1929, 10913;—CL 1948, 458.151.

This act does not appear in compilations prior to 1948.

GENERAL CORPORATION ACT: For provisions relating to ecclesiastical corporations, see Compilers' §§ 450.159 et seq. and 450.178 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

TAX EXEMPTIONS: See Compilers' §§ 211.7 subd. 5 and 211.9.

458.152 Membership.

Sec. 2. All persons now members of said association, and every person who shall hereafter pay 1 dollar or more to the treasurer of the corporation and request to become a member thereof, shall be and continue members of the corporation so long as they shall continue to pay annually 1 dollar or more to the treasurer of the corporation, and no longer; and all persons who are life members of said association, and every person who shall hereafter pay at any 1 time, to the treasurer of the corporation 10 dollars or more, and request to become a life member of the corporation, shall be life members of said corporation.

HISTORY: CL 1929, 10914;—CL 1948, 458.152.

458.153 First meeting, calling; annual meeting.

Sec. 3. There shall be a meeting of the members of said corporation once in each year, for the purpose of transacting business, at such time and place as may be designated at a previous meeting. The first meeting under this act of incorporation shall be at Jonesville, on the first Wednesday in October next. Should anything prevent a

meeting at that time, or at any other time, to be designated as above provided, it shall be the duty of the president, or in case of his absence, death or refusal, of any other officer or director, on the written request of a majority of the board of directors, to call a meeting of the members of said incorporation, at any time within 6 months thereafter, by giving 2 months notice of the time and place of such meeting in some newspaper published in this state.

HISTORY: CL 1929, 10915;—CL 1948, 458.153.

458.154 First meeting; election of officers and directors; terms of office; board of managers; powers of convention.

Sec. 4. At such meeting there shall be elected by ballot a president, 1 or more vice presidents, a secretary, a treasurer, an auditor and 30 directors. All of these shall be members of Baptist churches, and these shall constitute a board of managers for the transaction of all such business of the corporation as shall be entrusted to them for that purpose by the by-laws, rules and regulations made, or any resolution passed at any annual meeting of the members of the corporation, who shall have power from time to time to make all necessary by-laws, rules and regulations, and pass all necessary resolutions for that purpose, and to repeal, alter, or amend the same at pleasure, and to require security by bond or otherwise from any or all of said officers for the faithful performance of their duties. The president, vice-president, treasurer, auditor, secretary and directors, hereinbefore named, shall continue to hold their respective offices until the next meeting of the members of the corporation as hereinbefore provided, and until their successors are elected.

HISTORY: Am. 1905, p. 83, Act 60, Imd. Eff. April 19;—CL 1929, 10916;—CL 1948, 458.154.

458.155 Powers of corporation; legal successor to certain dissolved corporations.

Sec. 5. Such corporation may, by its corporate name, aforesaid, receive donations in money, and may take and hold real estate and personal property by gift, grant, devise, bequest or otherwise, and sell and dispose of the same and use the proceeds thereof for the purpose of disseminating the gospel by multiplying and circulating copies of the holy scriptures, publishing a religious newspaper or periodical, aiding state, home and foreign missions, promoting christian and ministerial education, Sabbath school instruction, and the circulation of religious tracts, and may sue and be sued, plead and be impleaded, contract and be contracted with, and may have a common seal which they may alter or renew at pleasure. That whenever any corporation heretofore organized or hereafter to be organized under the provisions of chapter 175 of Howell's annotated statutes, or under or by virtue of Act No. 54 of the Public Acts of 1899, entitled "An act to provide for the incorporation of Baptist churches," shall be dissolved either by the death of all its members, or by the loss of so many of them, that it is thereby rendered unable to do any corporate act, or restore itself by proceeding to elect trustees as provided in said act, this corporation shall be held and deemed to be the legal successor of such corporation, and shall succeed to and be vested with all the property rights which were in such corporation at the time it was dissolved. And that whenever the board of managers of this corporation shall have reason to believe that any corporation organized under the provisions of said chapter 175, or said Act No. 54 of the Public Acts of 1899 shall have become dissolved in the manner above specified, such executive board shall be authorized to file a petition, as near as may be, according to the provisions of sections 1 to 8 of chapter 300 of the Revised Statutes of 1897, for a decree determining the dissolution of such corporation; that thereupon proceedings shall be had under such petition, as near as may be in accordance with sections 1 to 8 of the last said chapter. And upon the coming in of the report of the matter if it shall appear that such corporation has been so dissolved, a decree shall be entered de-

claring and adjudging such corporation to have been dissolved, and decreeing the said Baptist Convention of the state of Michigan to be the legal successor of such corporation, and to have succeeded to and be vested with all the property rights which were in such corporation, at the time it was dissolved, which decree when made may be recorded and have the same force and effect as is provided in section 465 of the compiled laws of 1897.

HISTORY: Am. 1893, p. 73, Act 72, Eff. Aug. 28;—Am. 1905, p. 83, Act 60, Imd. Eff. April 19;—CL 1929, 10917;—CL 1948, 458.155.

NOTE: How. Ch. 175, above referred to, consisted of Act 225 of 1897 and was repealed by Act 209 of 1897, being CL 1915, 10889-10899.

Act 54 of 1899, above referred to, is Compilers' §§ 458.101 to 458.112.

Secs. 1-8 of Ch. 300 of the Revised Statutes (compiled laws) of 1897, 10652-10659, above referred to, has been superseded by Secs. 1-4 of Ch. 40 of Act 314 of 1915 (Jud. Act), being Compilers' repealed §§ 640.1 to 640.4. See § 600.3501, 600.3505, 600.3525 and GCR 778.

CL 1897, 465, above referred to, has been reenacted in Sec. 18 of Ch. 22 of Act 314 of 1915 (Jud. Act), being Compilers' repealed § 622.18. See GCR 530.

458.156 Donations; use.

Sec. 6. All money or property given to the corporation for any 1 of the objects specified in the last preceding section, to be designated by the donor, shall be used by the corporation for that object and no other; and all moneys or property given to the corporation generally, and without the donors specifying the particular object to which it shall be applied, may be used to promote any 1 or more of the objects named in said section.

HISTORY: CL 1929, 10918;—CL 1948, 458.156.

GIFTS, GRANTS OR DEVISES: Indefiniteness, see Act 280 of 1915, being Compilers' §§ 554.351 to 554.353; probate contested when donee unnamed, see Act 207 of 1917, being Compilers' §§ 720.51 to 720.53; in perpetuity, restraint of alienation, see Act 373 of 1925, being Compilers' §§ 554.381 and 554.382.

SALE OF LAND: See Act 258 of 1925, being Compilers' §§ 554.401 to 554.404.

458.157 Members; powers at any meeting.

Sec. 7. The members of the corporation shall have power at any meeting held, as aforesaid, to provide by their by-laws that any number of persons associated together for any of the purposes mentioned in this act of incorporation may, as auxiliary societies, be represented by their delegates at all meetings of the members of this corporation, and that such delegates may be entitled to vote at such meetings and for that purpose be considered as members of the corporation, and that any such society or any individual who shall pay 50 dollars or more annually, to said corporation shall have the right to appoint a member of the board of managers hereinbefore mentioned, the members of which may be increased for that purpose, and they may also provide by their by-laws what number of members of the board of managers shall constitute a quorum for the transaction of business and also to provide for an executive committee of said board of managers for the transaction of such business of said corporation as shall be, by said by-laws, entrusted to said executive committee.

HISTORY: Am. 1905, p. 84, Act 60, Imd. Eff. April 19;—CL 1929, 10919;—CL 1948, 458.157.

458.158 By-laws and rules.

Sec. 8. All by laws, rules and regulations now in existence of the society and not inconsistent with this act of incorporation, shall continue to be the by laws, rules and regulations of the corporation, until annulled or superseded by some other by law, rule or regulation of the corporation.

HISTORY: CL 1929, 10920;—CL 1948, 458.158.

458.159 Repeal of act.

Sec. 9. This act may be repealed at any time by the legislature.

HISTORY: CL 1929, 10921;—CL 1948, 458.159.

Act 32, 1929, p. 62; Imd. Eff. Apr. 4.

AN ACT to provide for the voluntary dissolution of ecclesiastical societies auxiliary to Baptist churches and for the disposition of their property.

The People of the State of Michigan enact:

458.171 Meeting of incorporated society; calling.

Sec. 1. Whenever any Baptist church in connection with which there is an incorporated religious or ecclesiastical society organized in accordance with the laws of the territory or state of Michigan, at any regular or called meeting, shall express by ballot and by 2/3 vote of its qualified members present and voting a desire to assume said corporate powers and the direction and control of its property and secular affairs, the trustees of said society upon receiving official notification of the vote of said church shall forthwith call a meeting of said society of which meeting notice shall be given on 3 successive Sundays next preceding the date of said meeting, specifying the time, place and object thereof to consider and vote upon the questions stated in section 2 hereof.

HISTORY: CL 1929, 10922;—CL 1948, 458.171.

458.172 Meeting of incorporated society; question put to vote; dissolution of society; property, passing to incorporated church.

Sec. 2. At the meeting so called the following question shall be put to vote:

“Shall the title to all the property of the (name of society) be vested in the BAPTIST CHURCH of Michigan and the said society be dissolved?”

The vote shall be by ballot and if 2/3 of the ballots cast shall be in the affirmative a duly certified copy of such resolution shall be transmitted to the clerk of said church who shall call a meeting of said church which shall then prepare, execute and place on record articles of association under and in accordance with the provisions of Act No. 54 of the Public Acts of 1899, and the amendments thereto, or such other act of the state of Michigan as may authorize the incorporation of churches and upon recording of said articles of association as provided in said act the said society shall be dissolved and all property owned by it shall pass to and be held by the said church so incorporated under the name and style adopted by it in the said articles of association and all liabilities of said society shall be assumed and paid by said church.

HISTORY: CL 1929, 10923;—CL 1948, 458.172.

NOTE: Act 54 of 1899, above referred to, is Compilers' §§ 458.101 to 458.112.

Act 265, 1909, p. 450; Eff. Sep. 1.

AN ACT to provide for the incorporation and reincorporation of Presbyterian churches. Am. 1917, p. 110, Act 64, Eff. Aug. 10.

The People of the State of Michigan enact:

458.201 United Presbyterian church; articles, adoption; first board of trustees.

Sec. 1. Whenever any church worshiping according to the faith and polity of the United Presbyterian church in the United States of America shall desire to possess corporate powers, the members thereof present at any regular meeting of the church, notice of the proposed action having been given at 2 previous regular meetings, the first meeting being held at least 2 weeks previous thereto, may, by vote of a majority of the adult members then present, adopt articles of association in accordance with the provisions of this act, and may thereupon proceed under the provisions hereof to elect not less than 3 nor more than 18 persons, a majority of whom shall be members of such church, to act as the first board of trustees of the corporate body.

HISTORY: CL 1915, 11067;—CL 1929, 10924;—CL 1948, 458.201;—Am. 1960, p. 59, Act 70, Eff. Aug. 17.

458.202 Certificate; execution, contents.

Sec. 2. It shall be the duty of the persons so chosen as such trustees to proceed to execute in duplicate, and acknowledge before any person authorized to take acknowledgment of deeds, a certificate which shall contain:

First, A copy of the records showing the proceedings and vote on the resolution accepting and adopting such articles of association;

Second, A copy of the articles of association so adopted, which shall give the name of the corporation; the name of the township, village or city, and of the county in which it is located; a statement of the purpose of the incorporation; the period for which it is incorporated; and it may contain such other provisions as may be desired and as are appropriate and in accordance with law.

HISTORY: CL 1915, 11068;—CL 1929, 10925;—CL 1948, 458.202.

458.203 Certificate; signature, acknowledgement, recording, form; body corporate.

Sec. 3. Said certificate shall be signed by the persons so chosen as trustees, duly acknowledged by the signers thereof, and 1 copy of such duplicate certificate shall be recorded in the office of the county clerk of the county named therein. Thereafter the said trustees and their successors, together with the adult members of said church, and such as may thereafter become such members, shall be a body corporate by the name given in such certificate, which certificate may be in the following form:

We, the persons whose names are subscribed hereto, are the persons elected by the members of Presbyterian church of to act as the first board of trustees of a corporation to be organized out of the membership of such church under the provisions of Act No. of the Public Acts of 1909.

Pursuant to the provisions of said act we do hereby certify that the adult members of such church did, on the day of 19...., at a meeting then held pursuant to notice of the proposed action given at 2 previous regular meetings, the first of which was held on the day of, 19...., adopt the articles of association hereinafter set forth at length, as appears by the record of such action, a copy of which is as follows:

A meeting of the Presbyterian church was held this day of, 19...., at in the of in the county of, in the state of Michigan, pursuant to notice given at a regular meeting of this church on the day of, 19...., and again at another regular meeting of this church held on the day of, 19.... At this meeting articles of association were presented with a view to the organization of a corporation as an auxiliary to this church. Such articles of association were, by a majority vote of the adult members of this church then present, adopted in the form following:

Articles of association of the Presbyterian church of

The members of Presbyterian church of, desiring to become incorporated under the provisions of Act No. of the Public Acts of 1909, entitled "An act to provide for the incorporation of Presbyterian churches," do hereby adopt the following articles of association:

First, The name assumed by this corporation and by which it shall be known in law is Presbyterian church of

Second, The location of said church shall be in the of in the county of in the state of Michigan;

Third, The purpose of this incorporation is to create a body which may, in accord with the form of government, discipline, rules and usages of the Presbyterian church in the United States of America, and subject to the civil law, manage and control the property and secular affairs of the church aforesaid;

Fourth, The trustees of this corporation shall be in number. At the first election of trustees under these articles, trustees shall be elected for a term of 1 year, trustees shall be elected for a term of 2 years, and trustees shall be elected for a term of 3 years, such terms to begin at the date of the annual meeting of such corporation. At each subsequent annual meeting persons shall be elected to succeed those trustees whose terms of office then expire and to fill such vacancies in the office of trustees as may then exist, the said trustees to be chosen by ballot;

Fifth, The annual meeting of this corporation shall be held on the in each year for the election of trustees and for the transaction of such other business as may properly come before it.

At the meeting so held and were elected as the first board of trustees of the corporation so to be formed, by a majority vote of the adult members of such church. Of these persons a majority in number are members of such church. They were directed to make the certificate provided for in section 2 of Act No. of the Public Acts of 1909, properly sign and acknowledge the same and cause the same to be properly recorded.

In witness whereof we, the said trustees, for the purpose of complying with the provisions of the act aforesaid, hereunto sign our names.

Done at the of in the county of in the state of Michigan this day of, 19....

(Signatures)

(Residences.)

State of Michigan,

County of

On this day of, 19...., before me, a in and for said county, personally appeared and known to me to be the persons named in and who executed the foregoing certificate and severally acknowledged that they executed the same freely and for the intent and purposes therein mentioned.

HISTORY: CL 1915, 11089;—CL 1929, 10926;—CL 1948, 458.203.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

458.204 Property rights of corporation; government.

Sec. 4. Such corporation shall succeed to all the property rights of the church out of which it is incorporated and, subject to the civil law, shall be governed by the form of government, discipline, rules and usages of the United Presbyterian church in the United States of America, as promulgated by the general assembly of said church and the presbytery within whose jurisdiction such corporation may be located.

HISTORY: CL 1915, 11090;—CL 1929, 10927;—CL 1948, 458.204;—Am. 1960, p. 59, Act 70, Eff. Aug. 17.

458.205 Powers of corporation.

Sec. 5. Such corporation may have a seal and alter the same at will; it may, in its corporate name, sue and be sued in all the courts of this state; it shall have power to acquire, hold, sell and convey property, both real and personal, in accordance with this act; it may hold and recover all debts, demands, rights, privileges, and all property, real or personal, of whatsoever nature it may be, belonging or appertaining to said church, out of which, and as auxiliary to which, it is incorporated, in whatsoever manner the same may have been acquired and in whosoever hands the same may be held, the same as if the right and title to the same had originally been vested in said

corporation; it may hold so much real property as may be needed for the purposes of church building and a manse or parsonage; it may also hold for a period not exceeding 10 years, such real estate as may be conveyed or devised to it, even though the same may not be needed for a church building or a parsonage, the proceeds from the same when sold to be used for said church purposes as may be determined upon.

HISTORY: CL 1915, 11091;—CL 1929, 10928;—CL 1948, 458.205.

458.206 Trustees; election, term, qualifications.

Sec. 6. The trustees aforesaid, and as well their successors in office, shall be adult citizens of the United States of America, shall be chosen by ballot, or as provided in the articles of association, and shall hold office for such length of time, and upon such conditions, as shall be provided in such articles.

HISTORY: CL 1915, 11092;—CL 1929, 10929;—CL 1948, 458.206.

458.207 Trustees; powers; disposal of realty.

Sec. 7. The secular affairs of said church shall, subject to the control of the general corporate body, be managed by such board of trustees. It shall have power to purchase, build, repair, lease, sell, rent, mortgage, encumber or otherwise dispose of property: Provided, That before it shall sell, mortgage or otherwise encumber or dispose of real property the consent of the corporation shall be given by an affirmative vote of at least 2/3 of all members present at a public meeting, who are entitled to vote for trustees under this act, of which meeting 10 days' notice at least shall be given, stating the time, place and object thereof.

HISTORY: CL 1915, 11093;—CL 1929, 10930;—CL 1948, 458.207.

458.208 Trustees; temporary vacancies.

Sec. 8. If it shall happen that an organization incorporated under this act shall be temporarily without officers, such corporations shall not for that reason be dissolved, but such corporation may proceed to elect trustees as provided in this act and the articles of association.

HISTORY: CL 1915, 11094;—CL 1929, 10931;—CL 1948, 458.208.

458.209 Title; passing to presbytery; sale of property; dissolution of corporation.

Sec. 9. In all cases where property belonging to any organization incorporated under the provisions of this act, has been abandoned, or is no longer used for the purpose for which said property was acquired, or for the benefit of a church society, and has not been conveyed by said corporation under the provisions of this act, or if said corporation has been dissolved or become extinct, the title of said property shall pass to the presbytery within the bounds of which the said corporation is situated and said presbytery may by such officer or committee as said presbytery may designate for that purpose, apply to the circuit court for the county in which said property may be, for license to sell the same, and such license shall be granted by said court, after such notice of said application, as said court may direct, has been given, and thereupon said property may be sold, and the proceeds of said sale disposed of as directed by said presbytery; and said court upon hearing of said application, may dissolve said corporation when it shall appear by proof that such society has ceased to support a pastor or performed the usual functions of a church for a period of 2 years.

HISTORY: CL 1915, 11095;—CL 1929, 10932;—CL 1948, 458.209.

Sec. 10.

HISTORY: Rep. 1915, p. 481, Act 314, Eff. Jan. 1, 1916 (Jud. Act).

This section related to the service of process. For the present law on this subject see Compilers' § 613.29 et seq.

458.211 Amendment of articles; procedure.

Sec. 11. Any church society incorporated under the provisions of this act, at a meeting called for that purpose of which 4 weeks' notice shall have been given by an-

nouncement at regular services, by a vote of 2/3 of all the qualified members present and voting, may amend its articles of association in any way not inconsistent with the provisions of this act, or the form of government of the United Presbyterian church in the United States of America; and such amendment shall become operative when a certificate such as is provided for in sections 2 and 3 of this act shall be executed and acknowledged by the trustees of such corporation and the same duly recorded as therein provided, showing such action and containing a copy of the amended articles.

HISTORY: CL 1915, 11096;—CL 1929, 10933;—CL 1948, 458.211;—Am. 1960, p. 60, Act 70, Eff. Aug. 17.

458.212 Reincorporation under act; procedure.

Sec. 12. Any Presbyterian church society heretofore incorporated, or whose corporate term of existence has heretofore expired by limitation, or the trustees of which have heretofore exercised the powers of a body corporate, may, by a 2/3 vote of its qualified members, present and voting, expressed at a meeting called as provided in section 11 hereof, place itself under the provisions of this act the same as if originally incorporated under it, and by executing articles of association as provided in section 11 in case of amendment, and causing the same to be recorded as is further required in case of such amendment.

HISTORY: CL 1915, 11097;—Am. 1917, p. 110, Act 64, Eff. Aug. 10;—CL 1929, 10934;—CL 1948, 458.212.

458.213 Trustees; evidence of authority.

Sec. 13. It is further provided that the execution by the trustees of said corporation of any deed, note, mortgage, bond or other obligation, or contract of said corporation, in proper form, shall be prima facie evidence of the proper appointment of said trustee, and that such act has been properly authorized by the corporation as hereinbefore provided.

HISTORY: CL 1915, 11098;—CL 1929, 10935;—CL 1948, 458.213.

Act 40, 1899, p. 56; Imd. Eff. Apr. 18.

AN ACT to revise the laws providing for the incorporation of Protestant Episcopal churches.

The People of the State of Michigan enact:

458.251 Protestant Episcopal church; incorporation, procedure; body corporate.

Sec. 1. It shall be lawful for any 6 or more persons, professing attachment to the Protestant Episcopal church, to execute and acknowledge, before any person authorized to take acknowledgments of deeds, 1 or more duplicate articles of agreement, in writing, whereby they shall agree to organize a church according to the usages of the Protestant Episcopal church, by the name and style set forth in such articles; and upon the execution and acknowledgment and filing thereof, as herein provided, such church shall become a body politic and corporate, by the name set forth in said articles, in accordance with the constitution, canons, doctrine, discipline and worship of the Protestant Episcopal church.

HISTORY: CL 1915, 10928;—CL 1929, 10936;—CL 1948, 458.251.

GENERAL CORPORATION ACT: For provisions relating to ecclesiastical corporations, see Compilers' §§ 450.159 et seq. and 450.175 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

TAX EXEMPTIONS: See Compilers' §§ 211.7 subd. 5 and 211.9.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

458.252 Protestant Episcopal church; articles, contents; name; location; vestry members.

Sec. 2. The articles shall contain:

First, The name of the proposed church;

Second, The township or city and county in which it is located;

Third, The number of vestry members, not less than 6 nor more than 15, who shall have charge of the temporal affairs of such church, and the time of the annual meeting, which shall be during the first 2 weeks of January, and no church shall be incorporated, in any township or city, bearing the same name as any other Protestant Episcopal church theretofore organized therein.

HISTORY: CL 1915, 10929;—Am. 1917, p. 106, Act 62, Eff. Aug. 10;—CL 1929, 10937;—CL 1948, 458.252;—Am. 1954, p. 31, Act 23, Eff. Aug. 13;—Am. 1957, p. 157, Act 136, Imd. Eff. May 28.

458.253 Articles; recording; acquisition of title to property.

Sec. 3. Such articles of agreement, when duly signed and acknowledged, shall be recorded in the office of the secretary of state and in the office of the county clerk of the county in which such church is located; and it shall not be lawful for such church to acquire the title to any property until such articles are so recorded.

HISTORY: CL 1915, 10930;—CL 1929, 10938;—CL 1948, 458.253.

458.254 First meeting; calling, notice; right to vote; election of vestry members.

Sec. 4. Any 3 or more persons who have signed any such articles may call the first meeting of such church, at such time and place as they may see fit, by publishing a notice for 10 days previous to the time of such meeting in some newspaper published in the city or township in which such church is located; and if no newspaper is published therein, then such notice may be given by posting the same in 3 of the most public places in such city or township; and at such meeting the affidavit of such posting or publishing shall be produced and recorded in the minutes. At such meeting, in addition to the signers of such articles, any other persons who may be authorized by the laws of the church to take part in the incorporation of parishes shall be entitled to vote, who shall sign a declaration in writing, to be kept in the book of minutes, whereby he or she shall signify an intention of becoming attached to said church, and accepting the terms of such articles. Vestry members of the church shall be elected at said meeting or any adjournment thereof.

HISTORY: CL 1915, 10931;—CL 1929, 10939;—CL 1948, 458.254;—Am. 1957, p. 157, Act 136, Imd. Eff. May 28.

458.255 Subsequent meetings; right to vote; annual and special meetings, notice; election of vestry members, classification; rector to preside; records.

Sec. 5. At all subsequent meetings, the right to vote shall be confined to such persons as shall be authorized by the laws of the church to vote at parish meetings. The annual meeting shall take place during the month of January. Public notice shall be given of the time and place of holding such meetings, on 2 Sundays immediately preceding such meeting, by the rector, and in his absence, by either of the wardens at the regular service on such days. In case service shall not be held, notice shall be given either by publishing or posting, as the vestry shall direct, written or printed notices thereof, signed by the rector, or in case there is no rector, by the secretary of the vestry at least 1 week prior to such meeting. Special meetings of the parish may be called by the vestry, and a like notice shall be given of any such special meeting as is required for an annual meeting, and the object of such special meeting shall be stated. At the annual meeting, an election of vestry members shall be held to serve until the next annual meeting, but at such annual meeting it shall be lawful, at the option of said meeting, to classify the vestry members in 3 equal classes, as near as may be, 1 of which

classes shall hold their offices for 1 year, 1 for 2 years, and 1 for 3 years, and at all subsequent meetings vestry members shall be elected for 3 years to fill the places made vacant by the class whose term of office shall expire at the time. Any diocese may by canon provide that in case any parish shall adopt the term of 3 years, then no vestry member so elected shall be eligible for reelection until the next annual parish meeting following the expiration of his term of office. Any church desiring to discontinue such classification may do so, and thereafter vestry members shall be elected for 1 year to fill the places made vacant by the class whose term of office shall expire at the time of election. The vestry members shall be elected by ballot and shall serve until their successors shall be chosen. The wardens, when present, shall be the judges of the election, and shall permit no person to vote unless qualified as aforesaid; and they shall canvass and declare the result, and a majority of all the votes cast shall be necessary to elect. In case of the absence of the wardens, or either of them, members of the vestry shall be appointed to act as such judges in the place of the absent warden or wardens. The rector, when present, shall preside at all meetings of the parish. A full and complete record of the proceedings of all such meetings shall be kept by the secretary of the vestry.

HISTORY: CL 1915, 10832;—Am. 1917, p. 108, Act 62, Eff. Aug. 10;—Am. 1923, p. 113, Act 87, Eff. Aug. 30;—CL 1929, 10940;—CL 1948, 458.255;—Am. 1957, p. 158, Act 136, Imd. Eff. May 28;—Am. 1965, p. 251, Act 157, Imd. Eff. Jul. 12.

458.256 Wardens; secretary, treasurer; meetings of vestry, presiding officer, quorum, vacancy.

Sec. 6. The vestry members shall annually choose by ballot from their own body 2 members, who shall be communicants, to be wardens. They shall also appoint a secretary and a treasurer, who may be members of their own body, and they may employ such other agents and servants as may be required. Meetings of the vestry may be called by the rector of the church by giving due notice thereof at any regular service on Sunday, or they may be called by serving upon the rector and upon all members of the vestry a notice in writing, signed by the rector, either warden or any 2 vestry members. A majority of the vestry members elected shall constitute a quorum for the transaction of business. The rector, when present, shall preside at all vestry meetings, but shall have no vote except in case of a tie; and in his absence from the meeting, 1 of the wardens, if present, shall preside. All vacancies in such vestry may be filled by the remaining vestry members at any meeting, and the persons so elected shall hold office for the same period as their predecessors would have held.

HISTORY: CL 1915, 10833;—CL 1929, 10941;—CL 1948, 458.256;—Am. 1957, p. 158, Act 136, Imd. Eff. May 28.

458.257 Powers of vestry; owner of pew or slip.

Sec. 7. The vestry shall have the care and management of all the temporal affairs of such church, and they shall have authority, in the corporate name, to lease or to purchase and hold such real estate as shall be reasonably necessary for a church building, chapel, parish house, lecture and school rooms, and for dwellings for the ministers thereof; but it shall not be lawful for such corporation to hold or use any real estate for any other purpose for a longer period than 10 years. The said vestry shall also have power to alienate or encumber any of the property of said corporation, but they shall not have power or authority to alienate or encumber any real estate purchased or held for any of the purposes above enumerated, without being first authorized to do so by a vote of the congregation of the parish, at the annual meeting or at a special meeting called for such purpose, and no other person shall vote at such special meeting except those qualified to vote at the annual meeting; nor shall it be lawful to encumber or alienate any such property without the previous consent of the bishop, acting with the advice and consent of the standing committee of the diocese in which such property is situated. Said vestry shall have authority to erect, alter, repair, enlarge, take down or remove and rebuild any church or other building belonging to such corporation, pro-

vided such vestry shall first have obtained from the parish authority so to do, in the manner hereinbefore provided for alienating or encumbering the property thereof. No owner of any pew or slip in such church shall be held to be the owner of any interest in the land whereon the same is erected.

HISTORY: CL 1915, 10934;—CL 1929, 10942;—CL 1948, 458.257.

HOLDING PROPERTY: By bishops of Protestant Episcopal church, see Compilers' § 458.271.

458.258 Record of proceedings; inspection, evidence.

Sec. 8. The vestry shall keep a record of their proceedings, which, together with a record of the meetings of the congregation of the parish, shall, at all times, be open to the inspection of any officer of the parish, and of all persons qualified to vote at the annual meeting of such church. Such records shall be prima facie evidence of the facts therein stated.

HISTORY: CL 1915, 10935;—CL 1929, 10943;—CL 1948, 458.258.

458.259 Reorganization and extension of corporate life; procedure.

Sec. 9. Any Protestant Episcopal church whose corporate term of existence has expired, or may be about to expire, or may hereafter expire, by limitation, may be reorganized under this act, so as to become subject to the provisions thereof, whenever the wardens and vestry members, de jure or de facto, shall execute and file articles of agreement as provided in this act. Said wardens and vestry members, de jure or de facto, are hereby authorized by their names of office to make, sign, acknowledge, execute and file 1 or more duplicate articles of agreement, as provided in sections 1, 2 and 3 of this act, which articles shall, in addition to the requisites in said last mentioned sections named, set forth that they are executed for the purpose of reorganizing said corporation according to the provisions of this act, and such articles shall be deemed sufficient when so executed and filed, although the number of signers shall be less than 6, if they shall constitute the majority of such wardens and vestry members, de jure or de facto. Upon the execution and filing of said articles such corporation shall, without further action, be deemed to all intents and purposes reorganized, and the corporate identity of such corporations shall continue unchanged.

HISTORY: CL 1915, 10936;—CL 1929, 10944;—CL 1948, 458.259;—Am. 1957, p. 159, Act 136, Imd. Eff. May 28.

458.260 Amendment of articles, procedure; existing amendments declared valid.

Sec. 10. Any church incorporated under this act may, at any annual meeting, or at any special meeting, called for that purpose, by a vote of the majority of those present qualified to vote and voting on the question, amend its articles of agreement in any manner not inconsistent with the provisions of this act, of the constitution and canons of the Protestant Episcopal church in the United States of America, and of the diocese in which said church shall be located, and such amendments shall become operative on filing a copy of the same, certified by the presiding officer and secretary of such meeting, with the secretary of state and with the clerk of the county in which such church is located; and all such amendments heretofore made by any Protestant Episcopal church are hereby declared to be valid and binding.

HISTORY: CL 1915, 10937;—CL 1929, 10945;—CL 1948, 458.260.

458.261 Repeal; saving clause.

Sec. 11. The following entitled acts are hereby repealed, viz.: "An act to provide for the organization of Protestant Episcopal churches," approved February seventeenth, 1857; "An act to amend sections 4, 5, 6 and 7 of an act entitled 'An act to provide for the organization of Protestant Episcopal churches,' approved February seventeenth, 1857, being sections 3083, 3084, 3085 and 3086 of the compiled laws of 1871, and to add a new section thereto, to stand as section 8 of said act," approved May twenty-seventh, 1879; "An act to enable certain Protestant Episcopal churches to reorganize

under the statute, approved February seventeenth, 1857, entitled 'An act to provide for the organization of Protestant Episcopal churches,'" approved March fourteenth, 1865; also all other acts amendatory of the above entitled acts, or inconsistent with this act; but the organization of all corporations under the provisions of either of said acts shall be deemed and taken to be organizations under this act, and all rights, obligations and liabilities contracted or incurred by any such corporations thereunder, or under the provisions of any law now in force, not inconsistent with the provisions of this act, shall continue of the same force and effect as though such acts of law had not been repealed; all such corporations, from and after the taking effect of this act, shall be subject to all the provisions hereof as fully as though such organization had been perfected hereunder.

HISTORY: CL 1915, 10938;—CL 1929, 10946;—CL 1948, 458.261.

NOTE: There is no repeal clause in the title of this act.

458.262 Reorganization and incorporation under act, procedure; officers.

Sec. 12. Any Protestant Episcopal church, heretofore organized under any other general law than those mentioned in the last preceding section, may reorganize so as to become subject to the provisions of this act. The wardens and vestry members, de jure or de facto, of such church, or a majority of them, are hereby authorized by their names of office to execute, acknowledge and file 1 or more articles of agreement, as provided in sections 1, 2 and 3 of this act, which articles shall, in addition to the requisites in said last mentioned sections provided, set forth that they are executed for the purpose of reorganizing such church according to the provisions of this act; and such articles shall be deemed sufficient, when so executed and acknowledged, although the number of signers shall be less than 6, if consisting of a majority of such wardens and vestry members. Upon the execution and filing of said articles, such church shall, without further action, be deemed to all intents and purposes to be reorganized and a corporation under this act, and all rights of property and of contract shall remain unimpaired, and the corporate identity of such church shall continue unchanged.

The wardens and vestry members in office shall continue in office until the annual election in Easter week next following such reorganization, and until their successors shall be chosen; and no other meeting or notice shall be necessary to complete such reorganization.

HISTORY: CL 1915, 10939;—CL 1929, 10947;—CL 1948, 458.262;—Am. 1957, p. 159, Act 136, Imd. Eff. May 24.

458.263 Cathedral; ex-officio rector.

Sec. 13. Should it be desirable to use the church building and any other buildings or property of any Protestant Episcopal church heretofore or hereafter organized and existing in this state, as and for a cathedral, it shall be lawful for such church, at its first meeting, or at any annual meeting, or at a special meeting duly called for that purpose, to adopt a plan not inconsistent with this act, nor with the constitutions and canons, doctrine, discipline and worship of the Protestant Episcopal church, by which it may adapt itself and its property to such use; which plan may provide for a dean or other officer, who shall be elected with the advice and consent of the bishop of the diocese in which such church may be located, in accordance with the canons of said diocese, and who shall be ex-officio rector.

HISTORY: Add. 1909, p. 166, Act 87, Eff. Sept. 1;—CL 1915, 10940;—CL 1929, 10948;—CL 1948, 458.263.

Act 223, 1913, p. 440; Eff. Aug. 14.

AN ACT to authorize the bishops of the Protestant Episcopal church in Michigan, and their successors in office to hold property in their respective dioceses in trust for the use of the said church.

The People of the State of Michigan enact:

458.271 Conveyances to bishops of Protestant Episcopal church in trust for certain purposes.

Sec. 1. All gifts, grants, deeds, wills and other conveyances wherein or whereby any lands, tenements or other property within this state, or any personal property the donor or grantor of which resided in this state at the time such conveyance or will became effective, have been given, granted, devised or bequeathed, or in any manner conveyed by any person or persons whatever, unto any person or persons by the name, style or title of bishop of any diocese of said church in this state or his successors, or to any of such bishops in his individual name without the expression or designation of any title, upon the trust expressed or implied to take hold and receive the same for the use and benefit of any congregation or society of the Protestant Episcopal church, or for the support, aid and maintenance of any school, hospital, church, parish house, burial ground, parsonage or rectory, or other religious or charitable purposes within this state, and all such gifts, grants, deeds, wills and other conveyances which may hereafter be so made, shall vest the legal title of, in and to said lands, tenements and personal property, in the said bishop and in his successor or successors forever, in trust for the uses and purposes for which said property is, or may be hereafter acquired, granted or devised: Provided, That nothing in this act shall be taken or construed to give, or grant to the said bishop or bishops, or his or their successor or successors, the right to hold real estate in trust for any society except for charitable, religious or educational purposes, as provided for in this act.

HISTORY: CL 1915, 10941;—CL 1929, 10949;—Am. 1937, p. 309, Act. 197, Imd. Eff. July 20;—CL 1948, 458.271.

ROMAN CATHOLIC BISHOPS: Similar provisions, see Compilers' § 458.1.

TAX EXEMPTIONS: See Compilers' §§ 211.7 subd. 5 and 211.9.

GIFTS, GRANTS OR DEVISES: Indefiniteness, see Act 280 of 1915, being Compilers' §§ 554.351 to 554.353; probate contested when donee unnamed, see Act 207 of 1917, being Compilers' §§ 720.51 to 720.53; in perpetuity, restraint of alienation, see Act 373 of 1925, being Compilers' §§ 554.381 and 554.382.

SALE OF LAND: See Act 258 of 1925, being Compilers' §§ 554.401 to 554.404.

458.272 Conditions under which legal title vests in bishop even though not named in conveyance.

Sec. 2. All gifts, grants, deeds, wills and other conveyances wherein or whereby any lands, tenements or other property within this state, or any personal property the donor or grantor of which resided in this state at the time such conveyance or will became effective, have been, or shall hereafter be given, granted, devised or bequeathed or in any manner conveyed unto any parish, mission or religious, educational or charitable society of the Protestant Episcopal church in the state of Michigan by name, and such parish, mission or society shall be incapable of receiving or holding such property, whether by reason of being unincorporated, or because the persons designated as grantees are uncertain and indefinite, and all such gifts, devises and bequests which have been made, or shall hereafter be made, in trust for any religious, educational, or charitable purpose of the Protestant Episcopal church, in which no trustee is named in the conveyance or will, or in which the trustee so named shall fail to qualify, shall vest the legal title of, in and to said lands, tenements and personal property in the present bishop of the Protestant Episcopal church of the diocese in which such society is located or within which such religious, educational or charitable purpose is to be executed, and in his successor or successors forever, in trust for the uses and purposes for which said property is, or may be hereafter acquired, granted or devised.

HISTORY: Add. 1937, p. 310, Act 197, Imd. Eff. July 20;—CL 1948, 458.272.

458.273 Authority of bishop to make conveyance; approval required.

Sec. 3. Any bishop of the Protestant Episcopal church in the state of Michigan who may now or hereafter be vested with title to any lands, tenements or personal property in trust for any of the uses and purposes named herein may in his discretion give, grant

and convey the same to a corporation incorporated under the laws of the state of Michigan, authorized by the canons of said diocese or by resolution of the diocesan convention thereof to hold such property, subject to all the terms and conditions of the trust under which said bishop received and held the same.

HISTORY: Add. 1937, p. 310, Act 197, Imd. Eff. July 20;—CL 1948, 458.273.

Act 53, 1901, p. 80; Imd. Eff. Apr. 9.

AN ACT for the organization of corporate Congregational churches.

The People of the State of Michigan enact:

458.301 Congregational church; incorporators; articles, execution, contents.

Sec. 1. It shall be lawful for any number of persons of full age, not less than 5, who may desire to form themselves into a Congregational church, to adopt, execute and acknowledge before any person authorized to take acknowledgment of deeds, articles of association, in writing, whereby they shall agree to organize a church, according to the faith and usages of the churches commonly called Congregational, under the name and style set forth in said articles, which shall contain the following items:

First. The name of said church;

Second. The township, village or city, and the county in which said church shall be located;

Third. An agreement to worship and labor together as a church according to the faith and usages of the churches commonly called Congregational.

HISTORY: Am. 1913, p. 567, Act 298, Eff. Aug. 14;—CL 1915, 11016;—CL 1929, 10950;—CL 1948, 458.301.

GENERAL CORPORATION ACT: For provisions relating to ecclesiastical corporations, see Compilers' §§ 450.159 et seq. and 450.175 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

TAX EXEMPTIONS: See Compilers' §§ 211.7 subd. 5 and 211.9.

ECCLESIASTICAL SOCIETY: Consolidation with its church, see Compilers' §§ 458.331 to 458.353.

458.302 Trustees; election, qualifications, terms; articles and certificate of election, recording; body corporate, name.

Sec. 2. The persons signing said articles may, at the same time, elect by ballot, or may designate some other time and place for so electing, not less than 3 nor more than 12 trustees, a majority of whom shall be members of said church, to serve until their successors shall be elected. One-third of said trustees as near as may be shall, at the first election, be chosen for 3 years, 1/3 for 2 years, and 1/3 for 1 year, but thereafter, except to fill vacancies, they shall be chosen for 3 years, of which election a full record shall be made, and a certified copy of such record, signed by the presiding officer and secretary of the meeting at which said election is held, together with said articles of association, shall be recorded by the clerk of the county in which such church or place of worship is or shall be located, in a book by him provided for that purpose, and such clerk shall be entitled to a fee of 10 cents per folio for recording the same. When said articles of association and the certificate of election of said trustees shall have been so filed for record, the persons who shall have signed said articles, together with those who shall thereafter become members of said church, and, if the articles of association so provide, those persons, being of legal age, who are, and those who shall become regular contributors to the support of said church, shall become and be a body corporate under the name and style adopted in said articles, which name shall conform to the following form, namely: The (insert name or number) Congregational church of (insert name of place of location).

HISTORY: Am. 1913, p. 567, Act 298, Eff. Aug. 14;—CL 1915, 11017;—CL 1929, 10951;—CL 1948, 458.302.

458.303 Amendment of articles; procedure.

Sec. 3. It shall be lawful for said corporation at any regular or called meeting of its members, due notice having been given as hereinafter provided, by a 2/3 majority of the ballots cast at such meeting, to amend its articles of association in any manner not inconsistent with the provisions of this act, and such amendment shall become operative when a copy of the same, duly certified by the presiding officer and clerk of such meeting, and acknowledged before any person authorized to take acknowledgment of deeds, shall be filed with the clerk of the county for record.

HISTORY: Am. 1913, p. 568, Act 298, Eff. Aug. 14;—CL 1915, 11018;—CL 1929, 10952;—CL 1948, 458.303.

458.304 Right to vote.

Sec. 4. At all meetings of said corporations, subsequent to the first, right to vote upon questions involving the acquirement and disposition of property and the expenditure of money shall be confined to adult members of the church so incorporated, and, if the articles of association so provide, those persons, being of legal age, who are regular contributors to its support: Provided, That if said church shall have suspended worship, the right to vote shall be determined as of the date of such suspension.

HISTORY: Am. 1905, p. 113, Act 84, Imd. Eff. May 3;—Am. 1913, p. 568, Act 298, Eff. Aug. 14;—CL 1915, 11019;—CL 1929, 10953;—CL 1948, 458.304.

458.304a Congregational churches; by-laws, adoption, subjects, amendment or repeal.

Sec. 4a. Every such corporation shall have authority to adopt by-laws at any regular or special meeting called for that purpose, upon the approval of such proposed by-laws by a majority vote of its membership. The notice of such regular or special meeting shall contain a statement that by-laws are to be considered for adoption, alteration, amendment or repeal, except as otherwise prescribed in this act, or the articles of association, said by-laws may determine the qualification of members; the manner in which they shall be admitted, suspended or expelled; the number and official title of the person or persons who control the business and religious affairs of such corporation; their terms of office; the manner of their selection and removal from office; their respective official duties; the time and manner of calling and holding church business meetings and the number of members constituting a quorum; the manner and condition under which property, both real and personal, may be acquired, held and disposed of; provisions for direction and control of the board of trustees in the exercise of their powers and duties; provisions not inconsistent with the articles of association for officers, their designations and duties and for the qualification of members to vote at meetings; and such other by-laws as may be deemed necessary for the management of the business and religious affairs of such corporation. The by-laws may prescribe how the same may be altered, amended or repealed.

HISTORY: Add. 1955, p. 427, Act 254, Imd. Eff. Jun. 29.

458.305 Notice of meetings; amendments.

Sec. 5. Notice of meetings of said corporation, specifying the time, place, and object thereof, shall be read from the pulpit on the 2 successive Sundays preceding such meeting on which services shall be held: Provided, however, That in case it is proposed to amend the articles of association, the proposed amendment, together with a notice of the meeting called for its consideration, shall be read from the pulpit on the 3 successive Sundays, immediately preceding such meeting on which services shall be held; and the proposed amendment shall not itself be amended, in any material point, in the meeting so called for its consideration: And Provided further, That if there should be no public services at which the notice herein required may be given, said notice may be posted on the church door or published in the town, city or county

newspaper whose circulation among the members is greatest, for 3 weeks preceding such meeting, specifying the time and place and object thereof.

HISTORY: Am. 1913, p. 568, Act 298, Eff. Aug. 14;—CL 1915, 11020;—CL 1929, 10954;—CL 1948, 458.305.

458.306 Powers of board of trustees; limitations; election of trustees and officers.

Sec. 6. In the management of the secular affairs of the church so incorporated and of the business of said corporation, but subject always to its direction and control, the board of trustees thereof shall have and exercise all such powers of the board of directors of a business corporation as are appropriate to the purposes and business of a religious corporation: Provided, however, That said board of trustees shall not choose, call, settle or dismiss a pastor or fix his salary or buy, sell, convey or incumber real estate or any right thereto or interest therein, unless instructed so to do by said corporation at a regularly called meeting: And provided further, That members of the board of trustees and such other officers as may be provided for in the articles of association shall be elected by ballot at a regularly called meeting of those entitled to vote under the articles of association.

HISTORY: Am. 1913, p. 569, Act 298, Eff. Aug. 14;—CL 1915, 11021;—CL 1929, 10955;—CL 1948, 458.306.

458.307 Powers of corporation; seal; offerings and funds for certain purposes.

Sec. 7. Such corporation may have a seal and alter the same at will. It may, in its corporate name, sue and be sued in all courts of competent jurisdiction. Subject to the provisions of this act it shall have power to choose, call and settle a pastor and fix his salary; to elect trustees, treasurer and clerk and such other officers as may be provided for in its articles of association; to direct and control their actions; to acquire, hold, manage, control, sell and convey property both real and personal; to hold and recover all debts, damages, rights, privileges and all property, real, personal or mixed of whatsoever nature they or it may be and in whosoever [whosoever] hands held, belonging or appertaining to said church or to the religious organization out of which it is incorporated or reincorporated the same as if the right and title to said property had originally been vested in said corporation. It may hold so much real estate as may be needed for the purpose of church building, parsonage and cemetery purposes and of any so-called institutional activities; it may also hold for a period not exceeding 10 years, such real estate as may be conveyed or devised to it even though the same be not needed for the purposes above mentioned or be actually occupied by it in the exercise of its franchises: Provided, however, That all property of said corporation whether real, personal or mixed or whether held in fee or in trust and the income therefrom and the proceeds thereof when sold shall, subject to the terms of any trust or trusts relating thereto or to any part thereof, be held and used by said corporation for the benefit of said church as a Congregational religious organization, and for no other purpose whatsoever, except as provided in section 8 of this act. Said corporation may and shall hold in perpetuity as a permanent fund all property given, bequeathed or devised to it or acquired by it for the purpose of an endowment, the income from which fund, subject to the terms of any specific trust or trusts relating thereto, or to any particular part thereof, may be used for any lawful purposes of said church or corporation: Provided, That as to real estate, said property, when so required by law, may be sold and the proceeds from such sale covered into said fund: And Provided further, That said corporation, in the lawful administration of said fund, may sell any property therein and re-invest the proceeds of such sale in such securities and other property as shall be lawful investments for savings banks and trustees in this state, said property and securities when acquired, to become a part of the principal of said fund: And Provided further, That none of the offerings of said church received or collected for mis-

sionary or benevolent purposes shall be used for the current running expenses of said church or corporation; nor shall any fund or funds, money or other property received, set aside, accumulated or acquired for a specific purpose be diverted to any other use without the consent of the donor or his duly authorized representatives.

HISTORY: Am. 1913, p. 569, Act 296, Eff. Aug. 14;—CL 1915, 11022;—CL 1929, 10956;—CL 1948, 458.307.

INVESTMENTS: See Compilers' § 555.201.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

458.308 Corporation declared extinct; dissolution, procedure; title, vesting in conference, powers and duties.

Sec. 8. In all cases where the property of any corporation subject to the provisions of this act has been abandoned, or is no longer used for the benefit of said corporation as a Congregational religious organization, or if said corporation has for a period of 2 years ceased to exercise its corporate functions, or to hold regular religious services, then, in any or all of such cases, the local association of churches with which it is, or has last been connected may, by resolution declare the said corporation extinct and may notify the Michigan Congregational Conference, a corporation organized and existing under and by virtue of the laws of this state, of such resolution. Upon receiving such notice the said conference by its executive committee or such officer as said committee may designate, may apply to any court of equity jurisdiction in the county in which said property may be, for a decree, dissolving said corporation and vesting the title to its property in the said Michigan Congregational Conference. The application for such decree shall contain a statement of the reasons for said action and there shall be annexed thereto a duly certified copy of the resolution of the local association of churches to which said corporation belonged, declaring said church extinct, as above provided. Upon the filing of said application an order shall be entered, requiring all persons interested in said corporation, to show cause if any they have why such corporation should not be dissolved, at some time and place to be therein specified, not less than 4 weeks from the date thereof. Notice of the contents of such order shall be published once in each week for 3 successive weeks in a newspaper published in said county, if any such there be, and if not, in such newspaper of general circulation in said county as the court may direct. On the day appointed in such order, or on any day to which the court may adjourn the proceedings, if it shall appear to the court that the facts set forth in said application are true, a decree shall be entered, dissolving said corporation and vesting the title to its property in the said Michigan Congregational Conference, and such corporation shall thereupon be dissolved and the title to its property shall vest in the said Michigan Congregational Conference, which shall hold the said property, or the proceeds thereof if, in its judgment, it shall be deemed wise to sell it, in trust for 2 years and if, within said time, a Congregational church shall be incorporated under this act as the successor of the church so dissolved and shall be received in due form as a member of the local association to which the said church belonged at the time of its dissolution, it shall be the duty of the said Michigan Congregational Conference, on receiving satisfactory proof of said facts, to convey the said property or the proceeds thereof to the said church so incorporated which shall then be deemed to be in all respects the successor of the said church so dissolved, and shall succeed to all of its rights, privileges, property and obligations, except as above provided, as if said corporation had not been dissolved. But if no such church is so organized and incorporated, the absolute title to said property shall vest in the said Michigan Congregational Conference, subject to all trusts affecting the same in the hands of the dissolved corporation.

HISTORY: Am. 1913, p. 570, Act 298, Eff. Aug. 14;—CL 1915, 11023;—CL 1929, 10957;—CL 1948, 458.308.

458.309 Incorporation under act; procedure.

Sec. 9. Any church or religious organization, whether incorporated or un-

incorporated, may, at a meeting duly called for the purpose, by a 2/3 vote of those persons present and voting, place itself under the provisions of this act, the same as if incorporated under it by adopting and filing articles of association as provided in section 2 hereof.

HISTORY: Am. 1913, p. 571, Act 296, Eff. Aug. 14;—CL 1915, 11024;—CL 1929, 10958;—CL 1948, 458.309.

458.310 Construction of inconsistent acts.

Sec. 10. In all cases, whether in law or in equity, that may arise in any of the courts of the state, regarding churches incorporated under this act, or those which by vote shall have put themselves under its provisions, all other acts or parts of acts inconsistent herewith shall be interpreted and construed in such manner as to give full force and effect to the provisions of this act.

HISTORY: Am. 1913, p. 571, Act 296, Eff. Aug. 14;—CL 1915, 11025;—CL 1929, 10959;—CL 1948, 458.310.

Act 47, 1901, p. 72; Imd. Eff. Apr. 8.

AN ACT for the consolidation in Congregational churches of an ecclesiastical society with its church.

The People of the State of Michigan enact:

458.331 Consolidation of Congregational church and its ecclesiastical society; procedure.

Sec. 1. That when any Congregational church which has a religious or ecclesiastical society with corporate powers in connection with it, shall, by a 2/3 vote of those entitled to vote therein and voting, at a meeting duly called for the purpose, express by ballot a desire to assume said corporate powers and manage all its affairs, both temporal and spiritual, it shall be the duty of the trustees of the said religious or ecclesiastical society, upon receiving official notice of said vote, at any time within 3 months after receiving such notice, to call a meeting of the said religious or ecclesiastical society, due notice for 3 weeks being given, for the purpose of effecting a union of said church and religious society; and the notice calling such meeting of the religious society shall specify the following objects of the said meeting, together with the time and place where the meeting is to be held, namely:

First. For the purpose of consolidating the religious society with the church in connection, shall the name of the society be changed to that of the church in connection?

Two. For the same purpose shall the membership of the society, after the expiration of 1 year from the time of this vote, be limited to the members of the church in connection, of legal age; or to such members together with the pew holders in said church, if otherwise qualified to vote?

Three. For the same purpose shall the time and place of holding the annual and other meetings of the religious society be so changed as to coincide with the time and place of holding the annual and other meetings of the church in connection?

HISTORY: CL 1915, 11026;—CL 1929, 10960;—CL 1948, 458.331.

This act is expressly repealed by Sec. 3 of Act 303 of 1913, being Compilers' § 458.353, which however, contains the proviso that this act shall be deemed to be still in force for the enjoyment and protection of all rights now held or enjoyed under and by virtue of this act.

458.332 Consolidation of Congregational church and its ecclesiastical society; completion.

Sec. 2. If these questions shall be answered in the affirmative by a 2/3 vote of the legal members of the religious society present and voting, and by ballot, at said meeting, then the said religious society shall thereby be consolidated with the church in con-

nection, and the 2 shall thereafter be 1 body incorporate, possessed of all the records, rights, property, funds and franchises belonging to the said church and its religious society before their union in 1 corporate body.

HISTORY: CL 1915, 11026a;—CL 1929, 10961;—CL 1948, 458.332.

458.333 Consolidation of Congregational church and its ecclesiastical society; act governing consolidated church.

Sec. 3. Any church governed according to the rules and usages of the Congregational denomination within the state, with which its religious society has been consolidated under the provisions of this act shall be subject to the provisions of the act, entitled "An act for the organization of corporate Congregational churches," the same as if it had been originally organized under the said act.

HISTORY: CL 1915, 11026b;—CL 1929, 10962;—CL 1948, 458.333.

NOTE: The act above referred to, is Act 53 of 1901, being Compilers' §§ 458.301 to 458.310.

Act 303, 1913, p. 578; Eff. Aug. 14.

AN ACT to provide for the voluntary dissolution of ecclesiastical societies auxiliary to Congregational churches, and for the disposition of their property, and to repeal Act No. 47 of the Public Acts of 1901, entitled "An act for the consolidation in Congregational churches of an ecclesiastical society with its church."

The People of the State of Michigan enact:

458.351 Meeting of incorporated society; calling.

Sec. 1. Whenever any Congregational church, in connection with which is an already incorporated religious or ecclesiastical society, at any regular or called meeting, shall express by ballot and by a 2/3 vote of its qualified members present and voting a desire to assume said corporate powers and the direction and control of its property and secular affairs, the trustees of said society, upon receiving official notification of the vote of said church, shall forthwith call a meeting of said society, of which meeting notice shall be given on 3 successive Sundays next preceding the date of said meeting, specifying the time, place and object thereof, to consider and vote upon the questions stated in section 2 hereof.

HISTORY: CL 1915, 11027;—CL 1929, 10963;—CL 1948, 458.351.

458.352 Question to be voted; incorporation of church; dissolution of society.

Sec. 2. At the meeting so called, the following question shall be put to vote:

Shall the title to all the property of the (name of society) be vested in the Congregational church of, Michigan, and the said society be dissolved?

The vote shall be by ballot and if 2/3 of the ballots cast shall be in the affirmative, a duly certified copy of such resolution shall be transmitted to the clerk of the said church who shall call a meeting of the said church, which shall then prepare, execute and place on record, articles of association under and in accordance with the provisions of Act No. 53 of the Public Acts of 1901, and the amendments thereto, or such other act as may hereafter supersede said act and upon recording said articles of association as provided in said act the said society shall be dissolved and all property owned by it shall pass to and be held by the said church so incorporated under the name and style adopted by it in the said articles of association, and all liabilities of said society shall be assumed and paid by said church.

HISTORY: CL 1915, 11028;—CL 1929, 10964;—CL 1948, 458.352.

NOTE: Act 53 of 1901, above referred to, is Compilers' §§ 458.301 to 458.310.

458.353 Repeal; saving clause.

Sec. 3. Act No. 47 of the Public Acts of 1901, entitled "An act for the consolidation in Congregational churches of an ecclesiastical society with its church," is hereby repealed: Provided, however, That notwithstanding the repeal thereof, all rights of every kind and nature now held or enjoyed under and by virtue thereof, are expressly preserved and shall continue unimpaired; and said act shall be deemed to be still in force for the enjoyment and protection of said rights but for no other purpose whatsoever.

HISTORY: CL 1915, 11029;—CL 1929, 10965;—CL 1948, 458.353.

NOTE: Act 47 of 1901, above referred to, is Compilers' §§ 458.331 to 458.333.

Act 82, 1899, p. 120; Imd. Eff. May 25.

AN ACT to provide for the incorporation of reformed churches in America, formerly known as Reformed Protestant Dutch churches.

The People of the State of Michigan enact:

458.401 Reformed church; incorporators; articles in triplicate, filing; body corporate.

Sec. 1. That the minister or ministers and elders and deacons, and if during any time there be no minister, then the elders and deacons during such time, of every reformed church or congregation now or hereafter to be established in this state, and elected according to the rules and usages of such churches within this state, shall be trustees for every such church or congregation, and it shall be lawful for the said trustees, if not already incorporated, to assemble together as soon as they shall deem it convenient, and execute under their hands and seals articles of association, in triplicate, and acknowledge before some officer authorized by law to take acknowledgment of deeds. One of such triplicate copies shall be retained by such corporation, 1 copy shall be filed in the office of the register of deeds in the county where such corporation is formed, and 1 copy shall be filed in the office of the secretary of state. And such trustees and their successors shall thereupon, by virtue of this act, be a body corporate by the name or title expressed in such articles of association.

HISTORY: CL 1915, 10954;—CL 1929, 10966;—CL 1948, 458.401.

GENERAL CORPORATION ACT: For provisions relating to ecclesiastical corporations, see Compilers' §§ 450.159 et seq. and 450.175 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

TAX EXEMPTIONS: See Compilers' §§ 211.7 subd. 5 and 211.9.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

458.402 Articles; contents.

Sec. 2. The articles of association of any such corporation shall state the purpose for which such society is incorporated, the name of the corporation, the period for which it is incorporated, and the name and place of residence of each of the persons associating in the first instance.

HISTORY: CL 1915, 10955;—CL 1929, 10967;—CL 1948, 458.402.

458.403 Powers of trustees.

Sec. 3. The trustees of every church, congregation or society hereinabove mentioned, and their successors may respectively have and use a common seal, and may renew and alter the same at their pleasure, and are hereby authorized and empowered to take into their possession and custody all the temporalities belonging to such church, congregation or society, whether the same consists of real or personal estate, and whether the same shall have been given, granted or devised directly to such church, congregation or society, or to any other person for their use; and also, by their

corporate name or title, to sue and be sued in all courts of law or equity, and to recover, hold and enjoy all the debts, demands, rights and privileges, and all churches, meeting houses, parsonages and burying places, with the appurtenances, and all estates belonging to such church, congregation or society, in whatsoever manner the same may have been acquired, or in whose name soever the same may be held, as fully and amply as if the right or title thereto had originally been invested in the said trustees; and also to purchase and hold other real and personal estate, and to demise, lease and improve the same for the use of such church, congregation or society, or other pious uses, and also to repair and alter their churches or meeting houses, and to erect others, if necessary, and to erect dwelling houses for the use of their ministers, and other buildings for the use of such church, congregation or society; and such trustees shall also have power to make rules and orders for managing the temporal affairs of such church, congregation or society, and to dispose of all moneys belonging thereto, and to regulate and order the renting of the pews in their churches and meeting houses, and the perquisites for the breaking of the ground in the cemetery or church yards and in the said churches or meeting houses, for burying the dead, and all other matters relating to the temporal concerns and revenues of such church, congregation or society; and to appoint a clerk and treasurer of their board, and a collector to collect and receive the said rents and revenues, and to regulate the fees to be allowed to such clerk, treasurer and collector, and them or either of them to remove at pleasure, and appoint others in their stead; and such clerk shall enter all rules and orders made by such trustees, and payments ordered by them, in a book to be provided by them for that purpose.

HISTORY: CL 1915, 10956;—CL 1929, 10968;—CL 1948, 458.403.

458.404 Receipt of bequests or gifts of money for investment; real estate.

Sec. 4. The trustees of every such church, congregation or society, hereinabove mentioned, may receive bequests or gifts of money for investment upon bond or mortgage when the interest of such investment is to be used by such trustees for the lawful purposes of the corporation, and may receive gifts or bequests of real estate for like purposes, but such real estate, so received shall be sold within 10 years of the time it becomes the property of such corporation, and the proceeds derived from such sale shall be invested in like manner as if the original bequest had been in money.

HISTORY: CL 1915, 10957;—CL 1929, 10969;—CL 1948, 458.404.

GIFTS, GRANTS OR DEVISES: Indefiniteness, see Act 280 of 1915, being Compilers' §§ 554.351 to 554.353; probate contested when donee unnamed, see Act 207 of 1917, being Compilers' §§ 720.51 to 720.53; in perpetuity, restraint of alienation, see Act 373 of 1925, being Compilers' §§ 544.381 and 554.382.

458.405 Dissolution; incumbrance or alienation of land.

Sec. 5. No corporation organized or reincorporated under the provisions of this act shall be dissolved or disbanded except by and with the consent of the classis to which such church shall belong, and no church building or parsonage, or any land necessarily used in connection therewith for the purpose of public worship, shall be sold, mortgaged, or in any manner alienated by such trustees or congregation except by and with the consent of the classis to which such church belongs.

HISTORY: CL 1915, 10958;—CL 1929, 10970;—CL 1948, 458.405.

458.406 Real estate not needed for church; sale or incumbrance.

Sec. 6. It shall be lawful for the trustees of every such church, congregation or society to sell and convey or mortgage, without the consent of the classis to which such church, congregation or society may belong, all real estate that may belong to such corporation, and upon which no church buildings or parsonage shall have been erected, and which is not necessary for use by such church, congregation or society in connection with their public worship.

HISTORY: CL 1915, 10959;—CL 1929, 10971;—CL 1948, 458.406.

SALE OF LAND: See Act 258 of 1925, being Compilers' §§ 554.401 to 554.404.

458.407 Extension of corporate life; procedure.

Sec. 7. Any corporation organized under the provisions of this act whose corporate existence is about to expire by limitation may extend its corporate existence for a term not exceeding 30 years, by filing with the secretary of state and the register of deeds of the county where such corporation is located duly attested copies of a resolution adopted by such corporation at a meeting called in accordance with the provisions of its by-laws expressing a desire to so extend its corporate existence, and upon the filing of such resolution as above specified, the corporate existence of such body shall be extended in accordance with the terms of such resolution for a term of not exceeding 30 years from the date of the expiration of its former term, and all rights of property and of contract shall remain unimpaired and the corporate identity of such body shall remain unchanged.

HISTORY: CL 1915, 10960;—CL 1929, 10972;—CL 1948, 458.407.

458.408 Reincorporation under act; saving clause.

Sec. 8. The trustees of every church, congregation or society that have heretofore been incorporated by virtue of the provisions of chapter 173, volume 1, Howell's annotated statutes of Michigan, providing for the incorporation of Reformed Protestant Dutch churches, and that are now operating thereunder, are hereby reincorporated under the provisions of this act, and shall be governed by all of the provisions thereof, the same as if they had been originally incorporated under this act, and all such corporations reincorporated under and made subject to the provisions of this act shall succeed to and be vested with all the property, real and personal, moneys, rights, credits and effects, and all the records, files, books and papers belonging to such corporations as formerly incorporated, and no rights or liabilities, either in favor of or against such former corporation, existing at the time of its reincorporation under and subject to the provisions of this act, and no suit or prosecution of any kind shall be in any manner affected by such change, but the same shall stand or progress as if no such change had been made, and all debts and liabilities of the former corporation shall be deemed debts and liabilities of the new corporation, and all the officers of any such corporation elected or appointed under the provisions of the former act incorporating such corporation and in office at the time of such reincorporation under this act shall continue to exercise their respective functions under the provisions of this act of reincorporation for the full term for which they were so elected or appointed, and until their successors shall have qualified and entered upon the duties of their office.

HISTORY: CL 1915, 10961;—CL 1929, 10973;—CL 1948, 458.408.

NOTE: Ch. 173 of How., above referred to, consisted solely of Act 355 of 1865, repealed and superseded by Act 209 of 1897, the latter act being repealed by Act 84 of 1921, see CL 1929, 10134.

Act 148, 1901, p. 199; Eff. Sep. 5.

AN ACT to provide for the incorporation of Christian Reformed churches of America.

The People of the State of Michigan enact:

458.421 Christian Reformed church; trustees; articles, execution, filing; body corporate.

Sec. 1. That the minister or ministers, elders, and deacons, and if during any time there shall be no minister, then the elders and deacons during such time of every Christian Reformed church now existing or hereafter to be organized in this state, and elected according to the constitution and usages of such church within this state, shall

be the trustees of every such church or congregation, and it shall be lawful for such trustees if not already incorporated, to assemble together as they shall deem it convenient, and execute under their hands and seals, articles of association, in writing, in triplicate, and acknowledge the same before some officer authorized by law to take acknowledgment of deeds.

One of such triplicate copies shall be retained by such corporation; 1 copy shall be filed in the office of the register of deeds of the county where such corporation is formed; and 1 copy thereof shall be filed in the office of the secretary of state, and such trustees and their successors in office shall thereupon by virtue of such articles and this act be a body corporate by the name or title expressed in such articles of association.

HISTORY: CL 1915, 11030;—CL 1929, 10974;—CL 1948, 458.421.

GENERAL CORPORATION ACT: For provisions relating to ecclesiastical corporations, see Compilers' §§ 450.159 et seq. and 450.178 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

TAX EXEMPTIONS: See Compilers' §§ 211.7 subd. 5 and 211.9.

458.422 Articles; contents.

Sec. 2. The said articles shall contain:

First. The name of the proposed corporation;

Second. The city, village or township in which the same is located;

Third. The fundamental principles of the proposed organization which shall in all cases be in conformity to the faith and constitution or form of government as adopted by the synod of the Christian Reformed church of America in the year A.D. 1896, and any amendments or additions thereto as shall have been adopted and may hereafter be adopted by the synod of said church;

Fourth. The period for which such corporation is incorporated not exceeding 30 years.

HISTORY: CL 1915, 11031;—CL 1929, 10975;—CL 1948, 458.422.

458.423 Officers; membership qualification; vacation or vacancy, effect.

Sec. 3. Any person elected to the office of pastor, elder or deacon according to the constitution and usages of the Christian Reformed churches of America in any particular church, and the pastor, if there be one, shall become and be a member of the corporation of that church, and corporate functions of all offices shall cease on the vacation of the ecclesiastical office, but a vacancy in the office of the pastor shall in no degree affect such corporation.

HISTORY: CL 1915, 11032;—CL 1929, 10976;—CL 1948, 458.423.

458.424 Powers of trustees.

Sec. 4. Such trustees may have a common seal and alter the same at pleasure, and shall take into their possession and custody all the temporalities of the church, and make rules and regulations for the management thereof, whether the same shall consist of real or personal estate, and whether the same has been given, granted, bequeathed or devised directly or indirectly to such church, or to any person for their use.

HISTORY: CL 1915, 11033;—CL 1929, 10977;—CL 1948, 458.424.

458.425 Powers of trustees; powers of corporation; sale of land, investment of proceeds.

Sec. 5. Such corporation may also in their own corporate name sue and be sued in all courts and places, and may in its corporate name recover and hold all debts, demands, rights and privileges, churches, buildings and parsonages and all the estate and appurtenances belonging to such church in whatsoever manner the same may have been acquired, or in whose hands soever the same may be held, as fully and amply as if the right and title thereto had been originally vested in said corporation, and they may

hold the moneys and personal estate raised or acquired for the purpose of erecting churches, parsonages and other buildings and may hold such an amount of real estate as it shall be reasonably necessary for church, lecture or school room and for dwellings for their ministers. Such trustees may also receive bequests or gifts of money for investment upon bond or mortgage, when the interest of such investment is to be used by such trustees for the lawful purposes of such church and may receive gifts or devises of real estate for like purpose; but all such real estate so received, except that used for church buildings, site, school or lecture rooms and parsonages, shall be sold within 10 years from the time it becomes the property of such church and the proceeds derived from such sale shall be invested or used in like manner as if the original gift or devise had been in money.

HISTORY: CL 1915, 11034;—CL 1929, 10978;—CL 1948, 458.425.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

458.426 Powers of trustees; limitations; terms of grant, donation or other conveyance, controlling.

Sec. 6. Said trustees shall also have power and authority to bargain, sell, convey, mortgage, lease or release any real estate belonging to said church or held by them as such trustees, and to erect churches, parsonages, school houses and other buildings for the direct and legitimate use of such church and to alter and repair the same, and to fix the salaries of their ministers: Provided, That no such purchase, sale or conveyance, mortgage, lease or fixing of salaries shall be made unless the vote of at least a majority of the members of the church organizations of which said trustees are officers, shall be first obtained at a meeting of such members of said church or congregation present and entitled to vote at any meeting of the members of such church or congregation duly and especially called for that purpose, by notice given for 2 successive Sabbaths at the usual place of meeting next preceding such meeting: Provided further, That no sale, mortgaging or conveyance shall be made of any gift, grant or donation, conveyance, devise or bequest which would be inconsistent with the express terms or plain intent of the grant, donation, gift, conveyance, devise or bequest.

HISTORY: CL 1915, 11035;—CL 1929, 10979;—Am. 1937, p. 270, Act 175, Eff. Oct. 29;—CL 1948, 458.426.

GIFTS, GRANTS OR DEVISES: Indefiniteness, see Act 280 of 1915, being Compilers' §§ 554.351 to 554.353; probate contested when done unnamed, see Act 207 of 1917, being Compilers' §§ 720.51 to 720.53; in perpetuity, restraint of alienation, see Act 373 of 1925, being Compilers' §§ 554.381 and 554.382.

SALE OF LAND: See Act 258 of 1925, being Compilers' §§ 554.401 to 554.404.

458.427 Amendment of articles; procedure.

Sec. 7. At any time after such corporation shall have been duly organized, it shall be lawful for such trustees, at any meeting thereof by a vote of 2/3 of the trustees to amend its articles of association in any manner not inconsistent with the provision of this act: Provided, That before such amendments shall be operative a vote in favor thereof, of at least 2/3 of the members of such church organization, present and entitled to vote shall be obtained by such trustees at a meeting of the members of said church specially called for that purpose, and of which notice has first been given as provided in section 6 of this act, and after such vote of said church organization in favor of such amendment, then a copy thereof shall be filed in the office of the secretary of state and the register of deeds in accordance with the provision of section 1 of this act. Such copies of the amended articles of association shall be certified by the chairman and secretary of such meeting.

HISTORY: CL 1915, 11036;—CL 1929, 10980;—CL 1948, 458.427.

458.428 Incorporation under act; procedure.

Sec. 8. The minister, elders and deacons of any church of the Christian Reformed church of Michigan, the trustees of which have been incorporated under any law of this state, may elect to become incorporated and take corporate powers under this act: Provided, That the consent of 2/3 of all the members of such church organization

present at a public meeting must first be obtained therefor, of which meeting due notice of the time, place and object thereof, shall be given in manner prescribed in the act under which such corporation is organized or incorporated, or in accordance with notice of meeting given in section 6 of this act; if such consent shall be obtained, a certificate shall be executed and acknowledged by the presiding officer and secretary of such meeting, and shall be filed in accordance with section 1 of this act; and on compliance with the provisions of this act providing for the reincorporation of such church congregation or society, all the property powers, duties, trusts and obligations of every kind possessed or pertaining to the original corporation shall be transferred to and become vested in the minister, elders and deacons of such church organization as trustees of such church and as a corporation organized for the same church under this act.

HISTORY: CL 1915, 11037;—CL 1929, 10981;—CL 1948, 458.428.

458.429 Reincorporation under act; saving clause.

Sec. 9. The trustees of every church organization that have heretofore been incorporated by virtue of the provisions of chapter 176 of volume 1 of Howell's annotated statutes of the state of Michigan and amendments thereto providing for the incorporation of Holland Christian Reformed churches may become reincorporated under the provisions of this act: Provided, That a vote of not less than a majority of the members of any such church or congregation present, and entitled to vote at any meeting of such church organization, duly and specially called for that purpose, by notice given 2 successive Sabbaths at the usual place of meeting, next preceding such meeting, shall have been obtained therefor, if such church organization shall by a majority vote of the members thereof present at said meeting and entitled to vote, elect to become reincorporated under this act, a certificate thereof shall be executed and acknowledged by the presiding officer and secretary of such meeting, and be filed in accordance with the requirements of section 1 of this act whereupon the trustees of such reincorporated church or congregation shall become a corporation and be governed by the provisions of this act the same as if they had originally incorporated thereunder, and all such corporations reincorporated under and made subject to the provisions of this act shall succeed to and be vested with all the property, real and personal, moneys, credits, and effects, and all the records, files, books and papers belonging to such corporation as formerly incorporated, and no rights or liabilities, either in favor or against such former corporation existing at the time of this reincorporation under the provisions of this act, and no suit or prosecution of any kind shall be in any manner affected by such change, but the same shall stand or progress as if no such change had been made, and all debts and liabilities of the former corporation shall be deemed debts and liabilities of the new corporation, and all the officers of any such corporation elected or appointed under the provisions of the former act of incorporation, and in office at the time of such reincorporation under this act, shall continue to exercise the functions under the provisions of this act of reincorporation for the full term which they were elected or appointed and until their successors shall have qualified and entered upon the duties of their offices.

HISTORY: CL 1915, 11038;—CL 1929, 10982;—CL 1948, 458.429.

NOTE: Ch. 176 of How., above referred to, consisted solely of Act 69 of 1881, repealed and superseded by Act 209 of 1897, the latter act being repealed by Act 84 of 1921, see CL 1929, § 10134.

Act 94, 1899, p. 135; Imd. Eff. Jun. 1.

AN ACT to provide for the incorporation of churches of the Evangelical association.

The People of the State of Michigan enact:

458.451 Evangelical church; incorporators.

Sec. 1. It shall be lawful for any number of members of the Evangelical association of full age, not less than 5, to organize and secure the incorporation of a church according to the usage of the Evangelical association, under the provisions hereof.

HISTORY: CL 1915, 10962;—CL 1929, 10983;—CL 1948, 458.451.

GENERAL CORPORATION ACT: For provisions relating to ecclesiastical corporations, see Compilers' §§ 450.159 et seq., 450.178 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

TAX EXEMPTIONS: See Compilers' §§ 211.7 subd. 5 and 211.9.

458.452 Articles; execution; certificate of consent.

Sec. 2. The persons desiring to organize such church shall execute and acknowledge, before any person authorized to take acknowledgment of deeds, articles of incorporation, in writing, whereby they shall agree to organize a church which shall be governed by the discipline, rules, usages and ministerial appointments of the Evangelical association. To such articles of incorporation the pastor in charge shall attach a certificate assuring his consent.

HISTORY: CL 1915, 10963;—CL 1929, 10984;—CL 1948, 458.452.

458.453 Articles; contents.

Sec. 3. Said articles of incorporation shall contain the following items:

First. The name of the church and the town, village or city and the county and state where located.

Second. An agreement to incorporate in the interests of religion and the spread of scriptural holiness, according to the discipline, rules and usages of the Evangelical association.

Third. The number of trustees, not less than 3, who shall have charge of the affairs of said church, and the time of the annual meeting thereof.

Fourth. The time for which said corporation shall be created.

HISTORY: CL 1915, 10964;—CL 1929, 10985;—CL 1948, 458.453.

458.454 Articles; certificate, copies, recording; body corporate, powers.

Sec. 4. Such articles of incorporation shall be executed in duplicate. One copy shall be retained by such corporation, and 1 copy shall be recorded in the office of the county clerk of the county where such corporation is formed. When said articles of incorporation and said certificate of the preacher in charge shall have been recorded, or left for record in the office of the county clerk, the said persons so signing said articles of association, and their associates and fellow members of said church, and all that may thereafter become members of said church as shown by its records from time to time shall thereby become and thenceforth be a body politic or corporation by the name expressed in said articles of incorporation, with all the powers, rights, and privileges appertaining to religious corporations by the law of this state.

HISTORY: CL 1915, 10965;—CL 1929, 10986;—CL 1948, 458.454.

458.455 Church government; ecclesiastical polity.

Sec. 5. Said churches, when so incorporated, shall be in all matters of church government and ecclesiastical polity subject to the discipline, rules and usages of the Evangelical association as from time to time authorized and declared by the general conference of said church and the annual conference in whose bounds such corporation is situated.

HISTORY: CL 1915, 10966;—CL 1929, 10987;—CL 1948, 458.455.

458.456 Meetings.

Sec. 6. Said church when so organized may provide by by-laws for such regular and special meetings of the members thereof as may be deemed essential for the full exercise of the powers granted or reserved hereby.

HISTORY: CL 1915, 10967;—CL 1929, 10968;—CL 1948, 458.456.

458.457 Powers of corporation; rights of ministers, presiding elders and bishops.

Sec. 7. Said church when so organized shall have all the rights, privileges and immunities appertaining to such religious corporations. It may sue and be sued; it may take and hold property both real and personal as may be necessary for the proper execution of the purpose for which it was incorporated; it may hold so much land as may be necessary for the proper purposes of said church and parsonage; it may sell, mortgage or lease real estate, when so directed by a majority of the members thereof in regular meeting. Said corporation shall at all times permit such ministers belonging to the Evangelical association as shall from time to time be duly authorized by the general conference or the annual conference within whose bounds such corporation is situated, to preach and expound God's word; and shall permit duly appointed pastors, presiding elders and bishops to perform the functions incident to their offices in accordance with the discipline and usages of the Evangelical association.

HISTORY: CL 1915, 10968;—CL 1929, 10969;—CL 1948, 458.457.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

458.458 Amendments of articles; procedure.

Sec. 8. It shall be lawful for any church organized under the provisions of this act, by a majority of the members of said church, to alter or amend its articles of incorporation in any manner not inconsistent with this act, and such alteration or amendment shall become operative when a majority of the members of said church of full age shall execute amended articles, and said amended articles shall have been executed in the manner provided for in section 3 of this act, and shall have been recorded by the county clerk as stated in section 4 of this act.

HISTORY: CL 1915, 10969;—CL 1929, 10990;—CL 1948, 458.458.

458.459 Reincorporation under act; procedure.

Sec. 9. Any church of the Evangelical association heretofore incorporated, or the trustees of which have heretofore exercised the powers of a body corporate may place itself under the provisions of this act by a majority of the members of said church executing articles of incorporation according to section 3 of this act, and recording the same as provided for in section 4 of this act.

HISTORY: CL 1915, 10970;—CL 1929, 10991;—CL 1948, 458.459.

458.460 Construction of acts.

Sec. 10. In all proceedings that may arise or be brought in any of the courts of this state touching or in any way concerning churches that may be incorporated under this act, all other acts or parts of acts shall be so interpreted and construed as to give full force and effect to the provisions of this act, and to all the rights and privileges granted by this act to churches incorporated thereunder.

HISTORY: CL 1915, 10971;—CL 1929, 10992;—CL 1948, 458.460.

458.501–458.514 Repealed. 1949, p. 360, Act 265, Eff. Sep. 23.

Sections provided for incorporation of Mennonite Brethren in Christ churches.

Act 265, 1949, p. 357; Eff. Sep. 23.

AN ACT to provide for the incorporation of United Missionary churches, for the change of name of Mennonite Brethren in Christ churches, and continuation of same as United Missionary churches, and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

458.521 Applicability of act.

Sec. 1. This act shall be applicable to the corporation heretofore incorporated under any general or special act as a Mennonite Brethren in Christ church, and to churches hereafter incorporated under this act as United Missionary churches.

HISTORY: New 1949, p. 357, Act 265, Eff. Sep. 23.

458.522 United Missionary churches; incorporation; change of name in articles.

Sec. 2. The articles of association of every ecclesiastical corporation heretofore incorporated under any general or special act of this state as a Mennonite Brethren in Christ church in the name of which the words "Mennonite Brethren in Christ" appear are hereby amended by deleting from the name of each of such corporations the words "Mennonite Brethren in Christ" and substituting therefor the words "United Missionary". Such change of name of every such corporation shall become operative ipso facto upon the effective date of this act without the filing of any amendment to the articles of association of any such corporation.

HISTORY: New 1949, p. 357, Act 265, Eff. Sep. 23.

458.523 United Missionary churches; organization, number of persons.

Sec. 3. It shall be lawful for any number of persons not less than 5, of full age, with the consent of the district superintendent of the district in which the proposed church is to be located, to organize and procure the incorporation of a United Missionary church.

HISTORY: New 1949, p. 357, Act 265, Eff. Sep. 23.

458.524 United Missionary churches; articles of association, certificate.

Sec. 4. The persons desiring to organize such church shall execute and acknowledge, before any persons authorized to take acknowledgments of deeds, articles of association in writing, whereby they shall agree to organize a church which shall be governed by the discipline, rules and uses of the United Missionary church. To such articles of association there shall be attached a certificate by the district superintendent of the district in which said church is to be located, that said church was organized by the consent of said district superintendent.

HISTORY: New 1949, p. 357, Act 265, Eff. Sep. 23.

458.525 United Missionary churches; contents and form of articles.

Sec. 5. Said articles of association shall contain the following items:

First. The name of said church.

Second. The township, village or city, and the county in which it shall be located.

Third. An agreement to worship and labor together according to the discipline, rules and usages of the United Missionary churches in America, formerly known as the Mennonite Brethren in Christ church.

Said articles may be in the following form:

We, the undersigned, desiring to become incorporated under the provisions of Act Number of the Public Acts of 1949, entitled "An act to provide for the incorporation of United Missionary churches, for the change of name of Mennonite Brethren in Christ churches, and continuation of same as United Missionary churches, and to re-

peal certain acts and parts of acts" (title of act may be omitted where act number is used), do hereby make, execute and adopt the following articles of association to-wit:

First. The name assumed by the corporation and by which it shall be known in law is "..... United Missionary church".

Second. The location of said church shall be in the of, county of, state of Michigan.

Third. The members of said church shall worship and labor together according to the discipline, rules and usages of the United Missionary church as from time to time authorized and declared by the general conference of said church, and the annual conference within whose bounds said corporation is situated. In witness whereof we, the parties hereby associating for the purpose of giving legal effect to these articles, herunto sign our names with our places of residence.

Done at the of, county of, and state of Michigan, this day of, A.D.

Signatures

Residences

State of Michigan,

County of, ss.

On this day of, A.D., before me, a in and for said county, personally appeared, known to me to be the persons named in, and who executed, the foregoing instrument, and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

.....
I,, District Superintendent of the district of the annual conference of the United Missionary church, the same being the district in which the church mentioned in the foregoing articles of association is to be or is now located, do hereby certify that such church was organized by my consent and concurrence.

Dated at Mich.,, A.D.

.....
District Superintendent

HISTORY: New 1949, p. 358, Act 265, Eff. Sep. 23.

458.526 United Missionary churches; triplicate articles, delivery to corporation and securities commission; fees; filing.

Sec. 6. Triplicate originals of the articles shall be delivered to the Michigan corporation and securities commission. If the commission finds that the articles conform to the law, it shall, when all fees and charges have been paid as required by law, file 1 of the original articles in its office, forward 1 such original articles to the county clerk of the county in which such church is to be located for filing by such county clerk, and return 1 of such original articles to the incorporators. The commission and each of the county clerks receiving articles for filing shall each certify thereon and upon all amendments thereto the date when the same were filed in their respective offices.

When such articles of association and certificate aforesaid shall be filed by the Michigan corporation and securities commission in its office the said persons so signing said articles of association, and their associates and fellow members of said church, and all who may thereafter become members of said church according to the discipline, rules and usages of the United Missionary church, shall thereupon become and thenceforth be a body politic or corporation, by the name expressed in said articles of association, with all the powers, rights and privileges appertaining to religious corporations by the laws of this state.

HISTORY: New 1949, p. 358, Act 265, Eff. Sep. 23.

458.527 United Missionary churches; government and policy.

Sec. 7. Said church, when so organized, shall be in all matters of church government and ecclesiastical polity subject to the discipline, usages and ministerial appointments of the United Missionary church, as from time to time authorized by the general conference of said church, and the annual conference within whose bounds said corporation may be situated.

HISTORY: New 1949, p. 359, Act 265, Eff. Sep. 23.

458.528 United Missionary churches; board of trustees.

Sec. 8. The secular affairs of said church shall be managed by a board of trustees elected and organized according to the provisions of the book of discipline of the United Missionary church, who shall hold their office until their successors are elected and accept their trust unless they previously forfeit their membership, in which case they shall also forfeit their office as a trustee.

HISTORY: New 1949, p. 359, Act 265, Eff. Sep. 23.

458.529 United Missionary churches; seal; powers; conveyance of property; discipline; administration of sacraments.

Sec. 9. Said corporation may have a seal and alter the same at pleasure. It may, in its corporate name, sue and be sued in all courts of this state. It shall have power to acquire, hold, sell, move and convey property, both real and personal, in accordance with this act, and it may recover and hold all the debts, demands, rights, privileges and all property, whether real or personal, of whatsoever sort it may be, belonging or appertaining to said church, in whatever manner the same may have been acquired, and in whose hands soever the same may be held, the same as if the right and title had originally been vested in said corporation. The board of trustees may authorize 1 or more of said board to affix the name and seal of said corporation, and to execute and attest conveyances, notes, obligations, acquittances, and all necessary legal documents. It may sell (but not mortgage) or otherwise dispose of its personal property, and it may, under restrictions hereinafter provided, sell, mortgage or otherwise dispose of or encumber its real estate, but not for current expenses. It may hold so much land as may be needed for the proper purposes of the church and its parsonage. It may also hold, for a period not to exceed 10 years, real estate, which may be conveyed or devised to it or to said trustees to be sold and the proceeds to be used in any way for the benefit of said church, as directed in the conveyance or will. Said corporation shall at all times permit all ministers belonging to the United Missionary church as shall from time to time be duly authorized by the general conference, or the annual conference, within whose bounds the said corporation may be, to preach and expound God's Holy Word therein; and shall permit district superintendents and pastors, duly appointed, to execute the discipline of the United Missionary church, and to administer the sacraments therein.

HISTORY: New 1949, p. 359, Act 265, Eff. Sep. 23.

458.530 United Missionary churches; powers of trustees.

Sec. 10. The trustees shall have power, according to the terms and limitations of the discipline of the United Missionary church, as from time to time authorized and declared by the annual conference of said church, to purchase, build, repair, lease, rent, mortgage or encumber its property: Provided, That in case of selling or disposing of real estate, the consent of the annual conference be obtained.

HISTORY: New 1949, p. 359, Act 265, Eff. Sep. 23.

458.531 United Missionary churches; sale of real estate, authorization; proceeds.

Sec. 11. Whenever it shall become necessary for the payment of debts or with a view of reinvestment, to make a sale of any real estate belonging to said church, the local conference of said church may, by a vote of a majority of all the members of said quarterly conference and the consent of the annual conference of which said church shall be a part, authorize a sale of said real estate by the trustees of said church with such limitations and restrictions as the quarterly conference and annual conference may judge necessary and impose, and the trustees of said church, when so authorized, may sell and convey said property, and with the proceeds of such sale pay the debts of such corporation, or reinvest the said proceeds by the purchase or improvement of other property for the same uses, and deeded to the corporation in the same manner as provided in section 7 of this act, as said trustees may be directed by the local conference and the annual conference.

HISTORY: New 1949, p. 359, Act 265, Eff. Sep. 23.

458.532 United Missionary churches; abandonment of property; license to sell.

Sec. 12. In all cases where property belonging to any church society incorporated under the provisions of this act has been abandoned or is no longer used for the purpose for which said property was acquired or for the benefit of said church society, and has not been conveyed by said society, under the provisions of this act, or said corporation has dissolved or become extinct, the title to said property belonging to said corporation shall pass to the annual conference within whose bounds said property is located. And such annual conference may by such officer or committee as said conference may designate, for that purpose apply to the circuit court for the county in which said property may be, for license to sell the same. And such license may be granted by said court, after such notice of said application as the court may direct, and thereupon said property may be sold and the proceeds of such sale applied or used as said annual conference may direct.

HISTORY: New 1949, p. 360, Act 265, Eff. Sep. 23.

458.533 United Missionary churches; amending articles, acknowledgment, certificate, recording.

Sec. 13. It shall be lawful for any church organized under the provisions of this act, by a 2/3 vote of the local conference of said church, to alter or amend its articles of association in any manner not inconsistent with the provisions of this act, or the book of discipline of the United Missionary church; and such alteration or amendment shall become operative when 2/3 of the of the members of the local conference shall execute amended articles and said amended articles are acknowledged in the same manner as stated in section 3 of this act, and the district superintendent has affixed his certificate thereto, as provided in said section, and the same has been recorded or left for record, as provided in section 4 of this act.

HISTORY: New 1949, p. 360, Act 265, Eff. Sep. 23.

458.534 United Missionary churches; suits or proceedings.

Sec. 14. In all proceedings or suits that may arise, or be brought in any of the courts of this state, touching or in any way concerning churches that may be incorporated under this act, all other acts or parts of acts inconsistent herewith shall be interpreted and construed in such manner as to give full force and effect to all the provisions of this act, and to all the rights and privileges granted by this act to churches incorporated thereunder.

HISTORY: New 1949, p. 360, Act 265, Eff. Sep. 23.

458.535 United Missionary churches; execution of obligations or contracts by acting trustees, validity.

Sec. 15. It is further provided, that the execution by the acting trustees of said corporation, in proper form, of any deed, mortgage, note, bond or other obligation or contract of said corporation, shall be prima facie evidence of the proper appointment of said trustees, and that the necessary steps have been taken to give them full authority to make such transaction.

HISTORY: New 1949, p. 360, Act 265, Eff. Sep. 23.

458.536 Act repealed; rights saved.

Sec. 16. Act No. 225 of the Public Acts of 1899, being sections 458.501 to 458.514, inclusive, of the Compiled Laws of 1948, is hereby repealed: Provided, however, That notwithstanding the repeal thereof, all rights of every kind and nature now held or enjoyed under and by virtue thereof, and all obligations and liabilities contracted or incurred by any such corporations thereunder, or under the provisions of any law now in force, now inconsistent with the provisions of this act, shall continue of the same force and effect as though such act had not been repealed: Provided, further, That all corporations incorporated under such act shall be deemed and taken to be corporations under this act, and from and after the taking effect of this act, shall be subject to all the provisions hereof as fully as though such corporation had been incorporated hereunder.

HISTORY: New 1949, p. 360, Act 265, Eff. Sep. 23.

CHAPTER 460. PUBLIC UTILITIES

PUBLIC SERVICE COMMISSION

Act 3 of 1939

- 460.1 Public service commission; creation; members, appointment, qualifications, terms, vacancies.
- 460.2 Public service commission; oath, chairman, removal, quorum, seal, offices.
- 460.3 Public service commission; compensation, employees, experts, appointment; expenses.
- 460.4 Public service commission; powers; pending matters; appeals from orders.
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- 460.6 Public service commission; powers and jurisdiction.
- 460.6a Gas, telephone or electric utilities; increase in rates, notice, hearing, finding, relief, investigation, report; nondomestic fuel adjustment charges.
- 460.6b Gas utility rates; authority of public service commission; rates, charges, classifications and schedules on file with federal power commission received in evidence; proceedings; appeal; refund.
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Act 115 of 1970

- 460.41 Public service inspectors; peace officer powers.

PUBLIC UTILITIES COMMISSION

Act 419 of 1919

- 460.51 Public utilities commission; creation; members, appointment, term, vacancy, interest in utilities; seal, offices, equipment.
- 460.52 Public utilities commission; officers, employees, engineers and experts; appointment, compensation, expenses.
- 460.53 Railroad commission; abolition, transfer; regulations relating to sanitation and adequate shelter for railroad employees.
- 460.53a Railroads; equipment of vehicles for transporting employees.
- 460.54 Public utilities commission; powers and duties concerning rates; franchise rights; municipally owned utility.
- 460.55 Additional reports; verification; rules of commission; penalties.
- 460.56 Books, records and accounts of public utility; examination by commission; failure to obey order, penalty; compulsory process.
- 460.57 Location of office of public utility; records; rate schedules, filing and posting, approval; rules.
- 460.58 Complaint; procedure for investigation; contempt; order of commission; witness fees.

- 460.59 Review of orders; opportunity to be heard.

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- 460.61 Public utilities commission; securities, issuance fee.

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RIGHTS AND POWERS OF COMMISSION

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- 460.101 Public utilities commission; rights, powers and authority.

- 460.102 Public utilities commission; restoration of powers and authority.

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- 460.201 Carriers by water; rates; filing, fixing by commission, exception.

- 460.202 Carriers by water; audit of books by commission; duty to furnish data.

- 460.203 Carriers by water; rules of commission.

- 460.204 Carriers by water; investigation, regulation of service and fixing of rates.

- 460.205 Carriers by water; review of orders of regulation.

- 460.206 Penalty.

ISSUANCE OF SECURITIES

Act 144 of 1909

- 460.301 Public utilities securities; approval by commission; appraisal of property, expense; review of order.

- 460.302 Penalty; recovery, disposition.

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REHEARINGS AND AMENDMENT OF FINDINGS

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- 460.351 Rehearings; amendment of orders.

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- 460.401 Expenses of audit or appraisal by utilities commission; account.

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Act 38 of 1925

- 460.451 Municipal public utilities; system of accounts; annual report, publication; forms.

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		460.652	Interest on guaranty deposits; semi-annual payment; enforcement of claim.

Act 3, 1939, p. 7; Imd. Eff. Feb. 15.

AN ACT to provide for the regulation and control of public utilities and other services affected with a public interest within this state; to create a public service commission and to prescribe and define the powers and duties thereof; to abolish the Michigan public utilities commission, and to confer the powers and duties now vested by law therein, on the public service commission hereby created; to provide for the continuance, transfer and completion of matters and proceedings now pending; to provide for appeals; to provide appropriations therefor; to declare the effect of this act and prescribe penalties for the violations of the provisions thereof; and to repeal all acts contrary to the provisions of this act.

The People of the State of Michigan enact:

460.1 Public service commission; creation; members, appointment, qualifications, terms, vacancies.

Sec. 1. A commission to be known and designated as the "Michigan public service commission" is hereby created, which shall consist of 3 members, not more than 2 of whom shall be members of the same political party, appointed by the governor with the advice and consent of the senate. Each member shall be a citizen of the United States, and of the state of Michigan, and no member of said commission shall be pecuniarily interested in any public utility or public service subject to the jurisdiction and control of the commission. During his term no member shall serve as an officer or committee member of any political party organization or hold any office or be employed by any other commission, board, department or institution in this state. No commission member shall be retained or employed by any public utility or public service subject to the jurisdiction and control of the commission during the time he is acting as such commissioner, and for 6 months thereafter, and no member of the commission, who is a member of the bar of the state of Michigan, shall practice his profession or act as counselor or attorney in any court of this state during the time he is a member of said commission: Provided, however, This shall not require any commissioner to retire from, or dissolve any partnership, of which he is a member, but said partnership, while he is a member of the commission, shall not engage in public utility practice. Im-

mediately upon the taking effect of this act, the offices of the present members of the Michigan public service commission are hereby abolished, and the members of the Michigan public service commission as herein created shall be appointed by the governor with the advice and consent of the senate, for terms of 6 years each: Provided, That of the members first appointed, 1 shall be appointed for a term of 2 years, 1 for a term of 4 years, and 1 for a term of 6 years. Upon the expiration of said terms successors shall be appointed with like qualifications and in like manner for terms of 6 years each, and until their successors are appointed and qualified. Vacancies shall be filled in the same manner as is provided for appointment in the first instance.

HISTORY: Am. 1947, p. 635, Act 337, Imd. Eff. Jul. 3;—CL 1948, 460.1;—Am. 1951, p. 581, Act 275, Eff. Sep. 28.

CITED IN OTHER SECTIONS: The above section is cited in § 16.331.

460.2 Public service commission; oath, chairman, removal, quorum, seal, offices.

Sec. 2. Members of said commission shall qualify by taking and subscribing to the constitutional oath of office, and shall hold office until the appointment and qualification of their successor. The governor shall designate 1 member to serve as chairman of the commission. Any member of the commission may be removed by the governor for misfeasance, malfeasance or nonfeasance in office after hearing. A vacancy in the commission shall not impair the right of the 2 remaining members to exercise all the powers of the commission. Two members of the commission shall at all times constitute a quorum. The commission shall adopt an official seal, of which all the courts shall take judicial notice and proceedings, orders and decrees may be authenticated thereby. It shall be the duty of the board of state auditors to provide suitable offices, supplies and equipment for said commission in the city of Lansing, the expenses thereof to be audited, allowed and paid in such manner and out of such funds as may be provided by law.

HISTORY: CL 1948, 460.2;—Am. 1951, p. 338, Act 228, Eff. Sep. 28.

460.3 Public service commission; compensation, employees, experts, appointment; expenses.

Sec. 3. The chairman of the commission and each of the other members shall be paid such annual salary as is established for such offices in the appropriation act most recently effective prior to the effective date of their confirmation by the senate. The commission may appoint a secretary and such deputies, clerks, assistants, inspectors, heads of divisions and employees as shall be necessary for the proper exercise of the powers and duties of the commission. All salaries and other expenses incurred by the commission shall be paid out of such funds as may be appropriated by the legislature therefor, and be paid out of the general fund of the state. All fees and other moneys received by the commission shall be paid over at the end of each month to the state treasurer, taking a receipt therefor. The commission shall have authority to employ engineers and experts in public utilities and public service matters and fix their compensation for such services, to be paid out of the appropriation provided by the legislature therefor. The members of the commission and the engineers, inspectors and employees thereof shall be entitled to their actual and necessary expenses incurred in the performance of the work of the commission. Each such deputy, clerk, assistant, engineer, inspector or expert shall perform such duties as may be required by the commission. Each member of the commission shall devote his entire time to the performance of the duties of his office.

HISTORY: Am. 1947, p. 635, Act 337, Imd. Eff. Jul. 3;—CL 1948, 460.3;—Am. 1951, p. 338, Act 229, Eff. Sep. 28;—Am. 1957, p. 264, Act 208, Imd. Eff. Jun. 8;—Am. 1959, p. 225, Act 162, Imd. Eff. Jul. 16;—Am. 1961, p. 73, Act 74, Eff. Sep. 8.

460.4 Public service commission; powers; pending matters; appeals from orders.

Sec. 4. The Michigan public utilities commission, having failed and refused to properly carry out the legislative mandates with respect to public safety, and having failed and refused to properly enforce the provisions of the several acts conferring jurisdiction upon it with respect to the use of the various highways of the state in a safe and proper manner, is hereby abolished, and immediately upon the taking effect of this act said Michigan public utilities commission shall cease to exist, and the tenure of office of the members thereof and other employment of each employe of said commission shall be thereby terminated. All the rights, powers, and duties vested by law in said Michigan public utilities commission, and in the Michigan railroad commission and transferred to the Michigan public utilities commission, shall be deemed to be transferred to and vested in the Michigan public service commission hereby created, and shall hereafter be exercised and performed by said commission. All hearings, matters and proceedings of whatsoever nature pending before said Michigan public utilities commission or any court shall not be terminated or abated, but shall be considered to have been transferred to the Michigan public service commission hereby created, and shall be continued, carried on and completed in the same manner and subject to the same rights, privileges, immunities and procedure as though the same were carried on and completed by said Michigan public utilities commission, without any requirement of amendment, modification, or change by reason of the transfer hereby made. Said Michigan public service commission shall have and exercise all rights and privileges and the jurisdiction in all respects as has been conferred by law and exercised by the Michigan public utilities commission under the laws of this state; and wherever reference is or has been made in any law to the "commission" or to the "Michigan public utilities commission" or the "Michigan railroad commission" such reference shall be construed to mean the Michigan public service commission hereby provided for, without further amendment or change thereof. Any order or decree of the Michigan public service commission shall be subject to review in the manner now provided by law for reviewing orders and decrees of the Michigan railroad commission or the Michigan public utilities commission. In no case, however, shall any injunction or other order issue suspending or staying any decree or order of the Michigan public service commission except after due notice to the commission and a reasonable opportunity for hearing thereon. All appeals from orders of the Michigan public utilities commission initiated under the provisions of any other act and now pending in any court shall not be dismissed, terminated, or abated but shall be continued, carried on, and completed exactly as though this section had been in effect at the time such appeals were taken and such appeals initiated under the provisions of this section. The Michigan public service commission shall be substituted as defendant in all such causes.

HISTORY: CL 1948, 460.4.

NOTE: See Compilers' § 460.51 et seq. and notes, as to powers and duties.

460.5 Public service commission; books, records, files.

Sec. 5. All books, records, files, papers, documents, and other property belonging to the Michigan public utilities commission shall be forthwith turned over to the Michigan public service commission and shall be continued as a part of the records, files, and other property of said commission. The Michigan public service commission shall in all respects be considered to be the successor in office of the Michigan public utilities commission in respect to all of the powers or duties now vested in or imposed

upon said public utilities commission. Any unexpended balance of moneys in the state treasury and any fees or other moneys now owing to said public utilities commission shall be and the same are hereby transferred and assigned over to the Michigan public service commission hereby created, to be used and disposed of as provided by law.

HISTORY: CL 1948, 460.5.

460.6 Public service commission; powers and jurisdiction.

Sec. 6. The public service commission is vested with complete power and jurisdiction to regulate all public utilities in the state except any municipally owned utility and except as otherwise restricted by law. It is vested with power and jurisdiction to regulate all rates, fares, fees, charges, services, rules, conditions of service and all other matters pertaining to the formation, operation or direction of such public utilities. It is further granted the power and jurisdiction to hear and pass upon all matters pertaining to or necessary or incident to such regulation of all public utilities, including electric light and power companies, whether private, corporate or cooperative, gas companies, water, telephone, telegraph, oil, gas and pipeline companies, motor carriers, and all public transportation and communication agencies other than railroads and railroad companies.

The commission shall have the same measure of authority with respect to railroads and railroad companies as is granted and conferred under the various provisions of the statutes creating the Michigan railroad commission and its successor, the Michigan public utilities commission, and defining their powers and duties.

HISTORY: CL 1948, 460.6;—Am. 1952, p. 397, Act 240, Eff. Sep. 18;—Am. 1960, p. 35, Act 44, Imd. Eff. Apr. 19;—Am. 1967, p. 156, Act 125, Imd. Eff. Jun. 27;—Am. 1969, p. 400, Act 223, Imd. Eff. Aug. 6.

460.6a Gas, telephone or electric utilities; increase in rates, notice, hearing, finding, relief, investigation, report; nondomestic fuel adjustment charges.

Sec. 6a. When any finding or order is sought by any gas, telephone or electric utility to increase its rates and charges or to alter, change or amend any rate or rate schedules, the effect of which will be to increase the cost of services to its customers, notice shall be given within the service area to be affected. When such utility shall have placed in evidence facts relied upon to support its petition or application to so increase its rates and charges, or to so alter, change or amend any rate or rate schedules, the commission, pending the submission of all proofs by any interested parties, may in its discretion and upon written motion by such utility make a finding and enter an order granting partial and immediate relief, after first having given notice to the interested parties within the service area to be affected in the manner ordered by the commission, and after having afforded to such interested parties reasonable opportunity for a full and complete hearing: Provided, That no such finding or order shall be authorized or approved ex parte, nor until the commission's technical staff has made an investigation and report: And provided further, That any alteration or amendment in rates or rate schedules applied for by any public utility which will result in no increase in the cost of service to its customers may be authorized and approved without any notice or hearing. Nothing contained in this section shall be construed to prohibit the commission from permitting the incorporation of fuel adjustment clauses in rate schedules for service other than domestic service pursuant to notice and hearing thereon.

HISTORY: Add. 1952, p. 401, Act 243, Eff. Sep. 18;—Am. 1955, p. 261, Act 172, Imd. Eff. Jun. 13.

CITED IN OTHER SECTIONS: The above section is cited in § 460.556.

460.6b Gas utility rates; authority of public service commission; rates, charges, classifications and schedules on file with federal power commission received in evidence; proceedings; appeal; refund.

Sec. 6b. If the rates of any gas utility shall be based, among other considerations, upon the cost of natural gas purchased by said gas utility which is in turn distributed

by said gas utility to the public served by it, and the cost for such gas is regulated by the federal power commission, the Michigan public service commission shall have the authority set forth in this section. In any proceeding to increase the rates and charges or to alter, change or amend any rate or rate schedule of a gas utility, the Michigan public service commission shall be permitted to and shall receive in evidence the rates, charges, classifications and schedules on file with the federal power commission whereby the cost of gas purchased or received by such gas utility is fixed and determined. If, while such proceeding is pending before the Michigan public service commission, a proceeding shall be instituted or be pending before said federal power commission, or on appeal therefrom in a court having jurisdiction, with respect to or affecting the cost of gas payable by such gas utility, said Michigan public service commission shall consider as an item of operating expense to said gas utility the cost of gas set forth in said rates, charges, classifications and schedules on file with the federal power commission. If the cost of gas payable by said gas utility shall be reduced by the final order of the federal power commission or the final decree of the court, if appealed thereto, and the Michigan public service commission shall have entered an order approving rates to said gas utility as aforesaid based upon the cost of gas set forth in the rates, charges, classifications and schedules on file with the federal power commission which were later reduced as above set forth, the Michigan public service commission upon its own motion or upon complaint and after notice and hearing may proceed to order refund to the gas utility's customers of any sums refunded to the said gas utility for the period subsequent to the effective date of the Michigan public service commission order approving rates for the gas utility as above set forth.

HISTORY: Add. 1952, p. 467, Act 272, Imd. Eff. Jun. 16.

460.7 Railroad labor unions; representatives; right to participate in hearings.

Sec. 7. Any elected or designated representatives of a recognized labor organization in the railroad industry which has a fiduciary relationship with its members and the health or safety of whose members in the course of their employment is affected by any action or inaction of the public service commission (including any rule, practice or order of said commission) or is affected by the violation of any statute whose enforcement is within the jurisdiction of the public service commission, shall have the right to file complaints or petition and appeal and be heard and participate fully as a party in interest in any hearings or investigations conducted by the public service commission in connection therewith: Provided, That the services rendered by such elected or designated representative shall be part of his regular duties and responsibilities, and he shall receive for such services no special compensation or fee from such organization or any individual member or members thereof, and such representation is limited to matters pertaining to the health or safety of such members in the course of their employment. This provision shall in no way affect representation authorized by Act No. 162 of the Public Acts of 1966.

HISTORY: Add. 1967, p. 109, Act 89, Eff. Nov. 2.

Original section 7 of Act 3 of 1938, p. 7, was an appropriation section and was repealed by Act 267 of 1945.

460.8 Voluntary associations; hearings; persons entitled to appear; industrial representative.

Sec. 8. Any elected or designated representative of a voluntary association in the industry whose members have an economic interest in any matters covered by Act No. 254 of the Public Acts of 1933, as amended, being sections 475.1 to 479.49 of the Compiled Laws of 1948, shall have the right to appear and be fully heard and fully participate as a party of interest on behalf of his association only in any public hearing conducted by the public service commission relating to matters covered by Act No.

254 of the Public Acts of 1933, as amended, being sections 475.1 to 479.49 of the Compiled Laws of 1948. The same privilege shall be extended to an industrial representative; this section shall not be construed to affect in any way section 7 of this act as added by Act No. 89 of the Public Acts of 1967.

HISTORY: Add. 1968, p. 201, Act 140, Imd. Eff. Jun. 11.

Original section 8 of Act 3 of 1939, p. 7, was a repeal section and was repealed by Act 267 of 1945.

Sec. 9. (This was a severing clause section.)

HISTORY: Rep. 1945, p. 415, Act 267, Imd. Eff. May 25.

Act 115, 1970, p. 371; Imd. Eff. Jul. 23.

AN ACT to provide inspectors appointed by the public service commission with powers of a peace officer to enforce certain acts and parts of acts.

The People of the State of Michigan enact:

460.41 Public service inspectors; peace officer powers.

Sec. 1. Inspectors appointed by the public service commission in addition to the powers and duties conferred upon them by any other provision of law, shall have all the powers conferred upon peace officers by the general laws of the state for the purposes of enforcing the following acts:

(a) Act No. 254 of the Public Acts of 1933, as amended, being sections 475.1 to 479.49 of the Compiled Laws of 1948.

(b) Act No. 181 of the Public Acts of 1963, as amended, being sections 480.11 to 480.19 of the Compiled Laws of 1948.

(c) Act No. 288 of the Public Acts of 1965, as amended, being sections 286.601 and 286.602 of the Compiled Laws of 1948.

(d) Act No. 246 of the Public Acts of 1921, being sections 460.201 to 460.206 of the Compiled Laws of 1948.

(e) Act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 257.923 of the Compiled Laws of 1948, only with respect to commercial vehicles and their operation.

HISTORY: New 1970, p. 371, Act 115, Imd. Eff. Jul. 23.

Act 419, 1919, p. 751; Imd. Eff. May 15.

AN ACT to provide for the regulation and control of certain public utilities operated within this state; to create a public utilities commission and to define the powers and duties thereof; to abolish the Michigan railroad commission and to confer the powers and duties thereof on the commission hereby created; to provide for the transfer and completion of matters and proceedings now pending before said railroad commission; and to prescribe penalties for violations of the provisions hereof.

The People of the State of Michigan enact:

460.51 Public utilities commission; creation; members, appointment, term, vacancy, interest in utilities; seal, offices, equipment.

Sec. 1. A commission to be known and designated as the "Michigan public utilities commission," to be composed of 5 members is hereby created. Immediately upon the taking effect of this act said members shall be appointed by the governor for terms of 4 years each, subject to confirmation by the senate. Upon the expiration of said terms successors shall be appointed in like manner for terms of 4 years each and until their

successors are appointed and qualified. Vacancies shall be filled in the same manner as is provided for appointment in the first instance. No member of said commission shall be pecuniarily interested in any public utility subject to the jurisdiction and control of the commission. Said commission shall adopt a suitable seal of which all courts of the state shall take judicial notice and all proceedings, orders and decrees shall be authenticated thereby. It shall be the duty of the board of state auditors to provide suitable offices, supplies and equipment for said commission in the city of Lansing, the expense thereof to be audited, allowed and paid in such manner as is or may be provided by law for the payment of other necessary state expenses.

HISTORY: CL 1929, 11006;—CL 1948, 460.51.

COMPILERS' NOTE: The public utilities commission has been abolished, and its powers and duties transferred to the public service commission, see Compilers' § 460.4.

By Sec. 3 of this act the Michigan railroad commission was abolished and its rights, powers and duties transferred to the Michigan public utilities commission. The cases have been annotated under the act under which they were decided. The various provisions of the railroad commission act, being Compilers' §§ 462.2 to 462.50, with annotations, should be consulted along with the sections and annotations of the present act.

EX OFFICIO MEMBERSHIP: Board for examination of sale of railroad property and franchises by purchaser at mortgage foreclosure sale, see Compilers' § 469.282.

CONSTRUCTION OF STATUTES: See Compilers' § 8.3.

HIGHWAYS ACROSS RAILROADS: Permission to construct, granting by utilities commission, see Compilers' § 221.27.

Supervision of grade crossings and separations by commission, see Compilers' § 253.1 et seq. and Act 114 of 1925, being Compilers' § 253.51 et seq.

460.52 Public utilities commission; officers, employees, engineers and experts; appointment, compensation, expenses.

Sec. 2. Said commission shall have power to appoint a secretary and such clerks, assistants, inspectors and other employes as shall be necessary for the proper exercise of the powers hereby granted. Each member of the commission shall receive an annual salary of 7,000 dollars payable in the same manner as are the salaries of other state officials. Any appropriation made for the Michigan railroad commission shall be received by the commission hereby created and used for the purpose of carrying out the provisions of this act. Any amounts of salaries of commissioners in excess of the amount appropriated for the Michigan railroad commission shall be paid out of the general fund of the state. The commission shall have authority to employ engineers and experts in public utility matters, and to fix the compensation for their services, and the same shall be paid out of the general fund of the state in the same manner as the salaries of other state officers are paid. The members of said commission and the employes thereof as aforesaid, shall be entitled to their reasonable expenses incurred while traveling in the performance of the work of the commission. Each such employe shall perform such duties as may be required by the commission.

HISTORY: CL 1929, 11007;—CL 1948, 460.52.

460.53 Railroad commission; abolition, transfer; regulations relating to sanitation and adequate shelter for railroad employees.

Sec. 3. Immediately upon the taking effect of this act, the Michigan railroad commission shall cease to exist and the tenure of office of the members thereof shall be at once terminated. All the rights, powers and duties now vested by law in said railroad commission shall be deemed to be transferred to and vested in said public utilities commission and shall be exercised and performed thereby, except as herein otherwise provided. All hearings, matters and proceedings of whatsoever nature now pending before said railroad commission shall not be terminated or abated, but shall be transferred to said public utilities commission and shall be carried on and completed in the same manner and subject to the same incidents as though such transfer were not made. Said utilities commission shall have and exercise the same measure of jurisdiction in all respects as is now held and exercised by the Michigan railroad commission under the laws of the state pertaining thereto; and wherever reference is made in such law to the "commission" or to the "Michigan railroad commission," such reference shall be construed to mean the public utilities commission herein provided for.

Said public utilities commission, now known as the Michigan public service commission, is hereby further authorized to promulgate and enforce reasonable rules and regulations relating to sanitation and adequate shelter as affecting the welfare and health of railroad trainmen, enginemen, yardmen, maintenance of way employees, highway crossing watchmen, clerical, platform, freight house, and express employees.

HISTORY: CL 1929, 11006;—Am. 1943, p. 32, Act 35, Eff. Jul. 30;—Am. 1947, p. 60, Act 54, Imd. Eff. Apr. 18;—CL 1948, 460.53;—Am. 1949, p. 166, Act 156, Eff. Sep. 23.

RAILROAD COMMISSION: See Compilers' §§ 462.2 to 462.50.

460.53a Railroads; equipment of vehicles for transporting employees.

Sec. 3a. Every railroad operating in this state shall provide adequate seating facilities, heating facilities and facilities for communication between cab and rear compartment on all motor vehicles purchased after the effective date of this section for use in the transportation of maintenance of way employees. This section shall not apply to motor vehicles used to transport employees distances of less than 5 miles from their regular assembly point nor in cases of extreme emergency. If any dispute arises as to the adequacy of the facilities herein provided for, it may be submitted to and decided by the public service commission.

HISTORY: Add. 1962, p. 34, Act 39, Imd. Eff. Apr. 16.

460.54 Public utilities commission; powers and duties concerning rates; franchise rights; municipally owned utility.

Sec. 4. In addition to the rights, powers and duties vested in and imposed on said commission by the preceding section, its jurisdiction shall be deemed to extend to and include the control and regulation, including the fixing of rates and charges, of all public utilities within this state, producing, transmitting, delivering or furnishing steam for heating or power, or gas for heating or lighting purposes for the public use. Subject to the provisions of this act the said commission shall have the same measure of authority with reference to such utilities as is granted and conferred with respect to railroads and railroad companies under the various provisions of the statutes creating the Michigan railroad commission and defining its powers and duties. The power and authority granted by this act shall not extend to, or include, any power of regulation or control of any municipally owned utility; and it shall be the duty of said commission on the request of any city or village to give advice and render such assistance as may be reasonable and expedient with respect to the operation of any utility owned and operated by such city or village. In no case shall the commission have power to change or alter the rates or charges fixed in, or regulated by, any franchise or agreement heretofore or hereafter granted or made by any city, village or township. It shall be competent for any municipality and any public utility operating within the limits of said municipality, whether such utility is operating under the terms of a franchise or otherwise, to join in submitting to the commission any question involving the fixing or determination of rates or charges, or the making of rules or conditions of service, and the commission shall thereupon be empowered, and it shall be its duty to make full investigation as to all matters so submitted and to fix and establish such reasonable maximum rates and charges, and prescribe such rules and conditions of service and make such determination and order relative thereto as shall be just and reasonable. Such order when so made shall have like force and effect as other orders made under the provisions of this act. In any case where a franchise under which a utility is, or has been, operated, including street railways, shall have heretofore expired or shall hereafter expire, the municipality shall have the right to petition the commission to fix the rates and charges of said utility in accordance with the provisions of this act, or to make complaint as herein provided with reference to any practice, service or regulation of such utility, and thereupon said commission shall have full jurisdiction in the premises.

HISTORY: CL 1929, 11009;—Am. 1931, p. 216, Act 138, Eff. Sept. 18;—CL 1948, 460.54.

COMMON CARRIERS: See Compilers' § 475.1 et seq.

RAILROAD COMMISSION: See Compilers' §§ 462.2 to 462.50.

RATES: In general, see Compilers' § 462.4 et seq.; switching charges, see Compilers' §§ 462.6 et seq. and 468.101; freight rates, see Compilers' §§ 462.5 subd. (b) 462.12 and Act 153 of 1883, being Compilers' §§ 469.471 and 469.472; railroad bridge and tunnel companies, see Compilers' § 464.9 subd. 9; surface or elevated railway companies, see Compilers' § 467.103; union depot companies operating local passenger trains, see Compilers' § 471.30; street railway companies, see Compilers' § 472.20; railroad, interurban railway, etc., see Act 382 of 1919, being Compilers' §§ 468.1 to 468.4 and Act 115 of 1921, being Compilers' §§ 468.31 to 468.37; carriers by water, see Act 246 of 1921, being Compilers' §§ 460.201 to 460.206; express charges, see Compilers' § 462.25 and telephone companies, see Compilers' §§ 484.103 and 484.110; transporting natural gas, see Compilers' § 483.110; transmission of electricity on highways, see Compilers' §§ 460.552 and 460.557; transmission of water power and electricity, see Compilers' § 486.253.

OVERCHARGES: Time limitation on recovery, see Act 315 of 1927, being Compilers' §§ 600.5811 and 600.5834.

SEWAGE OR GARBAGE DISPOSAL CORPORATIONS: Rates to be determined by public utilities commission, see Compilers' §§ 123.245 and 123.246.

460.55 Additional reports; verification; rules of commission; penalties.

Sec. 5. In addition to the reports now required to be made by any public utility under the laws of the state relating to the Michigan railroad commission, it shall be competent for the public utilities commission to require the making of such additional and further reports and the supplying of such data as is reasonably necessary for the proper performance of the powers and duties hereby contemplated. Any report required to be made by a utility operated and controlled by a corporation, joint stock company or association shall be verified by the affidavit of the president and secretary thereof. In all other cases such verification shall be made by the owner, or 1 of them, or by the general manager. Said commission shall have power and authority to make, adopt and enforce rules and regulations for the conduct of its business and the proper discharge of its functions hereunder, and all persons dealing with the commission or interested in any matter or proceedings pending before it shall be bound by such rules and regulations. The commission shall also have authority to make and prescribe regulations for the conducting of the business of public utilities, subject to the jurisdiction thereof, and it shall be the duty of every corporation, joint stock company, association or individual owning, managing or operating any such utility to obey such rules and regulations. Any such corporation, joint stock company, association or individual refusing or neglecting so to do, or refusing or neglecting to make any report required hereunder, shall be liable to a penalty of not less than 100 dollars nor more than 1,000 dollars; and the officer or individual in default shall also be deemed to be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not less than 10 dollars nor more than 1,000 dollars, or to imprisonment in the county jail not more than 6 months, or both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1929, 11010;—CL 1948, 460.55.

RAILROAD COMMISSION: See Compilers' §§ 462.2 to 462.50.

PENALTY: Suit for, see (Jud. Act) Compilers' § 600.4805 et seq.

460.56 Books, records and accounts of public utility; examination by commission; failure to obey order, penalty; compulsory process.

Sec. 6. Said commission shall have authority to examine, or cause to be examined, the books, accounts and records kept on behalf of any public utility subject to the jurisdiction thereof. For the purpose of making such examination any member of the commission or any examiner or employee thereof shall be given free and full access to said books, accounts and records. Any person, or persons, in any way preventing or obstructing such examination or interfering with the person or persons authorized to make the same shall be deemed guilty of a misdemeanor. It shall also be competent for the commission to require by order or subpoena, which may be served in the same manner as is a subpoena issued out of the circuit court, the production of any books, papers or records relating to the operating or management of any such utility. The owner or manager or the officers of any corporation, company, or association, owning or operating any such utility, may likewise be summoned to appear before the commission to answer such questions as may be put to him touching the operation and business of such utility. Neglect or refusal to obey any such order or subpoena or re-

fusal to so testify shall render the person or persons in default guilty of a misdemeanor. Said commission may also apply to any circuit court of the state for compulsory process to enforce any such order or subpoena, and said court shall have jurisdiction to compel obedience in the same manner as compliance with an order of the court might be enforced under the laws of the state pertaining thereto.

HISTORY: CL 1929, 11011;—CL 1948, 460.56.

MISDEMEANOR: Penalty, see Compilers' § 750.504.

WITNESSES: Compelling attendance, see GCR 506.

460.57 Location of office of public utility; records; rate schedules, filing and posting, approval; rules.

Sec. 7. Any corporation, joint stock company, association or individual operating a public utility within this state subject to the provisions hereof shall have and maintain an office within the county in which the property, or some portion of it, is located. All books, accounts, papers and records pertaining to the business and operation of such utility shall be kept in said office, unless the commission by special order or by rule or regulation may otherwise provide. Schedules of rates in such form and in such detail as the commission may direct shall be filed in the office of the commission and copies thereof shall be printed and posted in each of the principal offices of the utility. No such schedule shall be operative unless and until it has been approved by the commission; nor shall any change be made therein except on such approval. The commission may adopt rules and regulations governing the presentation of such schedules and desired changes, and action thereon, and shall have full authority to regulate the procedure to be observed.

HISTORY: CL 1929, 11012;—CL 1948, 460.57.

460.58 Complaint; procedure for investigation; contempt; order of commission; witness fees.

Sec. 8. Upon complaint in writing that any rate, classification, regulation or practice charged, made or observed by any public utility is unjust, inaccurate, or improper, to the prejudice of the complainant, the commission shall proceed to investigate the matter. The procedure to be followed in all such cases shall be prescribed by rule of the commission: Provided, however, That in all cases reasonable notice shall be given to the parties concerned as to the time and place of hearing. An investigation of any such complaint, and the formal hearing thereon, if such is deemed necessary, may be held at any place within the state and by any member or members of the commission, or by any duly authorized representative thereof. Witnesses may be summoned and the production of books, and records before the commission, or the member, or any duly authorized representative thereof conducting the hearing, may be required. Any witness summoned to appear or to produce papers at any such hearing, who neglects or refuses so to do shall be deemed guilty of a contempt. It shall be competent for the commission in any such case to make application to any circuit court of the state setting forth the facts of the matter. Thereupon said court shall have the same power and authority to punish for the contempt and to compel obedience to the subpoena or order of the commission as though such person were in contempt of such court or had neglected or refused to obey its lawful order or process. The taking of testimony at such hearing shall be governed by the rules of the commission: Provided, That at the request of either party a record of such testimony shall be taken and preserved. Upon the completion of any such hearing, the commission shall have authority to make an order or decree dismissing the complaint or directing that the rate, charge, practice or other matter complained of, shall be removed, modified or altered, as the commission deems just, equitable and in accordance with the rights of the parties concerned. For attending on any such hearing, any witness summoned by the commission shall be entitled to the same fees as are, or may be, provided by law for attending the circuit

court in any civil matter or proceedings, which said fees shall be paid out of the general fund in the treasury of the state. All claims for such fees shall be approved by the secretary, or by some member of the commission, and shall be audited and allowed by the board of state auditors.

HISTORY: CL 1929, 11013;—CL 1948, 460.58.

CONTEMPTS: See Compilers' §§ 600.1701 and 600.1731.

WITNESS FEES: See Compilers' § 600.2164, GCR 506 and § 600.2552.

460.59 Review of orders; opportunity to be heard.

Sec. 9. Any order or decree shall be subject to review in the manner now provided by law for reviewing orders and decrees of the Michigan railroad commission. In no case, however, shall any injunction or other order issue suspending or staying any decree or order of the commission except after due notice to the commission and a reasonable opportunity for hearing thereon.

HISTORY: CL 1929, 11014;—CL 1948, 460.59.

REHEARING: See Compilers' §§ 460.351 and 460.352.

REVIEW: See Compilers' §§ 462.26 and 462.27.

460.60 Rights not conferred.

Sec. 10. Nothing herein contained shall be deemed to confer upon any corporation, joint stock company, association or individuals any rights or privileges whatsoever of a determinate or of an indeterminate nature with respect to the use and enjoyment of franchises or the use and occupation of any street, highway or alley within the state.

HISTORY: CL 1929, 11015;—CL 1948, 460.60.

460.61 Public utilities commission; securities, issuance fee.

Sec. 11. Whenever any stocks, bonds, notes or other evidences of indebtedness are authorized by the commission to be issued in accordance with any law of this state, the party or parties upon whose application said securities are authorized shall before the issuance or sale of said securities, pay into the treasury of the state of Michigan a sum equal to 1/10 of 1 per cent of the face value of the securities so authorized; the sum so paid not to be less than \$50.00 in any case: Provided, That a minimum fee of \$5.00 shall be paid by rural telephone companies with respect to the authorization to borrow money: Provided, however, That where the property upon which such stocks, bonds, notes or other securities are authorized to be issued, is located partly within and partly without the state of Michigan, then said fee shall be computed only in such an amount and on such proportion of the entire issue, as the amount of the property of such applicant actually located within the state of Michigan, bears to the total amount of the property upon which such securities are issued.

HISTORY: CL 1929, 11016;—Am. 1939, p. 401, Act 211, Eff. Sept. 29;—CL 1948, 460.61.

PUBLIC UTILITIES SECURITIES: Approved by the public utilities commission or a similar body in foreign jurisdictions are excepted from the securities act, see Compilers' § 451.802.

Securities, in general, see Compilers' §§ 460.301 to 460.303; railroad companies, see Compilers' § 464.38; union depot companies, see Compilers' § 471.16; street railway companies, see Compilers' §§ 472.5 and 472.16; railroad bonds, see Compilers' §§ 468.221 to 468.223, brane pipe lines, see Compilers' § 483.221.

ISSUANCE OF SECURITIES: Fraud in, see Compilers' §§ 467.9 and 750.271 et seq.

CITED IN OTHER SECTIONS: The above section is cited in § 450.187b.

460.62 Declaration of necessity.

Sec. 12. This act is hereby declared immediately necessary for the preservation of the public peace, health and safety.

HISTORY: CL 1929, 11017;—CL 1948, 460.62.

Act 200, 1925, p. 286; Eff. Aug. 27.

AN ACT to give to the Michigan public utilities commission all rights, powers and authority, of every kind and nature, heretofore given to the Michigan railroad commission or the Michigan public utilities commission by Act No. 300 of the Public Acts of 1909 and Act No. 419 of the Public Acts of 1919, and the various amendments thereto:

and to restore to the said commission jurisdiction over all matters, and all rights, powers and authority of every kind and nature which may have been suspended by the act of congress, approved March twenty-first, 1918, referred to as the federal control act, and the presidential proclamation thereunder.

The People of the State of Michigan enact:

460.101 Public utilities commission; rights, powers and authority.

Sec. 1. The Michigan public utilities commission shall have, possess and exercise all rights, powers and authority of every kind and nature heretofore given to or conferred upon the Michigan railroad commission or the Michigan public utilities commission by Act No. 300 of the Public Acts of 1909 and Act No. 419 of the Public Acts of 1919, and the various amendments thereto.

HISTORY: CL 1929, 11069;—CL 1948, 460.101.

NOTE: Act 300 of 1909, above referred to, is Compilers' §§ 462.2 to 462.50. Act 419 of 1919, above referred to, is Compilers' §§ 460.51 to 460.62.

The Michigan public utilities commission has been abolished and its powers and duties transferred to the Michigan public service commission, see Compilers' § 460.4.

460.102 Public utilities commission; restoration of powers and authority.

Sec. 2. All rights, powers and authority of every kind and nature which may have been suspended by the act of congress, approved March twenty-first, 1918, referred to as the federal control act, and the presidential proclamation thereunder, are declared to be, and hereby are, fully restored to the Michigan public utilities commission, and the jurisdiction of said commission over all matters of every kind and nature which may have been suspended by the provisions of said act or said proclamation, is declared to be, and hereby is, fully and completely restored.

HISTORY: CL 1929, 11070;—CL 1948, 460.102.

NOTE: For act of Congress, above referred to, see 40 Stat. 451.

Act 246, 1921, p. 459; Imd. Eff. May 18.

AN ACT to regulate the service, rates, fares and charges of carriers by water within this state.

The People of the State of Michigan enact:

460.201 Carriers by water; rates; filing, fixing by commission, exception.

Sec. 1. Any and all persons, firms and corporations engaged in the transportation of freight, passengers, or express, by water, wholly within this state shall, within 30 days after this act shall take effect, make and file with the Michigan public utilities commission in such form as it shall prescribe, its schedule of rates, fares, and charges for the carrying of freight, passengers, and express; which said rates, fares and charges shall continue in force until superseded by other schedules, filed in the manner above prescribed, by said carrier, with the Michigan public utilities commission: Provided, however, That said Michigan public utilities commission may, either upon request, or upon its own motion, suspend the operation of any rate, fare, charge, or tariff filed as aforesaid, for a period not exceeding 30 days; and in case any such rate, fare, charge, or tariff shall be suspended by said Michigan public utilities commission, it shall give the interested carrier immediate notice thereof, and, within 10 days from the date of such suspension, shall fix a date of hearing, not more than 20 days from the date of said suspension, and shall give notice thereof to said carrier and to other persons in interest, who may be heard; and after said hearing said commission shall fix the rate, fare, charge, or tariff in the matter complained of; and such rate, fare, charge or tariff,

when so fixed, shall continue to be the legal rate, fare, charge, or tariff in force until superseded as provided by law: Provided, That any ferry company operating within any municipality under an agreement with such municipality shall not be affected either as to fares or operation by this act.

HISTORY: CL 1929, 11071;—CL 1948, 460.201.

NOTE: The Michigan public utilities commission has been abolished and its powers and duties transferred to the Michigan public service commission, see Compilers' § 460.4.

RATES: Regulation by commission, see Compilers' § 460.201 et seq.

460.202 Carriers by water; audit of books by commission; duty to furnish data.

Sec. 2. The Michigan public utilities commission may examine any and all books, accounts, records, and papers of any such carrier by water, and audit the same; and it shall be the duty of any such carrier by water, to furnish to said Michigan public utilities commission, its proper officers, and employes, any and all data in relation to its investment, income, operating expenses, and such other statistical data as it may require.

HISTORY: CL 1929, 11072;—CL 1948, 460.202.

460.203 Carriers by water; rules of commission.

Sec. 3. The Michigan public utilities commission is hereby authorized, empowered and directed to make all needful rules and regulations governing its investigations of the affairs of such carriers by water, and to prescribe the form of all reports required from such carriers.

HISTORY: CL 1929, 11073;—CL 1948, 460.203.

460.204 Carriers by water; investigation, regulation of service and fixing of rates.

Sec. 4. Whenever any complaint shall be made to said Michigan public utilities commission by any person, firm, or corporation against any rate, fare, charge, or tariff of any carrier by water within this state, or against any rule, regulation, or service of such carrier, or against the neglect, failure, or refusal of any such carrier to make, observe or perform any rate, fare, charge, or tariff, or any rule, regulation, or service, said Michigan public utilities commission shall investigate the same, and it may regulate the performance or observance of any rate, fare, charge, or tariff, and any rule, regulation, or service, and may prescribe the same to be observed by such carrier: Provided, That such carrier shall in all cases be entitled to reasonable notice and an opportunity to be heard on such investigation before any rate, fare, charge, or tariff, or any rule, regulation, or service shall be prescribed, established, or imposed by said commission, in accordance with the terms of this section, and when any rate, fare, charge, or tariff, or any rule, regulation, or service shall be prescribed, established, or imposed by said commission, it shall thereafter be the duty of said carrier to observe and obey the same.

HISTORY: CL 1929, 11074;—CL 1948, 460.204.

460.205 Carriers by water; review of orders of regulation.

Sec. 5. Any order made by the Michigan public utilities commission prescribing or affecting any rate, fare, charge, or tariff, or any rule, regulation, or service of any carrier by water within this state, shall be subject to review in the same manner as is now provided by law for the review of orders made by said Michigan public utilities commission.

HISTORY: CL 1929, 11075;—CL 1948, 460.205.

REVIEW OF ORDERS: See Compilers' §§ 462.26 and 462.27.

REHEARING: See Compilers' §§ 460.351 and 460.352.

460.206 Penalty.

Sec. 6. Any person, firm, or corporation violating any of the provisions of this act, or any order of the Michigan public utilities commission made in pursuance thereof, shall

be punishable by a fine not to exceed 100 dollars for each violation, and any officer or director of any corporation violating the provisions of this act, or any of the orders of the Michigan public utilities commission made in pursuance thereof, shall be punishable by a fine not exceeding 100 dollars for each such violation, or by imprisonment in the county jail for not more than 3 months, or by both such fine and punishment, in the discretion of the court.

HISTORY: CL 1929, 11076;—CL 1948, 460.208.

Act 144, 1909, p. 307; Eff. Sep. 1.

AN ACT to regulate the issuance of stocks, bonds and other evidences of indebtedness by persons, corporations and associations owning, conducting or operating certain public utilities, and to provide a penalty for the violation thereof. Am. 1915, p. 457, Act 259, Eff. Aug. 24.

The People of the State of Michigan enact:

460.301 Public utilities securities; approval by commission; appraisal of property, expense; review of order.

Sec. 1. Any corporation or association except municipal corporations, organized and existing, or which may hereafter be organized or authorized to do business under the laws of this state, or any lessee or trustee thereof, or any person or persons owning, conducting, managing, operating or controlling any plant or equipment within this state used wholly or in part in the business of transmitting messages by telephone or telegraph, producing or furnishing heat, artificial gas, light, water or mechanical power to the public, directly or indirectly, and any railroad, interurban railroad or other common carrier, or any corporation, association, or individual exercising or claiming the right to carry or transport natural gas for public use, directly or indirectly, or petroleum oil by or through pipe line or lines or engaged in the business of piping or transporting natural gas for public use, directly or indirectly, or engaged in the business of purchasing natural gas for distribution may issue stocks, bonds, notes or other evidences of indebtedness payable at periods of more than 12 months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of facilities or for the improvement or maintenance of service or for the discharge or lawful refunding of obligations and may issue stock to represent accumulated earnings invested in capital assets and not previously capitalized: Provided, and not otherwise, That there shall have been secured from the Michigan railroad commission an order authorizing such issue and the amount thereof, and stating that in the opinion of the commission the use of the capital or property to be acquired to be secured by the issue of such stock, bonds, notes or other evidences of indebtedness, is reasonably required for the purposes of such person, corporation or association, or that the issue of such stock fairly represents accumulated and undistributed earnings invested in capital assets and not previously capitalized. Any such person, corporation or association desiring authority to issue stocks, bonds, notes or other evidences of indebtedness shall make written application therefor to the said commission in such form as the commission may require. After receiving such application, said commission may, for the purpose of enabling it to determine whether it should grant such authority, make such inquiry or investigation, hold such hearings and examine such witnesses, books, papers, documents or contracts as it may deem of importance in enabling it to reach a determination. If the applicant shall fail, neglect or refuse to furnish any or all of the information required by said commission, or if the said commission shall so direct, an appraisal of the property of said applicant shall be made by a dis-

interested person or persons to be appointed by said commission and whose compensation shall be fixed by said commission, the entire expense of making such appraisal to be borne by said applicant. After said appraisal is made and filed with said commission and before any action is taken by said commission upon said application, the expenses of said appraisal as determined by said commission shall be paid by said applicant to said commission, which shall deposit the same in the treasury of the state to be credited to the general fund, taking the receipt of the treasurer therefor and filing the same in its office with said application. If the applicant shall refuse or neglect to pay the expense of said appraisal, the commission shall dismiss such application and said commission may bring an action against said applicant in any court of competent jurisdiction in this state for the recovery of the expense of said appraisal. The expense of said appraisal shall be paid by the state treasurer upon the warrant of the auditor general to the person certified by the commission to be entitled thereto. If from the application filed and such other information obtained from the investigation herein authorized, the said commission shall be satisfied that the funds derived from such issue of stocks, bonds, or notes are to be applied to lawful purposes and that such issue and amount is essential to the successful carrying out of such purposes, or that the issue of such stock fairly represents accumulated and undistributed earnings invested in capital assets and not previously capitalized, then said commission shall grant authority to make the issue applied for, and in granting such authority, the said commission may impose as a condition of the grant such reasonable terms and conditions as to the commission may seem proper: Provided, That any such person, corporation or association may issue notes for lawful purposes, payable at periods of not more than 24 months, without authority from said commission; but no such notes shall in whole or in part, directly or indirectly, be refunded by any issue of stock or bonds or by any evidence of indebtedness running for more than 12 months without the consent of said commission: Provided further, That the provisions of this act shall apply to all stock, shares, bonds or notes issued to or taken by the incorporators or their agents, assigns or trustees of any such corporation or association in the first instance, and shall also apply to all stock, bonds or notes issued to or taken by the stockholders of such corporation or association, their agents, assigns or trustees, from time to time thereafter. The supreme court upon petition of any person aggrieved may review by certiorari any final order of determination of the commission. The issuance of the writ shall not, however, unless specifically ordered by the court, operate as a stay of proceedings.

HISTORY: Am. 1911, p. 300, Act 177, Eff. Aug. 1;—Am. 1915, p. 457, Act 259, Eff. Aug. 24;—CL 1915, 8161;—Am. 1919, p. 667, Act 381, Eff. Aug. 14;—Am. 1929, p. 59, Act 30, Imd. Eff. April 4;—CL 1929, 11077;—CL 1948, 460.301.

RAILROAD COMMISSION: Abolished; powers and duties transferred to the public utilities commission, see Compilers' § 460.53; the public utilities commission has been abolished and superseded by the public service commission, see Compilers' § 460.4.

PUBLIC UTILITIES SECURITIES: Approved by the public utilities commission or a similar body in foreign jurisdictions are excepted from the securities act, see Compilers' § 451.902.

SAME: ISSUANCE FEE: See Compilers' § 460.61.

SAME: FRAUD: Railroad securities, see Compilers' §§ 467.9, 468.151 et seq., and 750.271 et seq.

APPRAISAL: See Act 47 of 1921, being Compilers' § 460.401 et seq.

CITED IN OTHER SECTIONS: The above section is cited in § 450.187b.

460.302 Penalty; recovery, disposition.

Sec. 2. Any person, corporation or association neglecting or failing to comply with, or who shall violate the provisions of this act or fail to perform the conditions imposed by the commission as provided in section 1 of this act, shall be liable to a fine of not less than 1,000 dollars nor more than 5,000 dollars for each offense, which may be recovered in an action by the attorney general in the name of the people of the state of Michigan in any court of record, and when so collected shall be paid into the state treasury to the credit of the general fund.

HISTORY: Am. 1915, p. 459, Act 259, Eff. Aug. 24;—CL 1915, 8162;—CL 1929, 11078;—CL 1948, 460.302.

460.303 Unauthorized issuance of securities; penalty.

Sec. 3. Any officer, director, agent or employe of any person, corporation or association, who shall cause to be issued any stocks, bonds, notes or other evidences of indebtedness payable at periods of more than 12 months after the date thereof, or who shall in any way aid in the issue of such stocks, bonds, notes or other evidences of indebtedness, not authorized by the Michigan railroad commission, or under the terms and conditions imposed, or any officer, director, agent or employe of such person, corporation or association, who shall, after the issue of stocks, bonds, notes or other evidences of indebtedness authorized by said commission upon certain terms and conditions, fail to comply with such terms and conditions so imposed, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison not less than 1 year nor more than 5 years.

HISTORY: Am. 1915, p. 459, Act 259, Eff. Aug. 24;—CL 1915, 8163;—CL 1929, 11079;—CL 1948, 460.303.
FRAUDULENT STOCK: Penalty, see Compilers' § 750.271 et seq.

Sec. 4. (This was a repeal section.)

HISTORY: CL 1915, 8164;—CL 1929, 11080;—Rep. 1945, p. 404, Act 267, Imd. Eff. May 25.

Act 94, 1923, p. 127; Eff. Aug. 30.

AN ACT to authorize the Michigan public utilities commission to grant rehearings and to alter, modify or amend its findings and orders.

The People of the State of Michigan enact:

460.351 Rehearings; amendment of orders.

Sec. 1. The Michigan public utilities commission, in any proceeding which may now be pending before it or which shall hereafter be brought before it, shall have full power and authority to grant rehearings and to alter, amend or modify its findings and orders.

HISTORY: CL 1929, 11081;—CL 1948, 460.351.

NOTE: The Michigan public utilities commission has been abolished and superseded by the Michigan public service commission, see Compilers' § 460.4.

460.352 Suit to review order; time.

Sec. 2. The time allowed by law for the bringing of suit to review any order of the commission, shall continue after the order denying a rehearing or made upon a rehearing, for the same number of days now provided by law for review of the order upon which such rehearing was denied or had.

HISTORY: CL 1929, 11082;—CL 1948, 460.352.

TIME: See Compilers' § 462.26.

Act 47, 1921, p. 74; Imd. Eff. Apr. 14.

AN ACT to provide for the payment to the state by certain public utilities of the expense incurred by the Michigan public utilities commission in auditing the books and records and appraising the plants, properties and facilities of said public utilities; and to appropriate said moneys towards the maintenance of said commission.

The People of the State of Michigan enact:

460.401 Expenses of audit or appraisal by utilities commission; account.

Sec. 1. Whenever the Michigan public utilities commission finds it to be necessary to audit the books and records, or to appraise the plants, properties or facilities of any telephone, gas, electric light, and power, electric railway, water, heat or any other

public utility under the jurisdiction of said commission for rate making, capitalization, or any other purpose, it shall have the right to make such audit and appraisal through its accounting, engineering and other forces, and shall keep an accurate, detailed account of all moneys expended and expenses incurred by said commission in and about such audit and appraisal.

HISTORY: CL 1929, 11083;—CL 1948, 460.401.

NOTE: The Michigan public utilities commission has been abolished and superseded by the Michigan public service commission, see Compilers' § 460.4.

460.402 Expenses for audit and appraisal; payment.

Sec. 2. From time to time during the progress of the audit and appraisal, or at the conclusion of the same, said commission shall render to the utility in question, statements showing the amounts of money expended in such work, which expense shall be paid by such utility into the state treasury at such times and in such manner as the commission may by order require.

HISTORY: CL 1929, 11084;—CL 1948, 460.402.

460.403 Audit or appraisal; disposition of receipts for expenses.

Sec. 3. All moneys paid into the state treasury by any public utility under the provisions of this act shall be credited to the general fund.

HISTORY: CL 1929, 11085;—Am. 1933, p. 11, Act 12, Imd. Eff. Feb. 17;—CL 1948, 460.403.

Act 38, 1925, p. 46; Eff. Aug. 27.

AN ACT to require municipalities owning or operating public utilities to adopt and keep a uniform system of accounts, and to make and publish annual reports relating to the operation of each such utility, and to require the Michigan public utilities commission to prescribe the forms thereof.

The People of the State of Michigan enact:

460.451 Municipal public utilities; system of accounts; annual report, publication; forms.

Sec. 1. Every municipality owning or operating a public utility shall, beginning with the first day of January, 1926, or should its fiscal year not coincide with the calendar year, then beginning with its first fiscal year thereafter, adopt, install, and thereafter keep a uniform system of accounts relating to its operation of each utility owned or operated by it. Every such municipality shall, thereafter, within 60 days after the close of each fiscal year, make and publish in some newspaper published and circulating in such municipality, or, if no newspaper is published in such municipality, then in some newspaper published and circulating in the same or in an adjoining county, a report in detail of its operation of each such utility. It is hereby made the duty of the Michigan public utilities commission to prescribe the form of accounts and of the annual reports required by this act, which shall, so far as applicable, conform to the system of accounts required to be kept, and reports to be made by privately owned utilities.

HISTORY: CL 1929, 11086;—CL 1948, 460.451.

NOTE: The Michigan public utilities commission has been abolished and superseded by the Michigan public service commission, see Compilers' § 460.4.

Act 69, 1929, p. 175; Imd. Eff. Apr. 23.

AN ACT to define and regulate certain public utilities and to require them to secure a certificate of convenience and necessity in certain cases.

The People of the State of Michigan enact:

460.501 Certificate of convenience and necessity; definition.

Sec. 1. The term "municipality", when used in this act, means a city, village or township.

The term "public utility", when used in this act, means persons and corporations, other than municipal corporations, or their lessees, trustees and receivers now or hereafter owning or operating in this state equipment or facilities for producing, generating, transmitting, delivering or furnishing gas or electricity for the production of light, heat or power to or for the public for compensation.

The term "commission", when used in this act, means the Michigan public utilities commission or such other state governmental agency as may exercise the powers now conferred upon said commission.

HISTORY: CL 1929, 11087;—CL 1948, 460.501.

NOTE: The Michigan public utilities commission has been abolished and superseded by the Michigan public service commission, see Compilers' § 460.4.

460.502 Certificate of convenience; necessity for gas or electric utilities.

Sec. 2. No public utility shall hereafter begin the construction or operation of any public utility plant or system thereof nor shall it render any service for the purpose of transacting or carrying on a local business either directly, or indirectly, by serving any other utility or agency so engaged in such local business, in any municipality in this state where any other utility or agency is then engaged in such local business and rendering the same sort of service, or where such municipality is receiving service of the same sort, until such public utility shall first obtain from the commission a certificate that public convenience and necessity requires or will require such construction, operation, service, or extension.

HISTORY: CL 1929, 11088;—CL 1948, 460.502.

460.503 Petition; contents.

Sec. 3. Before any such certificate of convenience and necessity shall issue, the applicant therefor shall file a petition with the commission stating the name of the municipality or municipalities which it desires to serve and the kind of service which it proposes to render, and that the applicant has secured the necessary consent or franchise from such municipality or municipalities authorizing it to transact a local business.

HISTORY: CL 1929, 11089;—CL 1948, 460.503.

460.504 Hearing; notices.

Sec. 4. Upon filing such application, the commission shall set a day for the hearing thereof in accordance with its rules and practice relating to hearings and notify the applicant thereof. A copy of said application and a notice of the time and place of hearing such application shall also be served upon each and every other utility or agency in the municipality or municipalities proposed to be served by said applicant then rendering similar service therein, and also upon the clerk or other similar officer of each municipality, at least 10 days before such hearing, and said persons so served shall each be permitted to appear and be heard with reference to said application.

HISTORY: CL 1929, 11090;—CL 1948, 460.504.

460.505 Hearing; matters for consideration; certificate, contents.

Sec. 5. In determining the question of public convenience and necessity the commission shall take into consideration the service being rendered by the utility then serving such territory, the investment in such utility, the benefit, if any, to the public in the matter of rates and such other matters as shall be proper and equitable in determining whether or not public convenience and necessity requires the applying utility to serve the territory. Every certificate of public convenience and necessity issued by

the commission, under the authority hereby granted, shall describe in detail the territory in which said applicant shall operate and it shall not operate in or serve any other territory under the authority of said certificate.

HISTORY: CL 1929, 11091;—CL 1948, 460.505.

460.506 Review of order.

Sec. 6. Any person aggrieved by the order of the commission made upon said application may review such order in the manner now provided by Act No. 419 of the Public Acts of 1919 for reviewing the orders of the Michigan public utilities commission.

HISTORY: CL 1929, 11092;—CL 1948, 460.506.

NOTE: Act 419 of 1919, above referred to, is Compilers' §§ 460.51 to 460.62. See, as to review, Compilers' § 460.59.

REHEARING: See Compilers' §§ 460.351 and 460.352.

Act 106, 1909, p. 213; Eff. Sep. 1.

AN ACT to regulate the transmission of electricity through the public highways, streets and places of this state, where the source of supply and place of use are in the same or different counties; to regulate the charges to be made for electricity so transmitted; to regulate the rules and conditions of service under which said electricity shall be furnished and to confer upon the Michigan public utilities commission certain powers and duties in regard thereto. Am. 1921, p. 516, Act 274, Eff. Aug. 18.

The People of the State of Michigan enact:

460.551 Transmission of electricity in or between counties; control.

Sec. 1. When electricity is generated or developed by steam, water or other power, within 1 county of this state, and transmitted and delivered to the consumer in the same or some other county, then the transmission and distribution of the same in or on the public highways, streets and places, the rate of charge to be made to the consumer for the electricity so transmitted and distributed and the rules and conditions of service under which said electricity shall be transmitted and distributed shall be subject to regulation as in this act provided.

HISTORY: CL 1915, 4842;—Am. 1921, p. 517, Act 274, Eff. Aug. 18;—CL 1929, 11093;—CL 1948, 460.551.

USE OF HIGHWAYS: Power of township board to grant franchise for use of highways, etc., see Compilers' §§ 460.601 to 460.605.

Use for transmission of electricity, see Compilers' § 247.183. Placing of poles, distance from center of highway, etc., see Compilers' § 247.186.

460.552 Transmission of electricity; rate regulation by commission.

Sec. 2. The Michigan public utilities commission, hereinafter referred to as "the commission" shall have control and supervision of the business of transmitting and supplying electricity as mentioned in the first section of this act and no public utility supplying electricity shall put into force any rate or charge for the same without first petitioning said commission for authority to initiate or put into force such rate or charge and securing the affirmative action of the commission approving said rate or charge.

HISTORY: CL 1915, 4843;—Am. 1921, p. 517, Act 274, Eff. Aug. 18;—CL 1929, 11094;—CL 1948, 460.552.

NOTE: The Michigan public utilities commission has been abolished and superseded by the Michigan public service commission, see Compilers' § 460.4.

RATES: See Compilers' §§ 460.54, 460.57 and 460.58.

460.553 Transmission of electricity; user of streets, regulation.

Sec. 3. Any person, firm or corporation engaged or organized to engage in any such business of transmitting and supplying electricity in 1 or more counties of this state shall, with the consent of the duly constituted city, village and township authorities of the cities, villages and townships in or through which it operates or may hereafter propose to operate, have the right to use the highways, streets, alleys and other public places of such cities, villages and townships: Provided, That in all cases each transmis-

sion line used shall have insulation and conductivity in accordance with its voltage. In case it has or procures a franchise from any city, village or township or a right to do business therein, it may transact a local business therein. Nothing herein contained shall be construed to impair any right possessed by any village or township to the reasonable control of its streets, alleys and public places in all matters of mere local concern.

HISTORY: CL 1915, 4844;—Am. 1921, p. 517, Act 274, Eff. Aug. 18;—CL 1929, 11095;—CL 1948, 460.553.

460.554 Data and information, specifications of construction; filing; height of lines; stenciling of poles.

Sec. 4. Every person, firm or corporation erecting any lines for the transmission of electricity in or through the highways, streets or public places of 1 or more counties of this state shall, from time to time, as and when required to do so by the commission, prepare and file with the commission such data and information as shall be required relative to the method and manner of the construction of such lines, the franchise or consent under which said lines were constructed or are being maintained, and such other information as the commission may reasonably require. The commission may require the filing with it of detailed specifications covering the type of construction of such lines. Such specifications shall show the details of construction of lines of various voltages; and after such specifications have been approved by the commission, all lines built by such person, firm or corporation must be constructed according thereto. The height of such lines at all highway crossings shall be not less than 22 feet; and at railroad crossings shall be in accordance with the regulations of the commission made under authority of law. The commission shall have the right to require all poles used in the transmission of electricity as aforesaid, to be stenciled or otherwise marked with the name of the owner thereof.

HISTORY: CL 1915, 4845;—Am. 1921, p. 517, Act 274, Eff. Aug. 18;—Am. 1923, p. 126, Act 93, Eff. Aug. 30;—CL 1929, 11096;—CL 1948, 460.554.

460.555 Public utility commission; inspection; order for improvements.

Sec. 5. The commission shall have power to inspect and examine all such electrical apparatus already installed in any public highways, streets or places and all such apparatus hereafter installed, and to investigate from time to time the method employed by persons, firms or corporations transmitting and supplying electricity, and shall have power to order such improvements in such method as shall be necessary to secure good service and the safety of the public and of those employed in the business of transmitting and distributing such electricity, and of any persons liable to be injured by the erection, maintenance and use of such apparatus.

HISTORY: CL 1915, 4846;—Am. 1921, p. 518, Act 274, Eff. Aug. 18;—CL 1929, 11097;—CL 1948, 460.555.

460.556 Public utility commission; discretionary powers; annual report of utilities; audit, expense.

Sec. 6. The commission shall have power in its discretion to order electric current for distribution to be delivered at a suitable primary voltage, to any city, village or township through which a transmission line or lines may pass; to order service to be rendered by any such electric utility in any case in which it will be reasonable for such service to be ordered; prescribe uniform methods of keeping accounts to be observed by all persons, firms or corporations engaged in such business of transmitting and supplying electricity, and to keep informed as to the methods employed by all electric utilities in the transaction of their business; and to see that their property is maintained and operated for the security and accommodation of the public and in compliance with the provisions of law. It shall have power to require of such persons, firms or corporations annually a verified report upon such form and giving such information as will enable the commission to better discharge the duties imposed upon it

hereby; and shall also have power to require from all electric utilities in the state such information as the commission may need at any time in connection with the performance of the duties imposed upon it by this act. Said commission shall also have power, in connection with any rate or service hearing or investigation, to make such audit and analysis of the books and records of the utility, and such inventory and appraisal of its property as may be necessary in connection with the duties imposed upon the commission by this act; and in any such case the commission shall keep a record of all expenses incurred by it in connection with its investigation of the affairs and property of the said utility and during the progress or at the conclusion of its work, shall state the amount thereof in writing to the said utility and said utility shall pay into the treasury of the state the amount of such expense at such times and in such manner as the commission may by order require. Said moneys when so paid into the state treasury shall go to the credit of the Michigan public utilities commission, and are hereby appropriated to the payment of its expenses.

HISTORY: CL 1915, 4847;—Am. 1921, p. 518, Act 274, Eff. Aug. 18;—CL 1929, 11098;—CL 1948, 460.556.

460.557 Public utility commission; investigation of complaints; rules; fixing of rates, restrictions; discrimination; laws governing.

Sec. 7. Upon complaint in writing by any consumer or city, village, or township, by its duly constituted common or village council or township board, or other duly constituted authority of such city, village or township, relative to the price of the electricity sold and delivered in such municipality, or with reference to the service rendered or any other matter of complaint, the commission shall investigate such complaint and may by its agents, examiners, inspectors, engineers and accountants inspect the system and method used in transmitting and supplying electricity and examine or cause to be examined the books and papers of such person, firm or corporation pertaining thereto. The commission shall cause notices of such complaint with a copy thereof to be served on the person, firm or corporation complained of or affected thereby which shall have a right to be heard in respect to the matter complained of at a convenient time and place to be fixed in such notice. After such investigation and hearing, the commission within lawful limits may by order fix the price of electricity to be charged by such person, firm or corporation, and the price so fixed, of which such person, firm or corporation shall have notice, shall be the price to be charged until the commission shall again fix the price to be charged therefor. Said commission may also by order establish such rules and conditions of service as shall be just and reasonable. In determining the proper price, the commission shall consider and give due weight to all lawful elements properly to be considered to enable it to determine the just and reasonable price to be fixed for supplying electricity, including cost, reasonable return on the fair value of all property used in the service, depreciation, obsolescence, risks of business, value of service to the consumer, the connected load, the hours of the day when used and the quantity used each month: Provided, however, That the commission shall in no case have power to change or alter the price fixed in or regulated by or under any franchise heretofore or hereafter granted by any city, village or township: Provided further, Where identical or substantially identical rates prevail or are established, or shall hereafter be established in 2 or more contiguous municipalities or communities served or whose inhabitants are served by the same person, firm or corporation, the territory so served and to be served shall be treated as a unit for the purpose of fixing rates and no such rate or rates shall be changed with respect to 1 or more of such municipalities or communities so as to establish any difference of rate within the territory so served, unless and until it shall be shown that the continuance of such identical or substantially identical rate or rates will work substantial hardship to some municipality or person, firm or corporation affected thereby. The prices, rates and charges of every electric utility shall be just and reasonable and no consumer shall at any time be charged more

or less than other consumers are charged for like contemporaneous service rendered under similar circumstances and conditions, and if any electric utility doing business within this state shall directly or indirectly by any special rate, rebate, draw-back or other device, charge, demand, collect or receive from any person or persons, copartnership or corporation, a greater or less compensation for any service rendered, furnished or performed, than it charges, demands, collects or receives from any other person, or persons, copartnership or corporation, for rendering, furnishing or performing for him or them a like contemporaneous service, such electric utility shall be guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful. It shall further be unlawful for any person, copartnership or corporation, directly or indirectly to ask, demand or accept any rebate, draw-back or other device whereby he or they shall obtain electric service for any less rate than that charged others in like circumstances. The provisions of Act No. 419 of the Public Acts of Michigan for the year 1919, shall, so far as applicable, govern the hearings before the said commission herein provided for, and the commission shall have power and authority to make, adopt and enforce rules and regulations for the conduct of its business and the proper discharge of its functions hereunder, and all persons dealing with the commission or interested in any matter or proceeding pending before it shall be bound by such rules and regulations. The provisions of Act No. 300 of the Public Acts of 1909, as amended and now in force, shall apply as to appeals from any order of the commission to the circuit court and from the circuit court to the supreme court.

HISTORY: CL 1915, 4848;—Am. 1921, p. 519, Act 274, Eff. Aug. 18;—Am. 1923, p. 150, Act 108, Eff. Aug. 30;—CL 1929, 11099;—CL 1948, 460.557.

NOTE: Act 419 of 1919, above referred to, is Compilers' §§ 460.51 to 460.62.

Provisions of Act 300 of 1909, above referred to, are Compilers' §§ 462.26 and 462.27.

460.558 Public utility commission; order mandatory; failure to comply, penalty.

Sec. 8. Every corporation, its officers, agents and employees, and all persons and firms engaged in the business of furnishing electricity as aforesaid shall obey and comply with every lawful order made by the commission under the authority of this act so long as the same shall remain in force. Any corporation or person engaged in such business or any officer, agent, or employee thereof, who wilfully or knowingly fails or neglects to obey or comply with such order or any provision of this act shall forfeit to the state of Michigan not to exceed the sum of 300 dollars for each offense. Every distinct violation of any such order or of this act, shall be a separate offense, and in case of a continued violation, each day shall be deemed a separate offense. An action to recover such forfeiture may be brought in any court of competent jurisdiction in this state in the name of the people of the state of Michigan, and all moneys recovered in any such action, together with the costs thereof, shall be paid into the state treasury to the credit of the general fund.

HISTORY: CL 1915, 4849;—Am. 1921, p. 520, Act 274, Eff. Aug. 18;—CL 1929, 11100;—CL 1948, 460.558.

PENALTY: Suit for, see (Jud. Act) Compilers' § 800.4805.

460.559 Scope; limitation.

Sec. 9. This act shall not apply to the transmission or use of electricity for the purpose of conveying intelligence by telegraph, telephone or by other methods now or hereafter adopted therefor.

HISTORY: CL 1915, 4850;—Am. 1921, p. 520, Act 274, Eff. Aug. 18;—CL 1929, 11101;—CL 1948, 460.559.

Sec. 10. (This was a repeal section.)

HISTORY: Add. 1921, p. 520, Act 274, Eff. Aug. 28;—CL 1929, 11102;—Rep. 1945, p. 404, Act 267, Imd. Eff. May 25.

Act 266, 1909, p. 454; Eff. Sep. 1.

AN ACT to authorize township boards to grant the right to use the highways, streets, alleys and other public places of any township for poles, wires, pipes or conduits, or tracks for railways, and to operate and maintain the same, and to authorize townships to grant public utility franchises, and to provide for the submission of such public utility franchise grants to the electors for confirmation.

The People of the State of Michigan enact:

460.601 Franchise to use streets and public places; grant by township board.

Sec. 1. The township board of any township may grant to any person, partnership, association or corporation the right to use the highways, streets, alleys, and other public places of the township to set poles, string wires, lay pipes or conduits or to lay tracks for railways and to operate and maintain the same and the right to transact a local business in such township, subject to such reasonable regulations as said board shall prescribe from time to time.

HISTORY: CL 1915, 4836;—CL 1929, 11103;—CL 1948, 460.601.

460.602 Confirmation by electors of grant; time.

Sec. 2. After a franchise has been granted by a township board and accepted in writing by the grantee, the action of the board in granting the franchise shall be submitted to a vote of the electors of such township for confirmation at the next regular election.

HISTORY: CL 1915, 4837;—CL 1929, 11104;—CL 1948, 460.602.

460.603 Confirmation by electors of grant; notice; form of ballot.

Sec. 3. The township clerk, at least 20 days before the next regular election, shall give notice that the question of the confirmation of the granting of such franchise will be submitted to a vote of the electors by posting a written or printed notice in 3 or more public places in such township. Printed ballots shall be prepared by the township clerk and kept at the polling place for the use of the electors and shall be in substantially the following form:

Confirming grant of franchise to
for the purpose of ☐ Yes.

Confirming grant of franchise to
for the purpose of ☐ No.

HISTORY: CL 1915, 4838;—CL 1929, 11105;—CL 1948, 460.603.

460.604 Confirmation by electors of grant; special election at instance of grantee; costs.

Sec. 4. The grantee of such franchise may have the same submitted to a vote of the electors of the township at a special election duly called, to be held at a time to be fixed by said township board not more than 60 days after the acceptance of such franchise by the grantee: Provided, That the grantee shall file with the township clerk at the time of the acceptance of such franchise a demand in writing that the same be submitted to the electors at a special election, and shall at the same time pay the township board such a sum of money as shall be sufficient, in the opinion of said board, to defray the expense of said special election.

HISTORY: CL 1915, 4839;—CL 1929, 11106;—CL 1948, 460.604.

460.605 Confirmation by electors of grant; majority vote, effect.

Sec. 5. If a majority of the electors of such township voting upon the question shall vote in the affirmative such franchise shall be confirmed and shall be irrevocable, otherwise it shall not be confirmed.

HISTORY: CL 1915, 4840;—CL 1929, 11107;—CL 1948, 460.605.

Act 347, 1921, p. 633; Eff. Aug. 18.

AN ACT to require public utilities to pay interest on guaranty deposits.

The People of the State of Michigan enact:

460.651 Interest on guaranty deposits.

Sec. 1. Whenever any public utility in this state requires a deposit of money exceeding 50 dollars as a guaranty for the payment of charges of any kind whatsoever, such public utility shall pay to the person, firm or corporation depositing such money, interest at the rate of 4 per centum per annum, said interest to be computed annually on all sums that have remained on deposit for 6 months.

HISTORY: CL 1929, 11108;—CL 1948, 460.651.

460.652 Interest on guaranty deposits; semi-annual payment; enforcement of claim.

Sec. 2. The payment of such interest shall be made semi-annually. Any person may enforce his claim in any court of competent jurisdiction and the presentation and filing with the court of a receipt from such utility shall be prima facie evidence of the indebtedness of such utility.

HISTORY: CL 1929, 11109;—CL 1948, 460.652.

CHAPTER 462. RAILROAD REGULATION

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		462.12	Freight classification.
		462.13	Depot facilities; investigation of facilities and service by commission; change of name of station. Joint maintenance of depot facilities by connecting railroads. Discontinuance of passenger service; approval of commission; procedure. Appeal from order of commission.
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		462.49	Powers, duties and privileges transferred to commission; saving clause.
		462.50	Legislation; hearing on changes; recommendations.

Act 300, 1909, p. 704; Eff. Sep. 1.

AN ACT to define and regulate common carriers and the receiving, transportation and delivery of persons and property, prevent the imposition of unreasonable rates, prevent unjust discrimination, insure adequate service, create the Michigan railroad commission, define the powers and duties thereof, and to prescribe penalties for violations hereof.

The People of the State of Michigan enact:

Sec. 1.

HISTORY: CL 1915, 8109.

This section dealt with the creation, appointment and organization of the Michigan railroad commission, which was abolished and its rights, powers and duties transferred to the Michigan public utilities commission by Sec. 3 of Act 419 of 1919, being Compilers' § 460.53. The public utilities commission in turn has been abolished and superseded by the public service commission, see Compilers' § 460.4.

FORMER ACTS: Act 79 of 1873, being CL 1897, 5206-5234, as Am. by Act 232 of 1907; Act 64 of 1875, being CL 1897, 5241-5242. Sec. 13 of Act 44 of 1899; Act 189 of 1903, as Am. by Act 307 of 1905; and Act 312 of 1907.

REPEAL: This act not repealed or superseded by Act 56 of 1919, see Sec. 5, being Compilers' § 469.245.

462.2 Railroad regulation; commissioners.

Sec. 2. (a) Said commissioners shall have the following qualifications: One shall be an attorney having knowledge of and experience in law relating to common carriers; the others shall have knowledge of traffic and transportation matters. Each of such commissioners shall devote to the duties of his office all the time necessary to insure the prompt and complete performance of all official duties, and said commission shall, so far as possible, arrange so that at all times during business hours, at least some 1 member shall be in attendance at the principal office of the commission every business day in the year;

Removal.

(b) The governor may at any time remove any commissioner for any neglect of duty or malfeasance in office. Before such removal, he shall give such commissioner a copy of the charges against him, and shall fix a time when he can be heard in his own defense, which shall not be less than 10 days thereafter, and said hearing shall be open to the public. If he shall be removed, the governor shall file in the office of the secretary

of state a complete statement of the charges made against such commissioner and his finding thereon, with a record of the proceedings, it being herein provided and declared that such discretionary power in the governor to make such removal is a sound and reasonable discretion to be exercised for the good of the state, and not arbitrarily;

Pecuniary interest.

(c) No person so appointed shall be pecuniarily interested in any railroad or in the business of transporting persons or property in this state or elsewhere, and if any such commissioner shall voluntarily become so interested, his office shall ipso facto, become vacant; and if he shall become so interested otherwise than voluntarily, he shall, within a reasonable time, divest himself of such interests; failing so to do, his office shall become vacant, and the governor shall proceed as provided for in section 2(b) of this act;

Oath.

(d) Before entering upon the duties of his office, each of said commissioners shall take and subscribe the constitutional oath of office;

Salary.

(e) Each of said commissioners shall receive an annual salary of 3,000 dollars payable in the same manner as salaries of other state officers are paid;

Organization; quorum; hearings; adjournment; rehearing.

(f) The commissioners appointed under this act shall forthwith, after their appointment and qualification, meet at the city of Lansing and organize by electing 1 of their members chairman, who shall serve until the fifteenth day of January, 1911. On the fifteenth day of January in each odd numbered year the commissioners shall meet at the offices of the commission and elect a chairman, who shall serve for 2 years and until his successor is elected. A majority of said commissioners shall constitute a quorum to transact business, and any vacancy shall not impair the right of the remaining commissioners to exercise all of the powers of the commission so long as the majority remains. Any investigation, inquiry or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner when so directed by the commission or its chairman. All such investigations, inquiries or hearings of a commissioner shall be and be deemed to be the investigations, inquiries and hearings of the commission, and every decision and order made by a commissioner, when approved and confirmed by the commission and ordered filed in its office, shall be and be deemed to be the decision and order of the commission: Provided, That any interested party shall be entitled to a re-hearing before the full commission on request served upon the commission within 5 days after service of such order upon such party. In the absence of a quorum of the commission at the time appointed for any hearing before such commission, such hearing may be continued to a later date by a single member of the commission present or, in the absence of any member, by the secretary;

Secretary and employees, salary; inspector, powers and duties.

(g) Said commission may appoint a secretary at a salary of not more than 2,000 dollars per annum and a chief clerk at a salary of not more than 1,500 dollars per annum, and employ not more than 5 clerks, and such inspectors, examiners and experts as may be necessary to perform what may be required of them, and shall fix their compensation. It shall be the duty of any such inspector, on the order of the commission, and he shall have the right to inspect all equipment, cars, power houses, trolley lines, tracks and property of every common carrier as defined in this act. Each such inspector shall likewise have the right to inspect freight in cars or warehouses of such common carriers, and all waybills, bills of lading and shipping receipts of such transportation companies, so that they may determine whether the classification and rating of such

freight is in conformity with the published tariffs and classifications of such transportation companies. Said inspectors shall be employed at a fixed compensation;

Secretary; duties, oath.

(h) The secretary shall take and subscribe to an oath similar to that of the commissioners, and shall keep full and correct records of all transactions and proceedings of the commission, and shall perform such other duties as may be required by the commission. Any person ineligible to the office of a commissioner shall be ineligible to the office of secretary. He shall devote his entire time to his office;

Chief inspecting engineer; duties, salary.

(i) The said commission may appoint a chief inspecting engineer at a salary of not to exceed 2,000 dollars per annum, to be fixed by such commission, whose duty it shall be under the instructions of the commission, to make such inspections and reports as may be ordered by the commission as regards the public safety, health and convenience, and which the commission may deem essential to full and thorough information as to physical condition of the properties of the various common carriers of the state and the proper enforcement of the police regulations enacted for the control and management of the same. Such engineer shall have such general knowledge of the requirements of railroad operation, signal appliances and safety devices as shall fit him to perform the duties imposed upon him by the provisions of this act;

Michigan railroad commission; name, seal.

(j) The commission shall be known collectively as "Michigan railroad commission," and in that name may sue and be sued. It shall have a seal with the words "Michigan railroad commission," and such other design as the commission may prescribe engraved thereon, by which it shall authenticate its proceedings and of which the court may take judicial notice;

Offices, equipment; meetings; expenses; free transportation.

(k) The commission shall have its offices at Lansing, and shall be provided suitable offices, necessary office furniture, supplies, stationery, books, periodicals, maps, printing, and all its necessary expenses shall be audited and paid as other necessary state expenses are audited and paid. The commission may hold meetings at other places than its said offices when the convenience of the parties so requires. The commissioners, secretary, clerks and inspectors and such experts as may be employed, shall be entitled to receive from the state their actual and necessary expenses while traveling on the business of the commission, such expenditures to be sworn to by the person who incurred the expense and to be approved by the chairman of the commission. Members of the commission, when traveling on official business of the commission pertaining to railroads, and employes of the commission when traveling on official business of the commission pertaining to railroads and by the direction of the commission, shall be carried free in performance of their duties, on all railroads within this state, upon all trains and cars, and upon any parts of such trains or cars: Provided, That any such person who shall suffer himself to be carried free on any train or car by any such railroad company, when not traveling on official business of the commission and not by direction of the commission, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than 100 dollars nor more than 500 dollars or by imprisonment not more than 90 days, or by both such fine and imprisonment in the discretion of the court;

Rules.

(l) The commission shall have the power to adopt and publish rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of common carriers and other parties before it, and all hearings shall be open to the public;

Conferences.

(m) The commission may confer by correspondence, by attending conventions, or otherwise, with the railroad commissioners of other states, with the interstate commerce commission or with any other bodies considering any matters pertaining to common carriers.

HISTORY: CL 1915, 8110;—CL 1929, 11018;—CL 1948, 462.2.

462.3 Definitions and scope.

Sec. 3. (a) The term "common carrier" as used in this act shall be construed to mean and embrace all corporations, companies, individuals, associations of individuals, their lessees, trustees or receivers appointed by any court whatsoever who now or may hereafter own, operate, manage or control as a common carrier in this state, any railroad or part of any railroad, whether operated by steam, electricity or other motive power, or cars or any other equipment used thereon, or bridges, switches, spurs, tracks, sidetracks, terminal facilities, or any docks, wharves or storage elevators used in connection therewith or any kind of terminal facilities used or necessary in the transportation of persons or property designated herein, and also all freight depots, yards and grounds used or necessary for the transportation or delivery of any said property and whether the same are owned by said railroad or otherwise; or any express company, car loaning companies, freight or freight line companies and all associations or persons, whether incorporated or otherwise, that shall do business as common carriers upon or over any line of railroads in this state, or any common carrier engaged in the transportation of passengers and property wholly by rail or partly by rail and partly by water.

Transportation, construed.

(b) The term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment, or carriage, irrespective of ownership, or of any contract expressed or implied for the use thereof, and all services in connection with the receipt, delivery, elevation, switching and transfer in transit, ventilation, refrigeration or icing, storage and handling of persons or property transported.

Railroad, construed; scope, limitations.

(c) The term "railroad" as used in this act shall be construed to mean all railroads, whether operated by steam, electric or other motive power: Provided, That the provision of this act shall not apply to any logging or other private railroad not doing business as a common carrier: Provided further, Nothing in this act contained shall be construed to authorize the commission to interfere with, lessen or impair or to authorize the impairment of any franchise provision, contract or agreement as to rate of fare now existing between any municipality, city, village, or township and any tram railway, street railway, interurban or suburban railway company, or to increase or lessen the rate of fare fixed by such franchise, contract or agreement, or to deprive any tram railway, street railway, interurban or suburban railway company of the right to charge for the carriage of passengers the rate of fare authorized and fixed by any franchise, grant or contract made or entered into between any municipality, city, village or township and any such tram railway, street railway, interurban or suburban railway company; Provided further, That nothing in this act contained shall apply to street and electric railroads engaged solely in the transportation of passengers within the limits of cities or within a distance of 5 miles of the boundaries thereof.

Scope.

(d) The provisions of this act shall apply to the transportation of passengers and property between points within this state, and to the receiving, switching, delivering, storing and handling of such property, and to all charges connected therewith, including icing and mileage charges: Provided, however, That this provision shall not be con-

strued as a limitation on the authority of the commission created by this act to prescribe car service and demurrage rules applicable to all traffic beginning or ending within this state.

Express and sleeping car companies.

(e) Express companies and sleeping car companies doing business for hire within this state are hereby defined to be common carriers.

HISTORY: Am. 1911, p. 293, Act 173, Eff. Aug. 1;—CL 1915, 8111;—CL 1929, 11019;—CL 1948, 482.3.

COMMON CARRIERS: Telephone lines and companies are included as common carriers. See Act 206 of 1913, being Compilers' §§ 484.101 to 484.124.

Motor vehicles used in the transportation of persons or property for hire are common carriers under Compilers' § 475.1. See also Compilers' § 477.1 et seq.

PIPE LINES: See Compilers' § 483.1 et seq.

462.4 Common carrier; duty to serve; rates.

Sec. 4. (a) Every common carrier is hereby required to furnish reasonably adequate service and facilities and shall provide and furnish transportation of passengers and property upon reasonable requests therefor, and all charges made for any service in connection therewith, or for the receiving, switching, delivering, storing, transporting or handling of such persons or property shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful;

Through routes, rates.

(b) All railroads incorporated under the general railroad law of this state, as between themselves, and all electric railroads, as between themselves, shall establish through routes and just and reasonable rates applicable thereto, except as hereinafter provided;

Joint rates.

(c) Whenever passengers or property are transported over 2 or more connecting lines of railroad between points in this state, and the railroad companies have made joint rates for the transportation of the same, such rates and all charges in connection therewith shall be just and reasonable, and every unjust and unreasonable charge is prohibited and declared to be unlawful: Provided, That a less charge by such railroads for their proportion of such joint rates than is made locally between the same points on their respective lines shall not for that reason be construed as a violation of the provisions of this act, nor render such railroads liable to any of the penalties hereof.

HISTORY: CL 1915, 8112;—CL 1929, 11020;—CL 1948, 483.4.

462.5 Free transportation; penalty.

Sec. 5. (a) No common carrier, subject to the provisions of this act shall hereafter, directly or indirectly, issue or give any free ticket, free pass, or free transportation for passengers, except to its employes or their families, its officers, agents, surgeons, physicians or attorneys at law and members of their families; or to former railroad employes and members of their families, when such employes have become disabled in the railway service, or retired upon pension, and to the members of the families of deceased employes; to ministers of religion, traveling secretaries of railroad young men's christian associations, persons engaged exclusively in charitable and eleemosynary work; to indigent, destitute and homeless persons and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes or homes for disabled volunteer soldiers, and sailors' homes, including those about to enter and those returning home after discharge, boards of managers of such homes; to necessary caretakers of live stock, poultry, fruit and vegetables; to employes on sleeping cars and express cars: to linemen of telegraph and telephone companies and others engaged in the care and operation of telegraph and telephone lines; to railroad postal employes, post office inspectors, custom inspectors and immigration inspectors; to newsboys on trains, bag-

gage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured or killed in accidents and members of the families of the same, and physicians and nurses attending such persons, and dependent relatives of injured or deceased employes, and such other persons as the commission may from time to time by special order designate: Provided, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, attorneys and employes of common carriers and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence or otherwise calamitous visitation: Provided further, That nothing shall be construed to prohibit the exchange of mileage for advertising in publications of general circulation. Any common carrier wilfully violating this provision shall be deemed guilty of a misdemeanor and for such offense, on conviction, shall pay to the state of Michigan a penalty of not less than 100 dollars nor more than 500 dollars, and any person, other than persons excepted in this provision, who uses any such free ticket, free pass or free transportation, shall be subjected to a like penalty;

Freight; mileage books; excursion tickets.

(b) Nothing herein shall prevent the carriage, storage or handling of freight free, or at reduced rates for the United States, the state or any political subdivision thereof, or any municipality thereof, or for charitable purposes, or to and from fairs and expositions for exhibition thereat, or household goods, or other personal property of railroad employes, or the interchange of franks for the free transportation of personal property of the officers, agents, attorneys and employes of common carriers and their families; nor to prohibit any common carrier from carrying property free with the object of providing relief in cases of general epidemic, pestilence or other calamitous visitations, or the issuance of mileage, commutation, excursion passengers' or party tickets: Provided, That such tickets shall be obtainable by all persons applying therefor under like circumstances and conditions without discrimination.

HISTORY: CL 1915, 8113;—CL 1929, 11021;—CL 1948, 462.5.

PENALTY: Suit for, see Compilers' § 462.41 and (Jud. Act) Compilers' § 800.4805.

462.6 Switch connection with private side track; service, preference; failure, order of commission; rules.

Sec. 6. (a) Any railroad, subject to the provisions of this act, upon application of any shipper tendering traffic for transportation, shall construct, maintain and operate upon reasonable terms a switch connection with any private side track, when such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of same, and shall furnish cars and transport to the best of its ability any traffic tendered to, over or from such private side track, without discrimination in favor of or against any such shipper: Provided, This shall not be construed to compel a railroad to remove from or deliver on a private side track traffic tendered in less than car lots: Provided further, That shipments of live stock, perishable property and explosives shall have precedence over all other classes of merchandise. If any railroad shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper, any shipper may make complaint to the commission, as provided by section 22 of this act, and the commission shall make investigation of the same, and it shall determine as to the safety, practicability and justification thereof, and shall fix a reasonable compensation therefor, and the commission shall make an order as provided in section 22 of this act, directing the railroads to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the commission, other than orders for the payment of money. The commission shall have power, and is hereby authorized, to fix and establish reasonable switching rules and regulations, and establish reasonable limits for said

switching and reasonable rates therefor, including rules and regulations regarding absorption of switching rates;

Spur track, payment of legitimate cost; disagreement.

(b) Every railroad shall provide a reasonable, adequate and suitable spur track to and to and upon the grounds of any mill, elevator, storehouse, warehouse, dock, wharf, pier, manufacturing establishment, lumber yard, coal dock or other industry or enterprise, wherever such spur track does not necessarily exceed 2 miles in length and is practically indispensable to the successful operation of any such industry or enterprise. and shall connect such spur track with its main track and operate the same in connection therewith: Provided, That such railroad may require the person or persons, firm, corporation or association primarily to be served thereby, to pay the legitimate cost and expense of acquiring by condemnation or purchase where necessary the rights of way for such spur track, and of constructing the same, in which case the total estimated cost thereof shall be deposited with the railroad before the railroad shall be required to incur any expense whatever therefor. No railroad shall, however, be required to provide a spur track where it is unusually unsafe and dangerous: Provided, That in the event of the failure of said shipper and the said railroad to agree, the necessity for, reasonableness of, and practical safety of such spur track and connection and the operation thereof shall be decided by the said public utilities commission upon complaint and hearing as provided in section 22 of this act.

HISTORY: CL 1915, 8114;—Am. 1921, p. 716, Act 390, Eff. Aug. 18;—CL 1929, 11022;—CL 1948, 462.6.
NOTE: Sec. 22, above referred to, is Compilers' § 462.22.

462.7 Interchange of traffic; preferred freight; routing by shippers or initial carrier.

Sec. 7. (a) All railroads subject to the provisions of this act shall afford all reasonable and proper facilities by the establishment of switch connections between one another and the establishment of depots and otherwise for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall transfer and deliver without unreasonable delay or discrimination any freight or cars or passengers destined to any point on its own line or on any connecting line, and shall not discriminate in their rates and charges between such connecting lines: Provided. Precedence may be given to live stock and perishable property. Nothing in this act shall be construed as requiring any railroad to give the use of its tracks or terminal facilities to another railroad engaged in like business, except that carload traffic shall be received and transported from any junction point or transfer point or intersection with another railroad in any city or town, destined to team tracks or other sidings in the same city or town as hereinafter provided. Any person or any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier subject to the provisions of this act shall have the right and privilege of routing such shipments and of prescribing and directing over what connecting line property so shipped shall be transported, and it shall be the duty of the initial carrier to observe the direction of such person or such officer or agent of any corporation or company, and to cause such freight to be transported over such connecting line as may be directed and required by such shipper. When freight is shipped in intrastate commerce and any person or officer or agent of any corporation or company who shall deliver property for transportation does not prescribe over what connecting line such property shall be transported, it shall be the duty of the initial carrier to so route the freight as to give the property the benefit of the lowest rate published between points of origin and destination;

Same; steam and interurban railroads.

(b) Where it is practicable and the same may be accomplished without endangering the equipment, tracks or appliances of either party, the commission may, upon application, require steam railroads and interurban and suburban railroads to interchange cars, carload shipments, less than carload shipments and passenger traffic, and for that purpose may require the construction of physical connections upon such terms as it may determine and such suburban and interurban railroads may be used for handling of freight in carload lots in steam railroad freight cars between shippers or consignees and the steam railroads, in the same manner and under the same general conditions, except as to motive power, as belt line railroads and terminal railroads are now or may hereafter be used for like purposes;

Drawing cars and merchandise of connecting lines; disagreement.

(c) Every corporation owning a railroad in use shall, at reasonable times and for a reasonable compensation, draw over the same the merchandise and cars of any other corporation or individual having connecting tracks: Provided, Such cars are of the proper gauge, are in good running order and equipped as required by law and otherwise safe for transportation and properly loaded: Provided further, If the corporations cannot agree upon the times at which the cars shall be drawn or the compensation to be paid, the said commission shall, upon petition of either party and notice to the other, after hearing the parties interested, determine the rate of compensation and fix such other periods, having reference to the convenience and interests of the corporation or corporations and the public to be accommodated thereby and the award of the commission shall be binding upon the respective corporations interested therein until the same shall have been revised;

Local traffic; private siding.

(d) Every common carrier operating within this state shall receive and transport at reasonable rates any and all carload traffic offered for transportation under the usual conditions locally consigned between points in the same city or town and shall receive and transport at reasonable rates from any junction point or transfer point or intersection with another railroad in such city or town any and all such carload freight destined to team tracks or other sidings on any line operated by the delivering carrier, and shall deliver such car or cars upon such team tracks or sidings in the city or town where such car or cars are received from such connecting line when required so to do: Provided, That when delivery is requested which will involve the use of a private siding not owned or controlled by consignee, said consignee shall file with both receiving and delivering carriers written permission signed by the owner or lessee of such private siding authorizing the use of same. When the particular delivery desired cannot be accomplished owing to the congestion of cars upon such siding or team tracks, it shall be the duty of the delivering carrier to notify consignee of such conditions and it shall be the duty of consignee upon receipt of such notice to advise upon what other siding delivery will be accepted or whether or not it is desired that such car or cars shall be held waiting the opportunity for delivery upon the siding originally designated as the destination;

Intrastate traffic; bill of lading, liability, recovery from other carrier.

(e) That any common carrier, railroad or transportation company receiving property for transportation from a point in the state of Michigan to another point within the state of Michigan, shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage or injury to such property caused by it or by any common carrier, railroad or transportation company to which said property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule or regulation, shall exempt such common carrier, railroad or transporta-

tion company from the liability hereby imposed: Provided, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law: Provided further, That the property so received for transportation shall move entirely within the boundaries of the state of Michigan between the points of shipment and its destination: And provided further, That the common carrier, railroad or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad or transportation company, on whose line or lines the loss, damage or injury shall have been sustained, the amount of such loss, damage or injury as it may be required to pay to the owners of such property as may be evidenced by any receipt, judgment or transcript thereof.

HISTORY: Am. 1911, p. 205, Act 139, Imd. Eff. April 25;—Am. 1913, p. 711, Act 370;—Am. 1913, p. 742, Act 389, Eff. Aug. 14;—Am. 1915, p. 492, Act 278, Eff. Aug. 24;—CL 1915, 8115;—Am. 1917, p. 921, Act 387, Eff. Aug. 10;—CL 1929, 11023;—CL 1948, 462.7.

BILLS OF LADING: See Compilers' §§ 440.1201 and 440.7102 et seq. See also Sec. 40 of this act, being Compilers' § 462.40.

462.8 Railroads to furnish cars; shortage, preference, regulation by commission; demurrage.

Sec. 8. Every railroad shall, when within its power so to do, and upon reasonable notice, furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight in carload lots. Every common carrier shall have sufficient cars and motive power to meet all requirements for the transportation of passengers and property which may reasonably be anticipated. In case of insufficiency of cars at any time to meet all requirements, such cars as are available shall be distributed among the several applicants therefor without discrimination between shippers or between points of shipment, whether competitive or non-competitive: Provided, Preference may be given to shipments of live-stock and perishable property. The commission shall have power to make and enforce, and shall make and enforce reasonable regulations for the furnishing and distribution of freight cars to shippers and switching the same, and for the loading and unloading thereof, and for the weighing of the cars and the freight offered for shipment over any line of railroad and shall fix a reasonable per diem demurrage to be paid for the detention of cars by shipper or consignee (which said car service and demurrage rules and regulations shall be applicable to all traffic whether the same begin or end within the state of Michigan), and for the failure or delay of the railroad in the furnishing of such cars and for the failure of the railroad to move the cars the number of miles per day as ordered by the commission.

HISTORY: Am. 1911, p. 295, Act 173, Eff. Aug. 1;—CL 1915, 8116;—CL 1929, 11024;—CL 1948, 462.8.

462.9 Charges for longer and shorter hauls; governing rate.

Sec. 9. It shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater fare or rate for the transportation of passengers or like kinds of property under substantially similar circumstances and conditions for a shorter than a longer distance over the same line, in the same direction, the shorter being included within the longer distance, but this act shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter distance as for a longer distance: Provided, however, That upon application to the commission appointed under the provisions of this act such common carrier may, in special cases after investigation by the commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property, and the commission may from time to time prescribe the extent to which a designated common carrier may be relieved from the operation of this section of this act. When there are 2 or more rates in effect between the same points, via the same route, the lowest published rate shall be the only legal rate applicable in this state. In the event a published through rate exceed any combination of 2 or more local

rates between the same points within the state, the combination forming the lowest rate shall govern.

HISTORY: Am. 1915, p. 491, Act 277, Eff. Aug. 24;—CL 1915, 8117;—CL 1929, 11025;—CL 1948, 462.9.
SPECIAL CONTRACT RATES: See Sec. 11 of this act.

462.10 Schedule of rates; filing with commission, public inspection.

Sec. 10. (a) Every common carrier subject to the provisions of this act shall file with the commission created by this act and print and keep open to public inspection in each of its depots and offices, schedules showing all rates, fares and charges for transportation, both of passengers and property, between different points on its own route, and between points on its own route and on the route of any other carrier, when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any common carrier, shall plainly state the places between which property and passengers will be carried and shall contain the classification of freight in force and shall also state separately all terminal charges, storage charges, icing charges and all other charges which the commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect or determine any part of or the aggregate of such aforesaid rates, fares and charges, or the value of the service rendered to the passengers, shipper or consignee: Provided, That where local switching tariffs are in effect at a competitive point, it shall be sufficient if the schedule state that the terminal charges shall be subject to the rules of such local switching tariffs. Such schedules shall be printed plainly in large type, and copies for the use of the public shall be kept on file for public inspection in every depot, station or office of such carrier where passengers or freight respectively are received for transportation or where tickets are sold, in such form that they will be accessible to the public and can conveniently be inspected. The provisions of this section shall apply to all traffic and transportation and facilities defined in this act;

Change of rates; investigation by commission.

(b) No change shall be made in the schedule of rates, fares or charges or joint rates, fares or charges which have been filed and published by common carriers in compliance with the requirements of this section, except after 30 days' notice to the commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule of rates, fares or charges or joint rates, fares or charges then in force and the time when such changed rates, fares or charges or joint rates, fares or charges will go into effect, and no such rates, fares or charges or joint rates, fares or charges shall be discontinued, except after giving such notice as is required for changing rates, fares or charges or joint rates, fares or charges, and the proposed changes in such rates, fares or charges or joint rates, fares or charges shall be shown by printing and filing new tariffs thereto or by showing such changes or discontinuance by issuing and filing of supplements in the regular manner now provided and keeping same open to public inspection: Provided, That the commission may, in its discretion and for good cause shown, allow changes upon less time than the notice herein specified, or modify the requirements in this section in respect to publishing, posting and filing of tariffs, either in particular instances or by general order applicable to special or peculiar circumstances or conditions: Provided further, That upon the filing with the commission by a common carrier of any tariff or supplement showing any change in rates, fares or charges or joint rates, fares or charges or a discontinuance of any rate or rates, fares or charges or joint rates, fares or charges, it shall be lawful for the said commission and it is hereby authorized, acting upon its own initiative or upon complaint, to postpone the date when such new rate or rates or joint rates, fares

or charges or discontinuance of rate or rates or joint rates, fares or charges, shall become effective to such time not to exceed in all 45 days as shall give the said commission opportunity to investigate the reasonableness of such proposed rate or rates or discontinuance of rate or rates, and it shall thereupon be lawful for said commission and it is hereby authorized to proceed with all convenient speed with an investigation upon at least 5 days' notice to said common carrier either upon its own initiative or upon complaint as to the reasonableness of said rate or rates or the discontinuance of said rate or rates, follow the procedure as near as may be, and make its order therein in the manner hereinafter provided in section 22 of this act, such investigation to take precedence of all matters of a different nature pending before the commission;

Joint tariff; names of carriers, evidence of concurrence.

(c) The names of the several carriers which are parties to any joint tariff shall be specified therein and each of the parties thereto, other than the one filing the same, shall file with the commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the commission, and where evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties;

Form of schedules.

(d) The commission may determine and prescribe the form in which the schedules required by this section to be kept open to the public inspection shall be prepared and arranged and may change the form from time to time as may be found expedient;

Same; conformance with I.C.C. forms.

(e) Such schedules shall, so far as is practicable, conform to the forms prescribed by the interstate commerce commission;

Filing and publication of rates a prerequisite to transportation; deviation from rates; rebates.

(f) No carrier, unless otherwise provided by this act, shall engage or participate in the transportation of passengers or property as defined in this act, unless the rates, fares and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this act, nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property or for any service in connection therewith between the points named in such fares and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares and charges so specified, nor extend to any shipper or person any privilege or facilities in the transportation of persons or property, except such as are specified in such tariff;

Rate complaint; time, hearing, order; court action.

(g) Within 2 years after the delivery of any shipment of freight at destination, and not after, any person aggrieved may complain to the commission that the charge exacted for the transportation of such freight between points in Michigan is irregular or exorbitant, and thereupon the commission shall have power to investigate such complaint, and to hear the same and to decide upon the merits thereof, in the manner provided by section 22 of this act. If, upon such hearing, the commission shall decide that the rate or charge exacted is irregular or exorbitant it shall find what, in its judgment, would have been a reasonable rate or charge for the service complained of. If the rate or charge so found shall be less than the charge exacted and the commission shall determine that any party complainant is entitled to an award of damages under the provisions of this act for a violation thereof, the commission shall make an order authorizing and directing the carrier to pay the complainant the sum to which he is entitled on or before a day named. In case of the refusal of the carrier to make such refund, the

party aggrieved thereby may maintain an action in the courts of this state to recover the amount of such excessive charge as found by said commission, and in the trial thereof the findings of the commission shall be prima facie evidence of the truth of the facts found by it, and no carrier shall be permitted to avail itself in the defense of such action that the shipment involved was in fact made on the published tariff rate in force at the time such shipment was made, but no carrier making a refund upon the order of the commission or pursuant to a judgment of court as herein provided, shall be liable for any penalty or forfeiture, or subject to any prosecution under the laws of this state on account of making such refund;

Military traffic.

(h) In time of war or threatened war preference and precedence shall, upon the demand of the governor of the state, be given over all other traffic to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic;

Schedules of rates, filing.

(i) Every common carrier within this state shall within 90 days, unless further time be granted by the commission, file in the office of the commission copies of all schedules of rates, including joint rates in force on its line or lines between points within this state on the date this act takes effect, not previously filed by such carrier with the Michigan railroad commission.

HISTORY: Am. 1911, p. 207, Act 139, Imd. Eff. Apr. 25;—CL 1915, 8118;—Am. 1923, p. 403, Act 256, Eff. Aug. 30;—CL 1929, 11026;—CL 1948, 462.10.

462.11 Special contract rates.

Sec. 11. Nothing in this act shall be construed to prevent concentration, commodity, transit and other special contract rates, but all such rates shall be open to all shippers for a like kind of traffic under similar circumstances and conditions, and shall be subject to the provisions of this act as to the printing and the filing of the same: Provided, All such rates shall be under the supervision and regulation of the commission.

HISTORY: CL 1915, 8119;—CL 1929, 11027;—CL 1948, 462.11.

462.12 Freight classification.

Sec. 12. The classification of freight in this state shall be uniform on all railroads.

HISTORY: CL 1915, 8120;—CL 1929, 11028;—CL 1948, 462.12.

462.13 Depot facilities; investigation of facilities and service by commission; change of name of station.

Sec. 13. (a) Every railroad, unless excused therefrom by the order of the commission made after petition and hearing, shall provide and maintain adequate depots and depot buildings, including facilities for checking baggage and the sale of tickets at its regular stations and at such other points as the commission shall direct, for the accommodation of passengers, which buildings shall be kept clean, well-lighted and warm for the accommodation of the traveling public. All railroads shall keep and maintain adequate and suitable freight depots, buildings, switches and sidetracks for the receiving, handling and delivering of freight transported or to be transported by such railroads. Upon the filing of complaint with the commission and hearing thereon as provided in section 22, the commission is authorized to make full inquiry in the matter of station facilities, train service, name of station, etc., at the station in question, and make such orders in regard to the building of depots, interurban railway shelters, name of station, stopping of trains or cars, necessary sidings and other track accommodations as it shall deem for the public interest and shall be just and reasonable. No order shall be made by the commission with reference to the name of a station until the change so ordered shall have been asked for by a majority vote of the citizens of the township, incorporated village or city in which such station is located.

Joint maintenance of depot facilities by connecting railroads.

(b) Where 2 or more railroads connect they shall, if so ordered by the commission after hearing, provide at the junction point a joint depot and suitable accommodations for passengers and merchandise. If the railroads cannot agree in providing such accommodations and for the maintenance thereof, the commission may determine the character of the accommodations to be provided and apportion the cost thereof and the expense of the maintenance of the same between the several roads.

Discontinuance of passenger service; approval of commission; procedure.

(c) Passenger service shall not be discontinued in this state without the permission of the commission and unless the railroad desiring to discontinue such service shall first file a petition with the commission, and hearing is held thereon as provided in section 22. The commission at such hearing shall inquire into the convenience and necessity of the service to the public and shall render its decision thereon. At any hearing upon such petition any person, association, corporation, municipality or governmental unit whose interests shall be adversely affected by the discontinuance of the service, may petition the commission for leave to intervene in said proceedings and participate therein as a party. If it shall appear to the commission from the state of the applicant's interests that the interests may be adversely affected by the discontinuance of service, the commission shall grant permission to intervene. The provisions of this act shall not apply to temporary or seasonal trains.

Appeal from order of commission.

(d) Any common carrier, or other party in interest, being dissatisfied with any order of the commission made under the provisions of this section, shall have the same rights to appeal and review as provided under section 26, as amended.

HISTORY: CL 1915, 8121;—CL 1929, 11029;—Am. 1941, p. 175, Act 134, Imd. Eff. May 26;—CL 1948, 462.13;—Am. 1965, p. 16, Act 15. Imd. Eff. Apr. 16.

462.14 Sidetracks, spurs and branches; control by commission; abandonment or removal, procedure.

Sec. 14. The commission shall have control and jurisdiction over all sidetracks, spurs and branches insofar as the same are used or operated by common carriers. No change or discontinuance in the service from, to or on such sidetracks, spurs and branches or abandonment or removal of said sidetracks, spurs or branches, except sidetracks or spurs solely required for the convenient operation of its engines and trains and private industrial sidetracks, shall be made except after 10 days' notice to the commission and to the public published as aforesaid, which shall plainly state the change or discontinuance proposed to be made in such service or the sidetrack, spur or branch proposed to be abandoned or removed and the time when such change, discontinuance or abandonment or removal will go into effect; and the proposed change, discontinuance or abandonment or removal shall be shown by printing and filing new tariffs or notice thereof or by showing such change, discontinuance or abandonment or removal by issuing and filing supplements or notice in the regular manner now provided and keeping same open to public inspection: Provided, That the commission may allow changes upon less time than the notice herein specified or modify the requirements in this section in respect to publishing and posting of tariffs either in particular instances or by a general order applicable to special or peculiar circumstances or conditions: Provided further, That it shall be lawful for the said commission and it is hereby authorized, acting upon its own initiative or upon complaint, to postpone the date when such change, discontinuance or abandonment or removal shall become effective to such time not to exceed in all 45 days as shall give the said commission opportunity to investigate the reasonableness of such proposed change, discontinuance or abandonment or removal, and it shall thereupon be lawful for such commission, and it is hereby authorized to proceed with all convenient speed with an investigation upon at least 5 days' notice to

said common carrier, either upon its own initiative or upon complaint as to the reasonableness of said change, discontinuance or abandonment or removal, and shall follow the proceedings as near as may be and make its orders thereon either approving or refusing such change, discontinuance or abandonment or removal or prescribing the terms and conditions upon which such change, discontinuance or abandonment or removal shall be made, in the manner hereinafter provided in section 22 of this act, such investigation to take precedence of all matters of a different nature pending before the commission, except investigations as to change or discontinuance of rates, fares or charges or joint rates, fares or charges then pending before said commission.

HISTORY: Am. 1911, p. 210, Act 139, Imd. Eff. April 25;—CL 1915, 8122;—CL 1929, 11030;—CL 1948, 462.14.

NOTE: Sec. 22, above referred to, is Compilers' § 462.22.

462.15 Continuous carriage of freight; unlawful acts.

Sec. 15. It shall be unlawful for any common carrier to enter into any combination, contract or agreement, express or implied, to prevent by change of time, schedule, carriage in different cars, or by other means or devices, the carriage of freight from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage or interruptions by such common carrier shall prevent the carriage of freight from being and being treated as 1 continuous carriage from place of shipment to the place of destination, unless such break, stoppage or interruption was made in good faith for some necessary purpose and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this act.

HISTORY: CL 1915, 8123;—CL 1929, 11031;—CL 1948, 462.15.

462.16 Rate discrimination unlawful; compensation for incidental service.

Sec. 16. If any common carrier or any agent or officer thereof shall, directly or indirectly, by any special rate, rebate, drawback, or by any means of false billing, false classification, false weighing, or by any other device whatsoever, charge, demand, collect or receive from any person, firm or corporation, a greater or less compensation for any service rendered or to be rendered by it for the transportation of persons or property or for any service in connection therewith than that prescribed in the public tariffs then in force, or established as provided herein, or than it charges, demands, collects or receives from any other person, firm or corporation for a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, or shall knowingly and willfully assist or willfully suffer and permit such greater or less compensation to be charged, demanded, collected or received, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful. It shall be unlawful for any common carrier to demand, charge, collect or receive from any person, firm or corporation a less compensation for the transportation of property or for any service rendered or to be rendered by said common carrier in consideration of said person, firm or corporation furnishing any part of the facilities incident thereto: Provided, Nothing shall be construed as prohibiting any common carrier from procuring any facilities or service incident to transportation and paying a reasonable compensation therefor.

HISTORY: CL 1915, 8124;—CL 1929, 11032;—CL 1948, 462.16.

462.17 Traffic discrimination unlawful.

Sec. 17. It shall be unlawful for any common carrier, subject to the provisions of this act, to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality or any particular description of

traffic in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality or any particular description of traffic to any undue or unreasonable disadvantage or prejudice in any respect whatsoever.

HISTORY: CL 1915, 8125;—CL 1929, 11033;—CL 1948, 462.17.

462.18 Receiving rebate or discrimination; penalty.

Sec. 18. It shall be unlawful for any person, firm or corporation knowingly to accept or to receive any rebate concession or discrimination in respect to transportation of any property wholly in this state or for any service in connection therewith, whereby any such property shall, by false billing, false classification, false weighing or any other device whatsoever, be transported at a less rate than that named in the published tariffs in force as provided herein or whereby any service or advantage is received, other than is therein specified. Any person, firm or corporation violating the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than 500 dollars or by imprisonment in the county jail for a term of not to exceed 3 months, or by both in the discretion of the court for each offense.

HISTORY: CL 1915, 8126;—CL 1929, 11034;—CL 1948, 462.18.

462.19 Civil liability.

Sec. 19. If any common carrier shall do, or cause to be done, or permit to be done, any matter, act or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing required to be done by it, or by any lawful order made under the provisions of this act by the Michigan railroad commission, such common carrier shall be liable to the person, firm or corporation injured thereby in double the amount of damages sustained in consequence of such violation: Provided, That any recovery as is in this section provided shall in no manner affect a recovery by the state of the penalty prescribed for such violation.

HISTORY: CL 1915, 8127;—CL 1929, 11035;—CL 1948, 462.19.

462.20 Failure to report unlawful.

Sec. 20. It shall be unlawful for any officer, agent or employe of any common carrier to willfully fail or refuse to fill out and return any blank or make any report as required by this act, or to willfully fail or refuse to answer any questions therein propounded, or to knowingly or willfully give a false answer to any such question or to evade the answer to any such question where the fact inquired of is within his knowledge, or to, upon proper demand, willfully fail or refuse to exhibit to any commissioner or any commissioners, or any person authorized to examine the same, any book, paper or account of such common carrier which is in his possession or under his control.

HISTORY: CL 1915, 8128;—CL 1929, 11036;—CL 1948, 462.20.

462.21 Fees; disposition.

Sec. 21. The commission shall charge and collect the following fees: For copies of papers and records not required to be certified or otherwise authenticated by the commission, 10 cents for each folio; for certified copies of official documents and orders filed in its office, 15 cents for each folio; for certifying a copy of any report made by a corporation to the commission, 50 cents; for each certified copy or the annual report of the commission, for certified copies of evidence and proceedings before the commission not required by this act to be furnished gratis, 15 cents for each folio. No fees shall be charged or collected for copies of papers, records or official documents furnished to public officers for use in their official capacity, or for the annual reports of

the commission in the ordinary course of distribution. All fees charged and collected by the commission shall belong to the people of the state, and shall be paid monthly, accompanied with a detailed statement thereof, into the treasury of the state to the credit of the general fund.

HISTORY: CL 1915, 8129;—CL 1929, 11037;—CL 1948, 462.21.

462.22 Rate investigation on complaint; hearing, order for change in schedules.

Sec. 22. (a) Upon complaint in writing of any person, firm or corporation or association, or of any mercantile, agricultural or manufacturing society, or of any body politic or municipal organization, that any of the rates, fares, charges or classifications, or any joint rate or rates are in any respect unreasonable or unjustly discriminatory, or that any regulation or practice whatsoever affecting the transportation of persons or property or any service in connection therewith, is in any respect unreasonable or unjustly discriminatory, or that any service is inadequate, the commission shall notify the common carrier complained of that complaint has been made and shall furnish a copy of the said complaint with said notice, and 20 days after such notice has been given the commission may proceed to investigate the same as hereinafter provided. Before proceeding to make the investigation, the commission shall give the said common carrier and the complainants at least 10 days' notice of the time and place when and where such matters will be considered and determined, and said parties shall be entitled to be heard and shall have process to enforce the attendance of witnesses. Such hearings may be continued from time to time in the discretion of the commission. If, upon such investigation, the rate or rates, joint rate or rates, fares, charges or classifications, regulation, practice or service complained of shall be found to be unreasonable, inadequate or unjustly discriminatory, the commission shall have power to and it shall determine and by order fix and order substituted therefor, such rate or rates, joint rate or rates, fares and charges, as is or are just and reasonable, and which shall be the maximum to be charged in the future, and such classifications, regulation, practice or service as is or are just, reasonable and adequate, and which shall be imposed and followed or service rendered in future in lieu of that found to be unreasonable, inadequate or unjustly discriminatory, and in either case the commission shall make an order that the common carrier cease and desist from such violation, and shall conform to the regulation and practice so prescribed, and it shall cause a certified copy of each such order to be delivered to an officer or station agent of the common carrier affected thereby, which order shall, of its own force, take effect and become operative 20 days after the service thereof. All common carriers to which the order applies shall, on or before the date when such order becomes effective, make such changes in schedules on file as shall be necessary to make the same conform to such order, and no change shall within 2 years thereafter be made by any such common carrier in any such rates, fares or charges, or in any such joint rate or rates, without the approval of the commission. Certified copies of all other orders of the commission shall be delivered to the common carriers thereby affected in like manner, and the same shall take effect within such times thereafter as the commission shall prescribe;

Separate hearings; dismissal.

(b) The commission may, when the complaint is made of more than 1 rate or charge, order separate hearings thereon, and may consider and determine the several matters complained of separately and at such times as it may prescribe. No complaint shall of necessity at any time be dismissed because of the absence of direct damage to the complainant;

Rate investigation on own motion of commission; order.

(c) Whenever the commission shall believe that any rate or rates or charge or charges may be unreasonable or unjustly discriminatory, or that any service is inadequate, and that any investigation relating thereto should be made, it may, upon its own motion, investigate the same. Before making such investigation, it shall present to the common carrier a statement in writing, setting forth the rate or charge to be investigated. Thereafter, on 10 days' notice to the common carrier of the time and place of such investigation, the commission may proceed to investigate such rate or charge in the same manner and make like orders in respect thereto as if such investigation had been made upon complaint;

Complaint by common carrier.

(d) This section shall be construed to permit any common carrier to make complaint of like effect as though made by any person, firm, corporation or association, mercantile, agricultural or manufacturing society, body politic or municipal organization;

Through routes; joint rates; disagreement.

(e) The commission may, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and the terms and conditions under which such through routes shall be operated when the common carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates: Provided, No reasonably satisfactory through route and joint rate exist. Whenever the common carrier or common carriers, in obedience to an order of the commission or otherwise, in respect to joint rates, fares or charges, shall fail to agree among themselves upon the apportionment or division thereof, the commission may after hearing make a supplemental order prescribing the just and reasonable proportion of such joint rate, fare or charge to be received by each common carrier party thereto, which order shall take effect as part of the original order.

HISTORY: CL 1915, 8130;—CL 1929, 11038;—CL 1948, 462.22.

UNREASONABLE PRACTICE: See also Compilers' § 462.32.

LEASES: For application of this section to leases of railroad property for elevators, etc., see Compilers' § 469.353.

CITED IN OTHER SECTIONS: The above section is cited in § 466.559.

462.23 Commissioners; powers; courts may compel obedience.

Sec. 23. (a) Each of the commissioners, for the purposes mentioned in this act, shall have power to administer oaths, certify to official acts, issue subpoenas, compel the attendance of witnesses and the production of papers, way bills, books, accounts, documents and testimony. In case of disobedience on the part of any person or persons, or willful failure to comply with any order of the commission or any commissioner or any subpoena, or upon the refusal of any witness to testify regarding any matter upon which he may be lawfully interrogated, or to produce any books or papers in his custody or control which he shall have been required by any commissioner to produce, it shall be the duty of the circuit court or any court, or a judge thereof, upon application of a commissioner, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court, or a refusal to testify therein, and in addition said commissioner shall have the powers vested in justices of the peace and notaries public to compel witnesses to testify and to produce books and papers;

Witness fees.

(b) Each witness who shall appear before the commission by its order shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in circuit court, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the chairman of the commission: Provided, That no witnesses subpoenaed at the instance of parties other than the commission shall be en-

titled to compensation from the state for attendance and travel, unless the commission shall certify that his testimony was material and necessary to the matter investigated;

Depositions.

(c) The commission or any party may, in any investigation, cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the circuit courts;

Record of proceedings; transcript of testimony.

(d) A full and complete record shall be kept of all proceedings had before the commission on any investigation had under section 22 of this act and all testimony shall be taken down by a stenographer appointed by the commission. When any complaint is served upon the commission under the provisions of section 26 of this act the commission shall, before said action is reached for trial, cause the certified transcript of all proceedings had and testimony taken upon such investigation to be filed with the clerk of the circuit court of the county where the action is pending. A transcribed copy of the evidence and proceedings, or any specific part thereof, or any investigation, taken by the stenographer, certified by him to be a true and correct transcript of all the testimony on the investigation or of a particular witness, or of any specific part thereof, carefully compared by him with his original notes, and to be a correct statement of the evidence and proceedings had on such investigation so purporting to be taken and transcribed shall be received in evidence with the same effect as if such stenographer were present and testified to the facts so certified. A copy of such transcript shall be furnished upon demand, free of cost, to any party to such investigations, and to all other persons on payment of a reasonable amount therefor.

HISTORY: CL 1915, 8131;—CL 1929, 11039;—CL 1948, 462.23.

TESTIMONY: Powers of justices to compel, see Compilers' § 600.7009 et seq.

WITNESS FEES: See Compilers' §§ 600.2164, GCR 506 and § 600.2552.

DEPOSITIONS: See (Jud. Act) Compilers' § GCR 302 to 306.

462.24 Orders of commission; rescission or amendment.

Sec. 24. The commission may, at any time upon application of any person or any common carrier, and upon at least 10 days' notice to the parties interested, including the common carrier, and after opportunity to be heard as provided in section 22, rescind, alter or amend any order fixing any rate or rates, fares, charges or classifications, or any other order made by the commission, and certified copies shall be served and take effect as herein provided for original orders.

HISTORY: CL 1915, 8132;—CL 1929, 11040;—CL 1948, 462.24.

462.25 Rates; classification and regulations prescribed by commission to be prima facie lawful.

Sec. 25. All rates, fares, charges, classification and joint rates fixed by the commission and all regulations, practices and services prescribed by the commission shall be in force and shall be prima facie, lawful and reasonable until finally found otherwise in an action brought for the purpose pursuant to the provisions of section 26 of this act, or until changed or modified by the commission as provided for in section 24 of this act.

Express companies; rates.

(a) It shall be unlawful for any express company operating or doing business in the state of Michigan to charge or collect a greater amount for the transportation of merchandise or other property within this state than the rates and charges set forth and contained in the schedule of rates, tariffs and classifications on file at each station and office to or from which said rates, tariffs and classifications are intended to apply; a copy of which said schedule of rates, tariffs and classifications shall be filed with the railroad commission by the issuing carrier or some duly authorized agent or representative of such carrier;

Same; discrimination, refusal to transport; charge over several lines.

(b) It shall be unlawful for any express company operating and doing business in the state of Michigan to discriminate in favor of or against any shipper or shippers or to refuse or fail to receive and transport proffered merchandise or other property, providing such merchandise or other property is a proper subject for shipment by express and in proper condition at the time of presentation for shipment from any point where such express company shall maintain or conduct an office or station, or to or from any junction point or points where the line of such express company intersects with the line of any other express company or to or from any common terminal to any point on its own line, and the charge and compensation for the transportation of such merchandise or other property by 2 or more express companies shall not exceed by 30 per cent the maximum charge for the same distance on any 1 line, such maximum charge being determined as hereinafter prescribed:

Same; joint rates.

(c) All express companies operating within this state shall publish and continue in force and effect through or joint rates between all points at which offices are maintained on the line of all express companies operating within the state of Michigan: Provided, That such express companies may divide charges for transportation in such a manner as to allow participating carriers an agreed minimum proportion when the division of such charges on a mileage basis would not allow a sufficient minimum;

Basic merchandise schedule.

(d) The following schedule of rates shall be the present maximum basic general merchandise schedule chargeable within the state of Michigan:

- 1 to 55 miles inclusive, 50 cents per 100 pounds;
- 56 to 75 miles inclusive, 55 cents per 100 pounds;
- 76 to 85 miles inclusive, 60 cents per 100 pounds;
- 86 to 95 miles inclusive, 65 cents per 100 pounds;
- 96 to 105 miles inclusive, 70 cents per 100 pounds;
- 106 to 130 miles inclusive, 75 cents per 100 pounds;
- 131 to 150 miles inclusive, 80 cents per 100 pounds;
- 151 to 170 miles inclusive, 85 cents per 100 pounds;
- 171 to 190 miles inclusive, 90 cents per 100 pounds;
- 191 to 210 miles inclusive, 1 dollar per 100 pounds;
- 211 to 230 miles inclusive, 1 dollar 10 cents per 100 pounds;
- 231 to 250 miles inclusive, 1 dollar 20 cents per 100 pounds;
- 251 to 275 miles inclusive, 1 dollar 30 cents per 100 pounds;
- 276 to 300 miles inclusive, 1 dollar 40 cents per 100 pounds;

Graduated schedule.

(e) The graduated table or schedule of charges now in force relating to shipments of merchandise or other property in quantities less than 100 pounds shall continue in operation except as hereinafter provided;

Express companies; supervision.

(f) The Michigan railroad commission shall have control and supervision over all express companies operating within this state, and upon complaint made to it or upon its own motion and after hearing had thereon, in accordance with the rules now in force relative to hearings on complaints by and against common carriers, may from time to time within its discretion change, alter and amend the maximum schedule of rates hereinbefore set forth, and may from time to time upon proper application or upon its own motion and hearing had thereon, as above prescribed, change, alter and amend

any graduated table or schedule of charges on merchandise or other property transported or to be transported, the weight of which is less than 100 pounds;

Same; forwarding of shipments.

(g) Any express company operating or doing business within the state of Michigan, upon receipt of any property or merchandise, providing such property or merchandise is a proper subject for shipment by express and in proper condition at time of presentation, shall unless otherwise requested by the shipper forward same via the nearest and most practical route, having in mind the frequency of train service at different junction points.

HISTORY: Am. 1911, p. 211, Act 139, Imd. Eff. April 25;—CL 1915, 8133;—CL 1929, 11041;—CL 1948, 462.25.

Amendatory Act 139 of 1911 contained a section 2 as follows: "This act is immediately necessary for the preservation of the public peace and safety."

462.26 Action by common carriers to vacate commission order; pleadings, hearing, decree.

Sec. 26. (a) Any common carrier or other party in interest, being dissatisfied with any order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices or services, may within 30 days from the issuance of such order and notice thereof commence an action in the circuit court in chancery for the county of Ingham, against the commission as defendant to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates fixed are unlawful or unreasonable, or that any such regulation, practice or service fixed in such order is unreasonable; in which suit the commission shall be served with a subpoena and a copy of the complaint. The commission shall file its answer, and on leave of court any interested party may file an answer to said complaint. Upon the filing of the answer of the commission said action shall be at issue and stand ready for hearing upon 10 days' notice by either party. All suits brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the said circuit court shall always be deemed open for the hearing thereof, and the same shall proceed, be tried and determined as other chancery suits. Any party to such suit may introduce original evidence in addition to the transcript of evidence offered to said commission, and the said circuit court in chancery is hereby given jurisdiction of such suits and empowered to affirm, vacate or set aside the order of the commission in whole or in part, and to make such other order or decree as the court shall decide to be in accordance with the facts and the law;

Injunction.

(b) No injunction shall issue suspending or staying any order of the commission, except upon application to the said circuit court in chancery or to the judge thereof, notice to the commission having been given and hearing having been had thereon;

Additional evidence; judgment.

(c) If, upon the trial of said action, evidence shall be introduced which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, unless the parties in such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for 15 days from the date of such transmission. Upon receipt of such evidence the commission shall consider the same, and may alter, modify, amend or rescind its order relating to such rate or rates, fares, charges, classifications, joint rate or rates, regulations, practice or service complained of in said action, and shall report its action thereon to said court within 10 days from the receipt of such evidence. If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify or amend the same, such altered, modified or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon as though made by the

commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order;

Appeal to supreme court.

(d) Either party to said action, within 60 days after service of a copy of the order or judgment of the court, may appeal to the supreme court, which appeal shall be governed by the statutes governing chancery appeals. When the appeal is taken the case shall, on the return of the papers to the supreme court, be immediately placed on the calendar of the then pending term, and shall be brought to a hearing in the same manner as other cases on the calendar, or if no term is then pending, shall take precedence of cases of a different nature except criminal cases at the next term of the supreme court;

Burden of proof.

(e) In all actions under this section the burden of proof shall be upon the complainant to show by clear and satisfactory evidence that the order of the commission complained of is unlawful or unreasonable, as the case may be.

HISTORY: Am. 1915, p. 242, Act 145, Eff. Aug. 24;—CL 1915, 8134;—CL 1929, 11042;—CL 1948, 462.26;—Am. 1951, p. 161, Act 129, Eff. Sep. 28.

CITED IN OTHER SECTIONS: The above section is cited in § 479.20.

462.27 Process; practice and evidence.

Sec. 27. (a) In all actions and proceedings in court arising under this act all such process shall be served and the practice and rules of evidence shall be the same as in actions in equity, except as otherwise herein provided. Every sheriff or other officer empowered to execute civil process shall execute any process issued under the provisions of this act, and shall receive such compensation therefor as may be prescribed by law for similar services;

Incriminating testimony; perjury; immunity.

(b) No person shall be excused from testifying or from producing books and papers in any proceedings based upon or growing out of any violation of the provisions of this act on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person having so testified shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have testified or produced any documentary evidence: Provided, That no person so testifying shall be exempted from prosecution or punishment for perjury in so testifying: Provided further, The immunity hereby conferred shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath, or produces evidence documentary or otherwise under oath;

Orders as evidence.

(c) Upon application of any person the commission shall furnish certified copies, under seal of the commission and signed by the commission or its secretary, of any order made by it, which shall be prima facie evidence in any court or proceedings of the facts stated therein.

HISTORY: CL 1915, 8135;—CL 1929, 11043;—CL 1948, 462.27.

SERVICE OF PROCESS: See (Jud. Act) Compilers § 600.1901, GCR 101, §§ 600.1920, 600.1923 and GCR 105.

EVIDENCE: See (Jud. Act) GCR 302.

PERJURY: Penalty, see Compilers' § 750.422 et seq.

462.28 Common carriers; authority of commission.

Sec. 28. (a) The commission shall have authority to inquire into the management of the business of any common carrier and shall keep itself informed as to the manner and shall have the right to obtain from any common carrier all necessary information to enable the commission to perform the duties and carry out the objects for which it is created;

Blanks; execution, perjury.

(b) The commission shall cause to be prepared for the purposes designated in this act blanks which shall conform as nearly as practicable to the forms prescribed by the interstate commerce commission, and shall when necessary furnish such blanks to each common carrier. Any common carrier receiving from the commission any such blanks shall cause the same to be properly filled out so as to answer fully and correctly each question therein propounded, and in case it is unable to answer any question it shall give a full and sufficient reason for such failure; and said answer shall be verified under oath by the proper officer of said common carrier and returned to the commission at its office within the time fixed by the commission. The making of a false affidavit or the filing of the same shall be deemed perjury and punishable as such under the statutes of Michigan defining perjury;

Inspection.

(c) The commission or any commissioner, or any person or persons employed by the commission for that purpose, shall, upon demand, have the right to inspect the books and papers of any common carrier, and to examine under oath any officer, agent or employe of such common carrier in relation to any matter which is the subject of complaint or investigation: Provided, That any person other than 1 of said commissioners who shall make such demand shall produce his authority to make such inspection under the hand of the commission or its secretary, and under the seal of said commission;

Order to produce books; penalty.

(d) The commission may require by order or subpoena, to be served upon any common carrier in the same manner that a subpoena is served in a law action in the circuit court, the production within this state, at such time and place as it may designate, any books, papers or accounts relating to any matter which is the subject of complaint or investigation, kept by such railroad in any office or place without the state of Michigan, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof shall be made by the commission or under its direction, and such subpoena may issue to any sheriff in any county of the state. Any common carrier failing or refusing to comply with such order or subpoena within a reasonable time shall for each day it shall so fail or refuse, forfeit and pay into the state treasury a sum of not less than 100 dollars nor more than 1,000 dollars, to be recovered in an action at law brought in the name of the Michigan railroad commission.

HISTORY: CL 1915, 8136;—CL 1929, 11044;—CL 1948, 462.28.

PERJURY: Penalty, see Compilers' § 750.422 et seq.

PENALTY: Suit for, see Compilers' § 462.41 and (Jud. Act) Compilers' § 600.4805.

462.29 Common carriers; contracts and free transportation lists.

Sec. 29. (a) Every common carrier whenever required by the commission shall, within a time to be fixed by the commission, deliver to the commission for its use, copies of all contracts which relate to the transportation of persons or property or any service in connection therewith, made or entered into by it with any other common carrier or any shipper or shippers, producers or consumers or other person or persons doing business with it;

Annual free transportation list.

(b) Every common carrier shall, on or before the first day of February, 1910, and annually thereafter and oftener if required by the commission, file with the commission a verified list of all free tickets, free passes and free transportation issued or given by it during the year ending the thirty-first day of December preceding, together with the full names and addresses of recipients thereof and the reason for issuing the same: Provided, That this section shall not be deemed to require the filing of a list of such free tickets, free passes and free transportation issued or given by such common carrier to its employes or their families, its officers, agents, surgeons, physicians or attorneys-at-

law and members of their families, or the officers, agents, attorneys and employes of other common carriers and their families, except such list be specially ordered by the commission.

HISTORY: CL 1915, 8137;—CL 1929, 11045;—CL 1948, 462.29.

462.30 Common carriers; annual statement, contents, time; blanks; additional information; earnings and income, report.

Sec. 30. Every common carrier doing business in this state, or which shall hereafter do business in this state, and every person, firm or corporation owning property in this state which is used for common carrier purposes, shall on or before the first day of May, 1918, and on or before the same day in each year thereafter, make and transmit to the commission at its office in Lansing a full and true statement, under oath of the proper official of such carrier of the financial and operating transactions of such carrier relative to the state of Michigan for the year ending the thirty-first day of December preceding, which statement for the state of Michigan shall be similar in character and detail to the annual report, if any, required to be made by such carriers to the interstate commerce commission. The said commission shall cause to be made suitable blanks at the expense of the state and forward the same to such common carrier, upon which to make reports required by this act. The said railroad commission may require of such common carrier, subject to the provisions of this act, any other or additional information relating to the management of such carrier and to the condition of its respective property utilized for common carrier purposes and such other subjects as in its judgment may be necessary in order to gain full information in regard thereto. Every common carrier doing business in this state shall, when so ordered by the commission, report to the railroad commission its earnings and income statement for the period designated in such order, and the proper blanks for that purpose shall be furnished by the commission.

HISTORY: CL 1915, 8138;—Am. 1917, p. 455, Act 205, Eff. Aug. 10;—CL 1929, 11046;—CL 1948, 462.30.

The amendatory act erroneously described this section as CL 1915, 8132.

REPORTS: See Compilers' § 450.82.

462.31 Freight tariffs; filing.

Sec. 31. Any freight tariffs issued by common carriers relating to interstate traffic in this state or by any common carrier relating either to interstate or to intrastate traffic wholly by water routes in this state shall be on order of the commission filed in the offices of the commission within such time as such order shall prescribe.

HISTORY: CL 1915, 8139;—CL 1929, 11047;—CL 1948, 462.31.

462.32 Unreasonable rate or practice; regulation by commission.

Sec. 32. Whenever, after hearing and investigation as provided in this act, the commission shall find that any charge, regulation or practice affecting the transportation of passengers or property, or any service in connection therewith not herein specifically designated, is unreasonable or unjustly discriminatory, it shall have the power to regulate the same as provided in section 22 of this act.

HISTORY: CL 1915, 8140;—CL 1929, 11048;—CL 1948, 462.32.

462.33 Accidents; report; investigation, expense.

Sec. 33. Every common carrier shall, whenever an accident occurs within this state upon its line or road or on its depot grounds or yards, give such notice thereof and make such report thereof to the commission as the regulations of the commission shall require. In the event of any accident the commission, if it deem the public interests require it, shall cause an investigation to be made forthwith, which investigation shall be held within the locality of the accident, unless for greater convenience of those concerned it shall order the investigation to be held at some other place, and said investigation may be adjourned from place to place, as may be found necessary and conven-

ient. The commission shall seasonably notify an officer of the company of the time and place of the investigation. The cost of such investigation shall be certified by the chairman of the commission, and the same shall be audited and paid by the state in the same manner as other expenses are audited and paid, and record or file of said proceedings and evidence shall be kept by said commission.

HISTORY: CL 1915, 8141;—CL 1929, 11049;—CL 1948, 462.33.

462.34 Equipment and structures; inspection; notice of repairs; orders as to rate of speed and use of defective equipment; penalties, forfeitures.

Sec. 34. Whenever the commission shall have reasonable grounds to believe, either on complaint or otherwise, that any of the equipment, cars, tracks, bridges or other structures of any common carrier of this state are in a condition which renders any of them dangerous or unfit for the transportation of passengers with reasonable safety, or unreasonably endangering the employes of such carrier, it shall be its duty to inspect and examine, or cause to be inspected, examined and tested by some competent person or persons, and for that purpose it, the said commission, may employ some other person possessing especial knowledge and skill in the construction of railroads and bridges, as an expert, and if, on such examination, in its opinion any such equipment, cars, tracks, bridges or other structures be dangerous or unfit for the transportation of passengers with reasonable safety, or unreasonably endanger the employes of such carrier, it shall be its duty to give the superintendent or other executive officer of the corporation, working or operating said defective, dangerous or unfit equipment, car, track or bridge or other structure, notice of the condition thereof, and of the repairs or changes necessary to place the same in a reasonably safe condition, and of the time within which such repairs or changes shall be made. It may also order and direct the rate of speed of passing trains or cars over such dangerous or defective track, bridge or other structure, until the said repairs shall be made. If any superintendent or other executive officer aforesaid, receiving such notice or order to direct the proper subordinate officers of said corporation to run the passenger trains or cars over such defective track, bridge or other structure, at the speed so prescribed by the commission, or if any engineer, conductor or other employe of such company shall knowingly disobey such order, every such superintendent, officer, conductor or employe shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section 43 of this act. The said commission shall have power to wholly prohibit the running of passenger trains or cars over such defective, dangerous or unfit track, bridge or other structure, or the use of such dangerous, unfit or defective equipment or car, if said company shall neglect or without reasonable cause fail to make such repairs within the time prescribed by the commission; and such company, for each and every day that ensues thereafter, and until such changes or repairs are made, shall forfeit and pay to the state the sum of 100 dollars. In case of the employment of an expert, as provided for in this section, the commission shall issue a certificate, which shall set forth the amount of time said expert has been employed, and the pay he is to receive therefor, which certificate shall entitle the holder thereof to receive the amount mentioned therein in the same manner as other employes of the state are paid.

HISTORY: CL 1915, 8142;—CL 1929, 11050;—CL 1948, 462.34.

PENALTY: Suit for, see Compilers' § 462.41 and (Jud. Act) Compilers' § 600.4805.

Sec. 35.

HISTORY: CL 1915, 8143;—Am. 1925, p. 251, Act 178, Eff. Aug. 27;—Am. 1927, p. 158, Act 117, Eff. Sept. 5;—CL 1929, 11051;—Rep. 1931, p. 805, Act 336, Eff. Sept. 18.

This section provided for crossing protection. For present law, see Compilers' § 469.1 et seq.

462.36 Equipment and structures; authority of commission.

Sec. 36. Authority is hereby given to the said commission, and it shall be its duty, if it shall deem it advisable, to prescribe the use of such modern generally approved sys-

tem of protection for the safe operation of trains or cars at all crossings and junctions of railroads in this state, and at all crossings of draw bridges, upon which trains or cars are operated by steam, electricity or other power, such as will secure safety in the operation of trains or cars at such crossings, junctions and draw bridges, and to apportion the cost of construction, operation and maintenance of such system of protection among the several companies in such proportion as to the commission shall seem just. The commission, having determined such form of protection, shall immediately cause a description thereof over its official signature to be delivered to an officer of the railroad affected thereby, with notice that the same must be adopted and put into practical force within a reasonable time to be fixed by the commission.

HISTORY: CL 1915, 8144;—CL 1929, 11052;—CL 1948, 462.36.

462.37 Equipment and structures; hearing prior to order.

Sec. 37. No order of the commission, made in pursuance of the provisions of sections 35 and 36 shall be made except upon examination, at which representatives of the common carriers affected shall be entitled to be heard, after notice.

HISTORY: CL 1915, 8145;—CL 1929, 11053;—CL 1948, 462.37.

462.38 Equipment and structures; refusal to obey order; penalty.

Sec. 38. Any common carrier that shall willfully neglect or refuse to obey or conform to any order of the commission made pursuant to either of sections 35 or 36 shall be liable to a penalty in the sum of 500 dollars, and to a like penalty for every week thereafter until such order shall have been complied with: Provided, That in cases in which an application for rehearing shall be made, or an action in court shall be begun and prosecuted in good faith and with diligence, the liability for the continuing penalty herein prescribed shall not apply or begin until after the decision of the commission or rehearing of the final order of the courts in such action.

HISTORY: CL 1915, 8146;—CL 1929, 11054;—CL 1948, 462.38.

PENALTY: Suit for, see Compilers' § 462.41; and (Jud. Act) Compilers' § 600.4805.

LEASES OF RAILROAD PROPERTY: For application of this section to violations of orders relating to certain leases, see Compilers' § 469.355.

462.39 Fences; inspection, construction.

Sec. 39. The railroad commission shall have power, and it shall be its duty, if it shall deem it practicable, in all cases to inspect and determine the sufficiency of all fences required by law to be constructed and maintained by railroad companies, and it may prescribe the manner of constructing and the time within which it shall be done.

HISTORY: CL 1915, 8147;—CL 1929, 11055;—CL 1948, 462.39.

FENCES: See Compilers' §§ 221.27, 466.15, 466.17 and 471.23.

462.40 Bill of lading; liability of carrier; statements of charges.

Sec. 40. Whenever any property is received by any common carrier subject to the provisions of this act to be transported from 1 place to another in the state, it shall upon demand by the shipper issue a receipt or bill of lading therefor, naming therein the classification of such freight and the rate of freight at which the same is to be carried; and no common carrier shall limit or change its common law liability by contract or otherwise as to its responsibility for the negligent act of its agents and servants with reference to property in its custody as a common carrier: Provided, That nothing herein contained shall be so construed as to abridge or in anywise lessen the liability of any such common carrier as it now is under existing laws. All statements rendered for transportation charges shall show character of shipments, weight, rate and total charges before demanding payment.

HISTORY: CL 1915, 8148;—CL 1929, 11056;—CL 1948, 462.40.

BILLS OF LADING: Uniform act, see Compilers' §§ 440.1201 (6) and 440.7102 et seq. False billing or classification, see Compilers' § 750.289.

462.41 Violations; investigation; enforcement of act.

Sec. 41. This commission shall inquire into any neglect or violation of the laws of this state by any such common carrier hereinbefore defined doing business therein, or by its officers, agents or employes thereof, and shall have the power and it shall be its duty to enforce the provisions of this act as well as all other laws relating to common carriers and report all violations thereof to the attorney general. Upon the request of the commission it shall be the duty of the attorney general, or the prosecuting attorney of the proper county, to aid in any investigation, prosecution, hearing or trial had under the provisions of this act, and to institute and prosecute all necessary actions or proceedings for the enforcement of this act and of all other laws of this state relating to common carriers, and for the punishment of all violations thereof. Any forfeiture and penalty herein provided shall be paid to the state treasurer and shall be recovered and suit therefor shall be brought in the name of the state of Michigan in the circuit court of any county having jurisdiction of the defendants. The attorney general of Michigan, or any prosecuting attorney selected by the said commission in any county where such action is pending, shall be the counsel in any proceeding, investigation, hearing or trial prosecuted or defended by the commission.

HISTORY: CL 1915, 8149;—CL 1929, 11057;—CL 1948, 462.41.

PENALTY: Suit for, see (Jud. Act) Compilers' § 600.4805.

462.42 Investigation of claims.

Sec. 42. All claims against any common carrier for loss or damage to property from any cause, or for over-charge upon any shipments, or for any other service, if not acted upon within 90 days from the date of filing of such claim with the common carrier may be investigated by the commission in its discretion, and the result of such investigation may be embodied in a special report and the next annual report of the commission.

HISTORY: CL 1915, 8150;—CL 1929, 11058;—CL 1948, 462.42.

462.43 Liability for violations; penalty.

Sec. 43. Any common carrier subject to the operation of this act, or whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent or person employed by such corporation, who alone or with any other corporation, company, person or party, shall willfully do or cause to be done, or shall willfully suffer or permit to be done any act, matter or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or who shall willfully omit or fail to do any act, matter or thing in this act required to be done, or shall cause or willfully suffer or permit any act, matter or thing so directed or required by this act to be done, not to be so done, or shall do or abet any such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, or who shall willfully disobey or knowingly fail or neglect to obey any lawful order made under the provisions of this act by the Michigan railroad commission, or shall aid and abet any such disobedience or omission or failure shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court having jurisdiction of misdemeanors, if a penalty for such offense be not elsewhere provided in this act, be subject to a fine of not to exceed 500 dollars for each offense, in the discretion of the court, or if the convicted party be a natural person, he shall be liable to be punished by imprisonment in the county jail for a period of not to exceed 3 months, or both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1915, 8151;—CL 1929, 11059;—CL 1948, 462.43.

LEASES OF RAILROAD PROPERTY: For application of this section to violation of act relating to certain leases, see Compilers' § 469.355.

462.44 Police powers vested in commission.

Sec. 44. The police powers of the state over railroads, street railways, interurban railways and suburban street railways, whether operated by steam, electricity or other motive power, organized or doing business in this state, shall be and the same are hereby vested in the railroad commission, and it is hereby made the duty of said railroad commission to exercise the same in accordance with the requirements of the law.

HISTORY: CL 1915, 8152;—CL 1929, 11060;—CL 1948, 462.44.

462.45 Substantial compliance.

Sec. 45. A substantial compliance with the requirements of this act shall be sufficient to give effect to all rules, acts and regulations of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

HISTORY: CL 1915, 8153;—CL 1929, 11061;—CL 1948, 462.45.

462.46 Rights of action; penalties cumulative.

Sec. 46. This act shall not have the effect to release or waive any right of action by the state or by any person for any right, damage, penalty or forfeiture which may have arisen or which may hereafter arise under any law of this state, and all penalties and forfeitures accruing under this act shall be cumulative, and a suit for and recovery of one shall not be a bar to the recovery of any other penalty or damage.

HISTORY: CL 1915, 8154;—CL 1929, 11062;—CL 1948, 462.46.

462.47 Mandamus; injunction; civil remedies.

Sec. 47. In addition to all the other remedies provided by this act for the prevention and punishment of any and all violations of the provisions hereof and of all orders of the commission, the commission, and likewise any person, firm or corporation interested, may compel compliance with the provisions of this act and with the orders of the commission by proceedings in mandamus, injunction or by other appropriate civil remedies.

HISTORY: CL 1915, 8155;—CL 1929, 11063;—CL 1948, 462.47.

462.48 Record of proceedings; report to governor, contents, publication.

Sec. 48. The commission shall keep a record of all its findings, decisions, determinations and investigations under this act or under any other act prescribing its duties and powers, and shall, on January first of each year, render to the governor a full and complete report of all such findings, decisions, determinations and investigations, together with a statement of all moneys expended by it or on its order, and of all salaries paid by or to it. It shall include in such report such recommendations as it shall desire to make on the conduct of railroad business in the state of Michigan, and such portion or abridgment of the reports of the various railroad corporations made to it as it shall deem to be of interest to the general public. Not more than 1,500 copies of this report shall be published, except by special authority of the board of state auditors.

HISTORY: CL 1915, 8156;—CL 1929, 11064;—CL 1948, 462.48.

462.49 Powers, duties and privileges transferred to commission; saving clause.

Sec. 49. All powers, duties and privileges imposed and conferred under existing laws upon the commissioner of railroads, the railroad and street crossing board, the crossing board as defined by section 6232 of the Compiled Laws of 1897, and the board of railway consolidations as defined by section 6255 of the Compiled Laws of 1897, and upon the Michigan railroad commission under existing laws are hereby imposed and conferred upon the commission created under the provisions of this act; and wherever in said acts or either of them the commissioner of railroads, the railroad and street crossing board, the crossing board, and the board of railway consolidations, the Michi-

gan railroad commission, or either of said officials or boards, are named, the same shall be construed to mean and apply to and name the Michigan railroad commission created by this act: Provided, That the powers and duties conferred upon the Michigan railroad commission by Act 312 of the Public Acts of 1907, shall continue to be exercised by that commission until the commission provided in section 1 of this act has qualified and organized: Provided further, That all hearings, investigations and complaints pending upon the organization of the commission provided for in section 1 of this act which shall have been begun by or before the commission organized under Act 312 of the Public Acts of 1907, may be continued and orders issued therein in all respects the same as if the complaints presented, investigations made and hearings held by the commission operating under Act 312 of 1907, had been presented to, made by and held by the commission created under section 1 of this act. All tariffs and schedules now on file with the Michigan railroad commission created by said Act 312 shall be of the same effect as if filed with the commission created by this act.

HISTORY: CL 1915, 8157;—CL 1929, 11065;—CL 1948, 462.49.

NOTE: Section 6232 of CL 1897, above referred to, as amended, is Compilers' § 464.7. Section 6255 of CL 1897, above referred to, is Compilers' § 464.30.

Act 312 of 1907, above referred to, was repealed by Sec. 52 of this act.

MICHIGAN RAILROAD COMMISSION: Abolished; and powers and duties transferred to the Michigan public utilities commission, see Compilers' § 460.53.

The Michigan public utilities commission has in turn been abolished and superseded by the Michigan public service commission, see Compilers' § 460.4.

462.50 Legislation; hearing on changes; recommendations.

Sec. 50. The commission shall conduct a hearing and take testimony as to the advisability of any proposed change of law relative to any matter within its jurisdiction if requested to do so by the legislature, by the senate or house committee on railroads, or by the governor, and shall report its conclusions to the officer or body at whose request the hearing was held. The commission may also recommend the enactment of such legislation, with respect to any matter within its jurisdiction, as it deems wise or necessary in the public interest, and may draft or cause to be drafted such bills or acts as it may deem necessary or proper to enact into law the legislation recommended by it.

HISTORY: CL 1915, 8158;—CL 1929, 11066;—CL 1948, 462.50.

Sec. 51. (This was a severing clause section.)

HISTORY: CL 1915, 8159;—CL 1929, 11067;—Rep. 1945, p. 413, Act 267, Imd. Eff. May 25.

Sec. 52. (This was a repeal section.)

HISTORY: CL 1915, 8160;—CL 1929, 11068;—Rep. 1945, p. 404, Act 267, Imd. Eff. May 25.

ACTS REPEALED: Act 79, 1873, CL 1897, 5206-5234; Act 64, 1875, CL 1897, 5241-5242; Sec. 13, Act 44, 1899; Act 189, 1903; Act 312, 1907.

CHAPTERS 463-467. RAILROAD, BRIDGE AND TUNNEL COMPANIES

RAILROAD, BRIDGE AND TUNNEL COMPANIES

Act 198 of 1873

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Act 198, 1873, p. 496; Imd. Eff. May 1.

AN ACT to revise the laws providing for the incorporation of the railroad bridge and tunnel companies and to regulate the running and management and to fix the duties and liabilities of all railroad, bridge, tunnel and other corporation owning or operating any railroad, bridge, or tunnel within this state, and to authorize the use of certain provisions of this act having to do with the exercise of the power of eminent domain by the state highway commissioner in certain cases, and to provide certain changes in such procedure when used by the state highway commissioner, and to confer certain rights and powers upon everyone coming under the provisions of this act. Am. 1899, p. 441, Act 266, Eff. Sep. 23;—Am. 1929, p. 330, Act 140, Imd. Eff. May 10.

The People of the State of Michigan enact:

ARTICLE I.—ORGANIZATION.

463.1 Railroad, bridge or tunnel companies; incorporators, articles, capital stock; directors.

Sec. 1. It shall be lawful for any number of persons, not less than 7, to organize themselves into a corporation for the purpose of constructing, operating, and maintaining a railroad, railroad bridge or railroad tunnel; and for such purpose such persons shall subscribe articles of association, in which shall be set forth the name of the corporation, the number of years the same is to be continued, the amount of capital stock of said company, which amount shall be the aggregate par value of all authorized shares having par value plus the aggregate amount of value placed in the articles of association upon all authorized shares of non-par value, and which shall not be less than \$4,000.00 per mile of road constructed or proposed to be constructed with flat-bar rail, or with a gauge not exceeding 3 feet 6 inches in width, and not less than \$8,000.00 per mile of road constructed or proposed to be constructed of "T" rails with gauge exceeding 3 ½ feet in width, and not less than 1/2 the estimated cost of any such bridge or tunnel; the number of shares of which the stock shall consist, the classes of stock authorized, any of which classes may be with or without nominal or par value, with such designations, relative rights, preferences, conditions, limitations, restrictions and voting rights as shall be specified; the number of shares of each class having par value, with the par value of each share; the number of shares of each class having no par value, with the value placed upon each share of each class, and the consideration for which the company may issue and sell such shares, or authorization to the board of directors to fix such consideration from time to time, which consideration shall in no event be less for any such share than the value placed thereon in the articles of associ-

ation,—and when the consideration for which any such share was authorized to be issued shall have been received by the company such shares shall be deemed to be fully paid and non-assessable; the number of directors, which shall not be less than 3, and their names; the places from and to which and the name of each county into or through which it is or is intended to be constructed, and its length as near as may be. Each subscriber to such articles of association shall set opposite his name his place of residence, and the number of shares of each class of stock by him subscribed. Whenever \$500.00 per mile of such railroad, or 1/2 the estimated cost of such bridge or tunnel, shall have been subscribed upon such articles of association, and 5% of the amount thereof shall have been paid in to the directors named in such articles, in good faith, in cash, and an affidavit shall have been made and attached thereto by any 2 of said directors, that said amount has been subscribed, and said amount of 5% paid in, in good faith, in cash, as before provided, such articles of association shall be filed in the office of the secretary of state, and thereupon the persons who have subscribed such articles, and all other persons who shall from time to time thereafter subscribe to or become the holders of the capital stock of said corporation, in the manner to be provided in its by-laws, shall be a body corporate, by the name specified in such articles, and shall be capable of suing and being sued, and may have a corporate seal, and may make and alter the same at pleasure, and may use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise, and be capable in law of purchasing, holding, and conveying any real and personal property necessary for the construction, maintenance, and operation of said railroad, railroad bridge or railroad tunnel; and for the erection of all necessary buildings, yards, and appurtenances for the use of the same: Provided, That any such company existing in whole or in part under the laws of this state, at any general or special meeting of the stockholders called and held pursuant to the provisions of this state in that behalf, may increase or decrease the number of its directors provided for in its articles of association, by a resolution to that effect: Provided, That 2/3 of the entire stock of the company having voting power shall be voted therefor: Provided further, That in no case shall the number of the directors be less than 3. A copy of any resolution so passed shall be certified by the secretary of the company and shall be filed and recorded in the office of the secretary of state in like manner as provided by law for the filing and recording of articles of incorporation of railroad companies.

HISTORY: Am. 1879, p. 141, Act 140, Imd. Eff. May 31;—Am. 1881, p. 402, Act 289, Eff. Sept. 10;—How. 3313;—CL 1897, 6223;—Am. 1911, p. 43, Act 33, Eff. Aug. 1;—CL 1915, 8232;—Am. 1927, p. 871, Act 366, Eff. Sept. 5;—CL 1929, 11110;—Am. 1933, p. 167, Act 121, Imd. Eff. June 12;—Am. 1945, p. 138, Act 132, Imd. Eff. April 27;—CL 1948, 463.1;—Am. 1955, p. 73, Act 47, Eff. Oct. 14.

463.2 Railroad, bridge or tunnel companies; organization of purchasers at foreclosure sale, certificate.

Sec. 2. In case of the foreclosure and sale of any railroad, bridge or tunnel or part of any railroad, bridge or tunnel, under any trust deed, or mortgage given to secure the payment of bonds sold to aid in its construction and equipment, or for other cause authorized by law, it shall be competent and lawful for the parties who may become the purchasers, and such others as they may associate with themselves, to organize a corporation for the management of the same, and issue stock in the same to represent the property in said railroad, bridge or tunnel; and such corporation, when organized, shall have the same rights, powers and privileges, as are or may be secured to the original company whose property may have been sold under and by virtue of such mortgage or trust deed. Such organization may be formed by virtue of a declaration or certificate of the purchasers at the sale under said mortgage or trust deed which shall set forth the description of the property sold, and the date of the deed under which it was sold, or of the decree of the proper court, if it shall have been sold by virtue of a decree of any court; and with such description of the parties to the deed or suit as may

identify the one or the other, or both; the time of the sale, and name of the officer who sold the same; and also the purchasers and the amount paid, and the stockholders to whom stock is to be issued, and the amount of the capital stock, which amount shall be aggregate par value of all authorized shares having par value plus the aggregate amount of value placed in the articles of association upon all authorized shares of non-par value; the classes of stock authorized, any of which classes may be with or without nominal or par value, with such designations, relative rights, preferences, conditions, limitations, restrictions and voting rights as shall be specified; the number of shares of each class having par value, with the par value of each share; the number of shares of each class having no par value, with the value placed upon each share of each class, and the consideration for which the company may issue and sell such shares, or authorization to the board of directors to fix such consideration from time to time, which consideration shall in no event be less for any such share than the value placed thereon in the articles of association,—and when the consideration for which any such share was authorized to be issued shall have been received by the company such share shall be deemed to be fully paid and non-assessable; and the name of the new corporation, and such other statements as may be found requisite to make definite the corporation whose property may have been sold, and the property sold, as well as the extents, and rights, and property of the new company; which said certificate or declaration shall be signed by all of the said purchasers, and shall be addressed to the secretary of state; and being filed and recorded in his office, the said corporation shall become complete, with all the powers and rights secured to railroad companies under this act, to all the provisions of which, and amendments thereto, it shall be subject, and a certified copy of the said certificate or declaration shall be prima facie evidence of the due organization of said company.

HISTORY: How. 3314;—CL 1897, 6224;—Am. 1899, p. 441, Act 266, Eff. Sept. 23;—CL 1915, 8233;—Am. 1927, p. 873, Act 366, Eff. Sept. 5;—CL 1929, 11111;—Am. 1933, p. 168, Act 121, Imd. Eff. June 12;—CL 1948, 463.2.

463.3 Railroad, bridge or tunnel companies; incorporation after surrender of special charter, certificate, continuance of liens and liabilities; stockholders' meeting.

Sec. 3. Any railroad company incorporated by special charter heretofore granted by the legislature of this state, may surrender such charter and incorporate under this act. Such surrender and incorporation may be effected by the passage of a resolution in that behalf by a vote of 2/3 in interest of the holders of the stock of such company, at a meeting called and held for that purpose, as hereinafter provided, and filing in the office of the secretary of state a certificate signed by the president and secretary of said company, and under its corporate seal, containing: (1) A recital of such resolution, so passed by such stockholders; (2) a declaration of such surrender and incorporation; (3) the name by which such new corporation is to be known, which may be the same as the name of such former corporation; (4) the time of existence of such new corporation; (5) the amount of its capital stock, which amount shall be the aggregate par value of all authorized shares having par value plus the aggregate amount of value placed in the articles of association upon all authorized shares of non-par value; the classes of stock authorized, any of which classes may be with or without nominal or par value, with such designations, relative rights, preferences, conditions, limitations, restrictions and voting rights as shall be specified; the number of shares of each class having par value, with the par value of each share; the number of shares of each class having no par value, with the value placed upon each share of each class, and the consideration for which the company may issue and sell such shares, or authorization to the board of directors to fix such consideration from time to time, which consideration shall in no event be less for any such share than the value placed thereon in the articles of association,—and when the consideration for which any such share was authorized to be is-

sued shall have been received by the company such share shall be deemed to be fully paid and non-assessable; (6) the total number of shares to be issued to the stockholders of such former company, which shall not exceed the total amount of stock of said corporation then held by said stockholders; (7) the number of directors of such new corporation, which shall not be less than 5 nor more than 15 and the names of the persons selected to act as such directors until the first annual meeting of said new corporation. Upon filing such declaration, such surrender and incorporation shall be deemed to be duly and completely effected; and thereupon all and singular all the railroad and other property, and all rights and interests therein, and all contracts and rights of action theretofore owned or possessed by said corporation so surrendering its charter, shall be deemed to be transferred to and vested in such new corporation, as owner thereof, by like title as the same were theretofore held and possessed by said former corporation; and such new corporation shall thereafter hold, possess and enjoy the same in like manner and to the same extent as said corporation so surrendering its charter might and could have done if such surrender had not been made: Provided, however, That the property so transferred to and vested in such new corporation shall continue subject to all liens existing thereon at the time of such transfer, and such new corporation shall be subject to all debts and liabilities of said corporation so surrendering its charter; and such debts and liabilities may be enforced against such new corporation to the same extent and in like manner as if the same had been originally incurred by it. A duly certified copy of such declaration, so filed in the office of the secretary of state, shall be prima facie evidence of the due incorporation of the company named therein. The meeting of the stockholders of any such company, at which the resolution hereby required shall be passed, shall be called by the board of directors of such company by a resolution passed by a majority of said board, at a meeting duly called and held in accordance with the by-laws of said company, and notice of the time when and the place where said stockholders' meeting is to be held, and the purpose thereof, shall be published at least once a week for the 12 successive weeks immediately prior to the date of said meeting, in a newspaper of general daily circulation, published in the cities of Detroit, New York and Chicago, respectively, and also in a newspaper published in the city or township where the general office of said company is situated, if not situated in the city of Detroit.

HISTORY: Add. 1891, p. 52, Act 52, Eff. Oct. 2;—CL 1897, 6225;—CL 1915, 8234;—Am. 1927, p. 874, Act 366, Eff. Sept. 5;—CL 1927, 11112;—Am. 1933, p. 169, Act 121, Imd. Eff. June 12;—CL 1948, 463.3.

463.4 Railroad, bridge or tunnel companies; certificates of stock, signatures, seal.

Sec. 4. The stock of every corporation, incorporated under this act, shall be represented by certificates signed by the president or vice-president, and the secretary or an assistant secretary, or the treasurer or an assistant treasurer. Said certificate shall be sealed with the seal of the corporation. When any such certificate is signed by a transfer agent or a transfer clerk and by a registrar, the signature of the corporate officers and the seal thereon may be facsimiles, written, engraved, stamped, lithographed or printed. In case any such officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer before such certificate is issued, it may be issued by the company with the same effect as if such officer had not ceased to be such at the date of its issue.

HISTORY: Add. 1941, p. 191, Act 147, Eff. Jan. 10, 1942;—CL 1948, 463.4.

ARTICLE II.—CORPORATE POWERS AND DUTIES OF DIRECTORS.

464.1 Directors of railroad, bridge or tunnel companies; powers, qualifications, election, quorum, vacancy; employee's stock.

Sec. 1. All of the corporate powers of any corporation organized under this act, or under any former act for the incorporation of railroads, shall be and are hereby vested in the board of directors, except as may be herein otherwise provided. No person except a stockholder shall be a director of said corporation, and no stockholder shall be entitled to vote for directors, or for any other purpose, who shall be in arrears in the payment of any assessment made on his subscription to stock. The president of said corporation shall be elected by the directors from their own number. The board of directors are hereby authorized, upon such terms and restrictions as they shall impose, to provide for the disposition of its unissued capital stock, and may provide and carry out a plan for the issue of any or all of its unissued stock to employees of the corporation, or to employees of subsidiary corporations who may desire to subscribe therefor, or to a trustee on their behalf, and for the payment for such stock in installments or at 1 time, and for the establishment of a special fund or funds in which employees purchasing stock pursuant to such plan and continuing in the ownership thereof and in the employment of the corporation during a definite period of time may be privileged to share upon such terms and conditions as may be imposed in respect thereof, and may provide for the election or appointment of agents or employees of said company, and may require of them security for the faithful performance of their duties, and for the general management of the business and affairs of said company. At all elections for directors and meetings of stockholders, each stockholder holding stock with voting power shall be entitled to cast, in person or by proxy, 1 vote upon each share of such stock held by him, except as may be otherwise provided by the articles of association or consolidation, and votes representing a majority of the voting power of all of the shares voted shall be requisite to an election, or for the determination of any question voted upon, except as may be otherwise provided by law as to any particular question. If the board of directors shall have specified a time not more than 40 days prior to any such election or meeting as the time as of which stockholders entitled to vote thereat shall be determined, shareholders of record at such time and no others shall be entitled to vote at such election or meeting. A majority of the directors shall constitute a quorum for the transaction of business by the board of directors. In case of any vacancy in the board of directors, such vacancy may be filled by the remaining directors until the next election of directors.

HISTORY: How. 3315;—CL 1897, 6226;—CL 1915, 8235;—Am. 1925, p. 50, Act 42, Eff. Aug. 27;—Am. 1927, p. 875, Act 366, Eff. Sept. 5;—CL 1929, 11113;—Am. 1933, p. 170, Act 121, Imd. Eff. June 12;—CL 1948, 464.1.

ELECTIONS FOR DIRECTORS: See Act 112 of 1885, being Compilers' § 450.651.

464.2 Articles of association; amendments; recording by secretary of state, certified copy as evidence.

Sec. 2. It shall be lawful for any company organized under this act, or under any former act for the incorporation of railroads, upon a vote of its stockholders holding shares representing 2/3 of the voting power of the outstanding capital stock entitled to vote on the proposed alteration and amendment, at any annual or special meeting of the stockholders, to alter and amend its articles of association or consolidation in any 1 or more of the following respects, namely: so as to change the general route of said railway; or to extend the length of the line thereof, from either or both of its termini; or to extend any branch or branches from any point on the same; or to change the gauge of its road; or to make any of the following changes in respect to its capital stock, issued or unissued, namely—to increase or decrease the capital stock; to change the number of shares; to change the par value of shares having par value or the value placed upon shares without par value; to provide for shares with par value, or shares without par value, or both, with such designations, relative rights, preferences, condi-

tions, limitations, restrictions, voting rights, values and interests of the shares of each class as may be specified; to provide or change the consideration for which the company may issue and sell its shares without par value, or to authorize the board of directors to fix such consideration from time to time, which consideration shall in no event be less for any such share than the value placed thereon in the articles of association or consolidation or in an amendment thereto,—to change shares of any class into the same or a different number of shares of any other class or classes, including a change of shares with par value into shares without par value or a change of shares without par value into shares with par value; or to classify or reclassify the shares:—or in any other respects not inconsistent with the provisions of this act; as it may determine: Provided, however, That for the approval of any such change in respect to the capital stock it shall also be necessary, if there be shares of more than 1 class outstanding, that votes representing at least a majority (or such greater proportion as the articles of association or consolidation may require) of all the outstanding shares of each class be cast in favor of such approval; and upon such vote said company may make articles amendatory of their original articles, which shall be signed and certified by the president and secretary of said company, and under its corporate seal; and when the same shall be so signed, sealed, and certified and filed with the secretary of state, they shall have the same force and effect as though such alterations or amendments had been included in, and made a part of, the original articles of association. Articles of association filed in pursuance of this act, with all such subsequent alterations and amendments thereof, and the affidavits annexed thereto, shall be forthwith recorded by the secretary of state, in a book to be provided by him for that purpose at the expense of the company filing the same, and whenever any articles of association shall be filed as above provided, the company filing the same may at once proceed to construct, operate, and maintain its railroad or any section or portion thereof, and to exercise its powers and privileges, and also to assess, levy, and collect such assessments upon such stock as at that time, and from time to time, may be subscribed for such purpose as said company shall determine. A copy of any articles of association, with a copy of the affidavit annexed thereto, as well as of any articles amendatory thereof, filed in pursuance of this act or of the record thereof, certified by the secretary of state, under the seal of the state, to be a copy, shall in all courts and places be prima facie evidence of the matters therein stated, and of the genuineness of the signatures thereto, and of the incorporation of said company, as well as the articles amendatory thereof.

HISTORY: How. 3316;—CL 1897, 6227;—CL 1915, 8236;—CL 1929, 11114;—Am. 1933, p. 171, Act 121, Imd. Eff. June 12, —CL 1949, 464.2.

464.3 Directors; terms; stockholder's meetings, notice, waiver, majority vote, adjournment.

Sec. 3. At any meeting of stockholders for the election of directors, it shall be lawful for the stockholders to classify the directors into 3 classes, as near as may be, 1 of which classes shall hold their office 1 year, 1 for 2 years, and 1 for 3 years, and until their successors are respectively elected; and at all subsequent elections, directors shall be elected for 3 years to fill the places made vacant by the class whose term of office shall expire at that time. In case no such classification shall at any time be made, the persons elected at any such meeting shall hold their office for 1 year, and until their successors shall be elected. It shall be the duty of the directors to prescribe by by-law the time and place for calling and holding annual meetings of the stockholders within some county in this state, for the election of directors and the transaction of such other business as may be desired; and if the directors fail so to do, or omit to call such meeting annually, the holders and owners of 1/4 of the capital stock of the company having voting powers may call the same, at which time and place there shall be a general meeting of the stockholders having voting powers in person or by proxy: Pro-

vided, however, That the directors may prescribe by by-law a place outside the state for the holding of annual meetings which by-law shall become effective when consented to in writing, or by resolution duly adopted at any meeting, by stockholders holding shares representing 100% of the voting power of the capital stock entitled to vote at any annual meeting. And a special meeting of the stockholders may be called at any time by the directors, or by the stockholders owning not less than 1/4 of the stock in voting power, by giving notice of such meeting as hereinafter provided. At least 30 days' written notice of the time and place and, in the case of special meetings, the purpose or purposes of every such meeting shall be given to all persons entitled to vote at such meeting at such time and in such manner as shall be provided in the by-laws: Provided, That no notice of regular meetings of the board or of any adjourned meetings thereof or of adjourned meetings of shareholders need be given unless specified in the by-laws. Notice of the time, place and purpose of any such meeting may be waived by telegram, radiogram, cablegram or other writing by those not present and entitled to vote thereat either before or after the holding thereof. Evidence of such notice may be perpetuated by the affidavit of any person having knowledge thereof. And at any meeting of the stockholders held pursuant to this act, the stockholders representing a majority in voting power of the stock may remove from office any of the directors, or other officer of the company, and elect others in their stead. And the president and directors, and officers and agents of the company, in the exercise of their respective powers and duties, shall at all times be governed by and be subject to such rules, regulations and directions as the stockholders holding a majority in voting power of the stock may adopt at such meeting and at every such meeting it shall be competent for any stockholder owning or holding stock with voting powers to appear and vote by proxy as well as in person. If at any meeting of the stockholders a majority in voting power of the stock which by the provisions of section 1 of article 2 of this act, is entitled to vote, is not represented in person or by proxy, the same shall be adjourned by such as are present from day to day, not exceeding 3 days, without doing any business, when, if such majority do not appear and attend, the meeting shall be dissolved.

HISTORY: Am. 1875, p. 56, Act 61, Eff. Aug. 3;—How. 3317;—Am. 1897, p. 384, Act 255, Eff. Aug. 30;—CL 1897, 6228;—Am. 1909, p. 456, Act 267, Eff. Sep. 1;—CL 1915, 8237;—Am. 1927, p. 876, Act 366, Eff. Sep. 5;—CL 1929, 11115;—CL 1948, 464.3;—Am. 1953, p. 194, Act 161, Eff. Oct. 2;—Am. 1955, p. 74, Act 47, Eff. Oct. 14.

464.4 Annual statement to stockholders.

Sec. 4. At every annual meeting of stockholders it shall be the duty of the board of directors to exhibit a clear and full statement of the affairs of the company for the preceding year.

HISTORY: How. 3318;—CL 1897, 6229;—CL 1915, 8238;—CL 1929, 11116;—CL 1948, 464.4.

464.5 Subscriptions; collection; forfeiture, sale.

Sec. 5. The board of directors may, by resolution, require the subscribers to the capital stock to pay the amounts by them respectively subscribed in such manner and in such installments as they may deem proper, and in case of neglect or refusal of any subscriber to pay any such installment, said company are hereby authorized to sue for and collect the same, and in case such neglect or refusal shall continue for 60 days after notice in writing to pay the same has been served on him personally, or by depositing the same in the postoffice, postage prepaid, properly directed to him at the postoffice nearest his usual place of residence, or in case execution issued on a judgment recovered for any such installment, shall be returned unsatisfied, in whole or in part, said board of directors may declare such stock, and all previous payments or collections made thereon, forfeited, and the same shall be forfeited accordingly, and any forfeited stock shall be subject to sale by the company, as may be provided for by by-laws or resolutions of the directors.

HISTORY: How. 3319;—CL 1897, 6230;—CL 1915, 8239;—CL 1929, 11117;—CL 1948, 464.5.

464.6 Stock deemed personalty; transfer; partly paid stock, issuance.

Sec. 6. The stock of any such company shall be deemed personal estate, and shall be transferable in the manner and under such restrictions and conditions as may be provided for by the by-laws, but any certificate of stock issued before payment in full, shall show on its face, or by indorsement, the amount paid thereon, and no share shall be transferred on the books of the company until the same shall be paid in full, without the consent of the board of directors.

HISTORY: How. 3320;—CL 1897, 6231;—CL 1915, 8240;—CL 1929, 11118;—CL 1948, 464.6.

STOCK TRANSFERS: See Compilers' § 440.8309 et seq.

464.7 Map of route; approval, filing; crossings, unlawful construction, penalty; change in route, procedure; expenses; condemnation.

Sec. 7. Every such company proceeding to construct a part of its road into or through any county named in its articles of association, or which shall have been so constructed, shall make a map of such part of the route intended to be adopted by such company, or which shall have been adopted, giving also the location of the points selected for crossing any other railroad, which shall be certified by the president and secretary of such company under its corporate seal and approved by a board consisting of the commissioner of railroads, attorney general and secretary of state, and filed in the office of the register of deeds of such county. If such route crosses the road of any other railroad company, said board shall give at least 10 days' notice to the general manager or general superintendent of such other company when and where said board will consider the question of approving such map, and shall permit such other company, if it so desires, to be heard in opposition to such approval, and at the time of approving said map, said board may determine the place where and the manner in which said crossing shall be made, whether at grade or otherwise, and if at grade, what safeguards shall be provided by the company desiring to make such crossing, to protect against accident thereat. The said board shall approve such map within 30 days from the time it is presented to it by said company, or within the said 30 days shall file in the office of the commissioner of railroads written reasons for the disapproval of said map, or any part thereof, and serve a copy of said reasons upon said company. It shall be unlawful for any corporation or person to construct any crossing of the tracks of a railroad company with the tracks of any other railroad company until after the place where and the manner in which such crossing shall be made shall have been approved by the board, as above provided, and for any violation of the provisions of this act, any such corporation or person shall be liable to a penalty of 500 dollars and to a penalty of 100 dollars for every 10 days during which said crossing shall be permitted to remain in existence. The route so adopted, or any part thereof, may be changed by the company as often as found expedient before it has fully completed its road thereon: Provided, That any such change shall be approved by said board and a new map showing the new route adopted shall be made, certified, approved and filed as aforesaid: And provided further, That 2 members of said board, of which the commissioner of railroads shall be 1, shall constitute a quorum for the transaction of business: And provided further, That the secretary of state and attorney general, when serving as members of the said board, or board of consolidation, as provided by this act, shall receive 5 dollars per day and expenses incurred while actually engaged in such services, and said board shall also be authorized to employ a clerk, who shall receive for his services 5 dollars per day and expenses, all such services of said board and clerk to be paid for by the railroad companies interested therein: And provided further, That a map shall

not be necessary as a basis for condemnation proceedings affecting the property sought to be obtained for railroad purposes and situated adjacent to the main line of the petitioner's railroad.

HISTORY: Am. 1883, p. 186, Act 174, Eff. Sept. 8;—How. 3321;—Am. 1887, p. 294, Act 236, Imd. Eff. June 24;—Am. 1897, p. 243, Act 187, Eff. Aug. 30;—CL 1897, 6232;—Am. 1899, p. 273, Act 180;—Am. 1899, p. 442, Act 266, Eff. Sept. 23;—Am. 1901, p. 114, Act 80, Imd. Eff. April 22;—Am. 1901, p. 207, Act 153, Eff. Sept. 5;—Am. 1905, p. 177, Act 128, Imd. Eff. May 17;—CL 1915, 8241;—CL 1929, 11119;—CL 1948, 464.7.

BOARD OF APPROVAL: Powers mentioned above were conferred on Michigan railroad commission, see Compilers' § 462.49, which in turn was superseded by the Michigan Public Utilities Commission, see Compilers' § 460.53.

SUIT FOR PENALTY: See Compilers' § 467.10.

464.8 Change in line; procedure.

Sec. 8. If at any time after the location and use of the track, bridge or tunnel, or any part thereof, of any company organized under the provisions of this act, it shall appear to the directors of said company that the line in some parts thereof may be improved, it shall be lawful for such directors from time to time to alter the line and cause a new map to be filed in the office of the register of deeds of the county in which such alteration is made, and when a new line is adopted, to take possession of the lands and property embraced in such new location that may be required for the construction and maintenance and operation of the road, bridge or tunnel on such new line and the convenient accommodations appertaining to the same, either by agreement with the owner or owners or by such proceedings as near as may be, as are authorized under the preceding provisions of this act, and use the same.

HISTORY: How. 3322;—CL 1897, 6233;—Am. 1899, p. 443, Act 266, Eff. Sept. 23;—CL 1915, 8242;—CL 1929, 11120;—CL 1948, 464.8.

464.9 Powers; liabilities; restrictions.

Sec. 9. Every such corporation shall possess the general powers and be subject to the following liabilities and restrictions:

Surveys; bond.

(a) To cause such examinations and surveys of the proposed railroad, or railroad bridge or tunnel to be made as may be necessary to the selection of the most advantageous route for the road, and for such purposes by its officers, agents and servants to enter upon lands or waters of any person or company, but subject to liability for all damages which they shall do thereto. It shall not be lawful for any such corporation by its officers, agents or servants to enter upon the land or water of any person or company to make any such examination or survey until such corporation shall have made, executed and delivered to the judge of probate of the county where such land or water lies, a bond to be approved by him, with 2 sufficient sureties running to the judge of probate of the county in his official name, for the use of any person interested, in the penal sum of \$5,000.00, conditioned upon the payment by such corporation of all damages sustained by any person or company on occasion of any such examination or survey. Upon the delivery of such bond to such judge of probate and its approval by him, he shall file it in his office, and when so filed it shall be deemed a public record and may be proved in court by a certified copy thereof. Any person or company having a claim for damages arising under this section may bring suit upon the bond in any court of the county having jurisdiction over the amount claimed in damages.

Property; voluntary grants and donations.

(b) To receive, hold and take such voluntary grants and donations of real estate and other property as shall be made to it to aid in the construction, maintenance and accommodation of such road or railroad bridge or tunnel, but the real estate thus received by voluntary grant shall be held and used for the purpose of such grant only.

Property; purchase; voluntary grants and donations; use; payment of compensation.

(c) To purchase, and by voluntary grants and donations, receive, take and by its officers, engineers, surveyors and agents, enter upon and take possession of, hold and use

all such lands and real estate, franchises and other property as may be necessary for the construction, maintenance and accommodation of its railroad or railroad bridge or railroad tunnels, stations, depots and other accommodations; but they shall not be appropriated until the compensation to be made therefor is agreed upon by the parties, or ascertained as herein prescribed, to be paid to the owners or deposited as herein-before directed, unless the consent of such owner be given therefor.

Width of road; material for road, taking.

(d) To lay out its road not exceeding 100 feet in width, and to lay out its bridge or tunnel and its bridge or tunnel approaches not exceeding 200 feet in width, and to construct the same, and for the purpose of cuttings and embankments and for procuring stone, gravel or other material or for the purpose of draining its roadbed or tunnel, to take in the manner herein provided such further lands adjacent to and in the vicinity of its road or tunnel, as may be necessary for the proper construction, operation and security of its road or tunnel.

Right of way; crossings; local assessment; damages.

(e) To construct its road or bridge over, upon or across, or its railroad tunnel under any stream of water, watercourse, private road, street, lane, alley or highway, and across or under any plank road, railroad or canal which the route of its road or railroad bridge or railroad tunnel shall lie along or intersect; but the corporation shall restore the stream, watercourse, private road, street, alley, lane, highway, plank road, railroad or canal to its former state as near as may be, but shall not materially obstruct the navigation of any stream, nor obstruct any public highway or street by cars or trains for more than 5 minutes at any one time, and the railroad commission shall have the authority to cause the removal of switches that are so located with reference to public highways or streets that by reason of the constant switching or shunting of cars the use of the public highway or street is materially obstructed, impeded or delayed; and such corporation shall construct suitable road and street crossings for the passage of teams by fitting down planks between and on each side of the rails of such road, the top of which shall be at least 1/2 inch higher than the top of the rails of such road. Whenever it shall become necessary to lay, build or repair any sewer, pavement or sidewalk, in or upon, or to otherwise improve any street, lane, alley or highway which shall intersect or cross the right of way of any railway company in any municipality, such railway company shall be required to pay and be assessed with such proportion of the cost thereof as shall be its fair and proper proportion thereof, to be determined, assessed, spread, levied, collected and to be a lien in the same manner and proportions and with the same effect and upon the same tax or assessment roll as the costs of such improvement are ascertained for or spread, levied, collected and borne by or upon abutting property owners or upon property other than that owned or occupied by railway companies. When any pavement or sidewalk is laid upon or across any such crossing or intersection, plank may be used between the rails and for 1 foot on either side of such rails. In cases of sidewalk, the railway company shall first be given the right to construct in the same manner as that right is given to individuals, and in the event of its failure so to do the municipality may cause the same to be constructed at the expense of such railway company, and the cost thereof to be collected in the usual manner as provided in the law governing the particular municipality. And in case of the construction of such railway upon any public street, lane, alley or highway, it shall be on such terms and conditions as shall be agreed upon between the railroad company and the common council of any city, or the village board of any village, or the commissioners of highways of any township in which it may be; but such railway shall not be constructed upon any public street, lane, alley, highway or private way until damages and compensation be made by the railroad company therefor to the owner or owners of property adjoining such street, lane, alley, highway or private way and opposite where

such railroad is to be constructed, either by agreement between the railroad company and each owner or owners, or ascertain as herein prescribed for obtaining property or franchises for the purpose of its incorporation to be paid to the owner thereof or deposited as hereinafter directed.

Connections; intersections.

(f) To cross, join and unite its railroads, bridge or tunnel with any other railroad now or hereafter constructed under any law whatever at any point on its route, and upon the grounds of such other railroad now or hereafter constructed with the necessary turnouts, sidings and switches and other accommodations and conveniences in furtherance of the objects of its connections; and to make all such business arrangements as said companies may agree upon. Every company whose railroad shall be intersected by any other railroad shall unite with the owners of such other railroad in forming such intersections and connections, and grant facilities for them as hereinafter provided.

Transportation; tolls.

(g) To take, transport, carry and convey persons and property on their road or bridge or through such tunnel by the force and power of steam, animals or any mechanical power or by any combination of them, and to receive tolls and compensation therefor.

Equipment; lands.

(h) To erect and maintain all necessary and convenient buildings, stations, depots, fixtures and machinery for the accommodation and use of their passengers, freight and business, and to obtain and hold all the lands necessary therefor.

Transportation, passengers and property regulate; tolls, compensation.

(i) To regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor.

HISTORY: Am. 1877, p. 187, Act 177, Eff. Aug. 21;—How. 3323;—Am. 1883, p. 107, Act 116, Eff. Sept. 8;—Am. 1887, p. 287, Act 230, Imd. Eff. June 24;—Am. 1889, p. 280, Act 202, Eff. Oct. 2;—Am. 1891, p. 101, Act 90, Imd. Eff. May 21;—CL 1897, 6234;—Am. 1899, p. 443, Act 266, Eff. Sep. 23;—Am. 1907, p. 56, Act 54, Eff. Sep. 28;—Am. 1909, p. 667, Act 288, Eff. Sep. 1;—Am. 1911, p. 474, Act 276, Eff. Aug. 1;—Am. 1915, p. 502, Act 287, Eff. Aug. 24;—CL 1915, 8243;—CL 1929, 11121;—CL 1948, 464.9;—Am. 1967, p. 151, Act 123, Eff. Nov. 2.

464.10 Transportation and discharge of passengers and freight; preference, penalty, civil liability.

Sec. 10. Every such corporation shall furnish sufficient accommodation for the transportation of all such passengers and property as shall, within a reasonable time previous thereto, offer or be offered for transportation at the place of starting, and the junctions of other railroads, and at siding and at stopping places established for discharging and receiving way passengers and freight; and shall take, transport, and discharge such passengers and property at, from, and to such places, on the due payment of toll, freight, or fare, legally authorized therefor; and every such corporation shall transport merchandise, wood, lumber, and other property, and persons from the various stations upon said road without partiality or favor, when not otherwise directed by the owner of said property, and with all practicable dispatch, and in the order in which such freight and property shall have been received, under a penalty for each violation of this provision of 100 dollars, to be recovered by the party aggrieved, in an action of debt against such corporation, Provided, That perishable or explosive freight and property shall have the preference over all other classes of merchandise. In case of the refusal by such corporation or agents so to take and transport any such passenger or property, as aforesaid, or to deliver the same or either of them, without a legal or just excuse for such default, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit, or the penalty prescribed in this section at the election of the party aggrieved.

HISTORY: How. 3324;—CL 1897, 6235;—CL 1915, 8244;—CL 1929, 11122;—CL 1948, 464.10.

464.11 Baggage checking; penalty.

Sec. 11. A check shall be fixed to every parcel of baggage when taken for transportation, by the agent or servant of such corporation, if there is a handle, loop or fixture so that the same can be attached upon the parcel or baggage so offered for transportation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and if such check be refused on demand, the corporation shall pay to such passenger the sum of 10 dollars, to be recovered in a civil action; and further, no fare or toll shall be collected or received from such passenger; and if such passenger shall have paid his fare, the same shall be refunded by the company; and on producing said check, if his baggage shall not be delivered to him, he may recover the value of such baggage.

HISTORY: How. 3325;—CL 1897, 6236;—CL 1915, 8245;—CL 1929, 11123;—CL 1948, 464.11.

464.12 Ticket office; time open; announcements of conductor; penalty.

Sec. 12. All railroad companies shall keep their ticket offices open for the sale of tickets at least 20 minutes immediately preceding the departure of all passenger trains from every regular passenger station from which any such passenger trains are to start from or stop at, between the hours of 7 o'clock in the morning and 11 o'clock in the evening; and the conductors of all such passenger trains shall announce, or cause to be announced, the name of the station in each passenger car of every such train twice inside each passenger car of every such train, the door of said car being closed at the time of such announcement, within a reasonable time before the arrival of any passenger train at every station at which said train from notice given is to stop. At junctions, crossings, and points where trains leave in different directions, at or near the same time, the conductor of each train shall announce, or cause to be announced distinctly in each passenger car of his train, before starting, the direction in which his train is to go. For each violation of the provisions of this section, the railroad company whose employes do not comply with the provisions of this section in every respect, shall forfeit the sum of 100 dollars for each violation of the same.

HISTORY: Am. 1875, p. 137, Act 98, Eff. Aug. 3;—How. 3326;—CL 1897, 6237;—CL 1915, 8246;—CL 1929, 11124;—CL 1948, 464.12.
SUIT FOR PENALTY: See Compilers' § 467.10.

464.13 Unclaimed property; sale, notice; surplus.

Sec. 13. Every company which shall have unclaimed freight, not perishable, or unclaimed baggage, in its possession for a period of 1 year or more, or which shall have in its possession or upon its tracks, for the period of 3 months, freight, baggage, cars or other property, which the owner thereof declines to accept and remove, may sell the same at public auction, and out of the proceeds may retain the charge of transportation and storage thereof and the expense of advertising and sale thereof. Notice of such sale shall be given to the consignor and consignee, either by personal service or by mailing the same, addressed to the consignor at the postoffice of the place where the articles were delivered to the company, and addressed to the consignee at the postoffice of the place to which the goods or property were to be carried, and shall be published at least once in each week for 4 successive weeks in a newspaper published in the city, township or village in which the general offices of such company are located, if the general offices of such company are located in this state; if not so located, then such notice shall be published in some newspaper published in a principal city or village in this state, located on the line of such railroad; and in all such cases such sale shall take place in this state, which notice shall specify the time and place of such sale, and also the name of the consignee of such freight or baggage, if known, and a general description thereof, and, in the case of freight or baggage, the name of the station or depot to which said freight or baggage is consigned; and the expense of such advertising shall be a lien on such freight or baggage, car or other property, in a suitable pro-

portion, according to the value of each article, package or parcel, if more than one. In case such unclaimed freight or baggage shall be in its nature perishable, then the same may be sold as soon as may be, after giving notice of such sale, as the nature of the case will permit, in the city, township or village where the same may be. Such company shall make a record of the balance of the proceeds of the sale, if any, of the freight or baggage owned by or consigned to each person as near as can be ascertained, and at any time within 2 years thereafter shall refund any surplus so retained to the owner of such freight or baggage, his heirs, executors, administrators or assigns, on satisfactory proof of such ownership.

HISTORY: Am. 1879, p. 85, Act 87, Imd. Eff. May 22;—How. 3327;—Am. 1899, p. 296, Act 209, Eff. Oct. 2;—CL 1897, 6238;—CL 1915, 8247;—CL 1929, 11125;—CL 1948, 464.13.

464.14 Rights and liabilities; agreement.

Sec. 14. Any railroad company organized under this act, receiving freight or livestock for transportation, shall be entitled to the rights and be subject to the liabilities of common carriers, except as herein otherwise provided; but no such company shall be suffered to lessen or abridge its common-law liability as a common carrier, unless by an agreement to be signed by both parties thereto.

HISTORY: How. 3328;—CL 1897, 6239;—Am. 1907, p. 65, Act 61, Imd. Eff. April 25;—CL 1915, 8248;—CL 1929, 11126;—CL 1948, 464.14.

464.15 Condemnation proceedings; payment of attorney fee in addition to compensation and damages.

Sec. 15. Whenever any lands are condemned to the public use, by any railroad, bridge or tunnel company, under the provisions of this act, such company shall pay to the owners and others interested in the lands condemned, in addition to the damages and compensation awarded by the commissioners or jury, a reasonable attorney fee, to be fixed and determined by the court when the report or verdict is confirmed, or as soon thereafter as may be, and the attorney fee, so allowed, together with witness fees and other costs and disbursements, to be taxed as in civil actions, shall be paid, tendered or deposited with the damages or compensation as hereinafter provided, before such company shall have any right to enter upon or take possession of the lands condemned.

HISTORY: How. 3329;—Am. 1883, p. 139, Act 133, Imd. Eff. May 31;—CL 1897, 6240;—Am. 1899, p. 447, Act 266, Eff. Sept. 23;—CL 1915, 8249;—CL 1929, 11127;—CL 1948, 464.15.

464.16 Realty of minor or incompetent; acquisition.

Sec. 16. In case any of the real estate required by said company for the purposes aforesaid, is owned by a person insane, a minor, or otherwise incompetent and under guardianship, and such company and the guardian of such person shall agree upon a price for the same, and enter into a contract, in writing, therefor, the said guardian shall, upon the approval of the same by the probate court of the county in which the said real estate is situated, convey said real estate, in accordance with the terms of such contract, to said railroad company, and the deed thereof shall be valid in law to convey the title of such person under guardianship to said company, in accordance with the terms of said contract.

HISTORY: How. 3330;—CL 1897, 6241;—CL 1915, 8250;—CL 1929, 11128;—CL 1948, 464.16.

SALE BY GUARDIAN: See Compilers' § 709.3 et seq.

464.17 Condemnation proceedings; property of another railroad.

Sec. 17. In case any railroad, bridge or tunnel company is unable to agree for the purchase of any real estate, property or franchises required for the purpose of its incorporation, it shall have the right to acquire title to the same in the manner and by the special proceedings prescribed in this act; but there shall be no power, except for crossing, to take the track or right of way of any other railroad company except when any road-bed or part thereof has for 5 years remained, or shall hereafter for 5 years re-

main in an unfinished condition and without having the ties and iron placed and continued thereon up to the time measures are instituted to appropriate the same as hereinafter authorized, any other railroad corporation shall have the right to acquire title to the same and to the real estate and easements held by such company for use in connection therewith, in the manner prescribed for obtaining other property or franchises required for its use, and in such case proceedings may be instituted in a court of record of any county wherein a part of such road-bed sought to be acquired may be situate, and all of such road-bed and property aforesaid within this state, or only a part thereof at the election of the applicant may be included in 1 proceeding. Notice of the application shall be given the company or corporation owning or claiming an interest in the road-bed and property mentioned when created under the laws of this state by serving a copy of the petition and notice hereinafter mentioned personally upon its president, any vice-president, superintendent, secretary, treasurer, general manager, or general counsel, if either of them reside within the state, 10 days or more prior to the presentation of the same to the court, but if they do not, then service may be made by publication as required by section 18 of this act, except in such case a description of the property as in this section provided shall be sufficient, and if such company or corporation was not created under the laws of this state, it may be served by delivering such copy of the petition and notice to either of said officers personally at least 30 days previous to presenting such petition to the court, or by publication as required in said section 18, except it shall be sufficient to describe the property to be taken as provided in this section. It shall be sufficient in such petition to describe the property sought to be appropriated as the line is designated in the articles of association, or articles amendatory thereof, and by which it was established, and further designating it as the road-bed and property connected therewith of the company or corporation then owning or claiming it whose title is sought to be acquired.

HISTORY: How. 3331;—Am. 1882, p. 48, Act 18, Imd. Eff. March 14;—CL 1897, 6242;—Am. 1899, p. 447, Act 266, Eff. Sept. 23.—CL 1915, 8251;—CL 1929, 11129;—CL 1948, 464.17.

TENDER OF DAMAGES: Effect on recovery by landowner of costs in condemnation proceedings, see Compilers' § 465.301.

CONDEMNATION PROCEEDINGS: By public agencies, see Compilers' § 213.1 et seq.

464.18 Condemnation proceedings; petition, contents, service.

Sec. 18. For the purpose of acquiring such title such company may present a petition to any court of record for such county, praying for the appointment of 3 commissioners. Said petition shall be in the name of the company, shall be signed by 1 of the directors, or the engineer or the attorney of said company on its behalf, and shall be verified by the oath of the person so signing the same, and shall contain the description of all the real estate, property or franchises, or so much thereof as the company seeks to acquire under such petition in said county; and that said company is duly incorporated; that it has a railroad, railroad bridge or railroad tunnel constructed, specifying the points from and to which the same is in operation, or that it is the intention of said company, in good faith, to construct, finish and maintain a railroad, railroad bridge or railroad tunnel from and to the places named for that purpose in its articles of association; that the capital stock of the company has been in good faith subscribed as required by this act to organize such company; that the property described in the petition is required for the purpose of constructing, operating or repairing the railroad or its appurtenances, or the railroad bridge or tunnel or its appurtenances, as the case may be; and that the taking thereof is necessary for the public use, and that the company has not been able to acquire title thereto, and the reason of such inability. The petition must also state the names and places of residence of the parties, so far as the same can with reasonable diligence be ascertained, who own, or have, or claim to own or have, estates or interests in said lands or property; and if any such persons are infants, their ages, as near as may be, must be stated, and if any of them are idiots, or persons of unsound mind, or are unknown, it must be so stated, together with such

other facts and allegations as to incumbrances or otherwise as will be sufficient to show who have or claim to have interests in said lands, real estate or property, and such other matters as the company may see fit to make. A copy of such petition, with a notice of the time and place when and where the same will be presented to such court, must be served on all persons whose interest will be affected by the proceeding, at least 10 days prior to the presentation of the same to the court, as follows, viz.:

First. If the person upon whom service is to be made resides in this state, and is not an infant under the age of 14 years, idiot or person of unsound mind, service of a copy of such petition and notice must be made on him or his agent or attorney authorized to contract for the sale of real estate described in the petition, personally, or by leaving the same at the usual place of residence of such person or agent, with some person of suitable age; and if he resides out of this state, but has such agent as aforesaid residing in this state, then such service may be made on such agent in the manner aforesaid, or upon him personally out of or within this state; or it may be by publishing a notice stating briefly the object of the application, and giving a description of the land, interest therein, or property to be taken, and in some paper published in the county in which the said lands or property are situated, if there be one, and if not, then in some weekly paper published in the city of Detroit once in each week for 6 successive weeks next previous to the presentation of the petition; and if the residence of such person or persons residing out of this state be known, a copy of such petition and notice shall be deposited in the postoffice at least 30 days previous to presenting such petition, directed to such person at his place of residence, as near as may be, postage prepaid;

Second. If any person on whom such service is to be made is a minor under the age of 14 years, or an idiot or person of unsound mind, and resides in this state, such service shall be made as aforesaid on his guardian, or if none, then on the person who has the care of, or with whom such infant, idiot or person of unsound mind resides;

Third. If the person on whom such service is to be made be unknown, or his residence unknown, then such service may be made by publication for 6 weeks in the same manner provided in the first subdivision of this section, and the court or judge shall appoint an attorney to appear for and protect the rights of any such person;

Fourth. In case any party to be affected by the proceedings is an infant, idiot or person of unsound mind and has no guardian, the said court, or the judge of said court, shall appoint a special guardian or committee to appear for and attend to the interests of such infant, idiot or person of unsound mind, and all notices to be served in the progress of the proceedings may be served on such special guardian;

Fifth. In all cases not otherwise provided for, service of orders, notices and other papers in the proceedings authorized by this act may be made as the said court or judge may direct.

HISTORY: How. 3332;—Am. 1887, p. 6, Act 7, Imd. Eff. Feb. 15;—CL 1897, 6243;—Am. 1899, p. 448, Act 266, Eff. Sept. 23;—Am. 1901, p. 115, Act 80, Imd. Eff. April 22;—CL 1915, 8252;—CL 1929, 11130;—CL 1948, 464.18.
GUARDIAN AD LITEM: See (Jud. Act) Compilers' § 600.2415 and GCR 201.

464.19 Condemnation proceedings; railroad leasing or purchasing line.

Sec. 19. Whenever the line or road of any company organized under this act shall be in the possession or use of any other railroad company, under any lease, contract, or agreement, for the building or operating the same, under the laws of this state, it shall be competent for the latter company, with the assent and in the name of the former company, to institute and prosecute proceedings for acquiring title to any land or property for the purposes and under the conditions mentioned in preceding sections. In such case the petition may be signed and verified by a director, engineer or attorney of either company. Whenever any company organized under this act shall be in use or possession of any railroad acquired from another company, by purchase or con-

solidation, it shall be competent for the company so in possession and use to institute and prosecute condemnation proceedings in its own name, to acquire land or property for railroad purposes, in connection with the railroad so acquired. In such case the petition and proceedings shall, so far as practicable, comply with the general provisions of the statute regulating condemnation proceedings.

HISTORY: How. 3333;—CL 1897, 8244;—Am. 1901, p. 117, Act 80, Imd. Eff. April 22;—CL 1915, 8253;—CL 1929, 11131;—CL 1946, 464.19.

464.20 Condemnation proceedings; procedure, commissioners, jury.

Sec. 20. On presenting such petition to said court or the judge thereof at chambers with proof of service of a copy thereof, and due notice as aforesaid, all persons whose estate or interest are to be affected by the proceedings, may show cause against the prayer of the petition, and may disprove any of the facts alleged therein; and said court or judge shall hear the proofs and allegations of the parties; and if no sufficient cause is shown against granting the prayer of the petition, said court or judge shall make an order appointing 3 disinterested and competent freeholders as commissioners to ascertain and determine the necessity for taking such lands, franchises or other property, and to appraise and determine damages or compensation to be allowed to the owners and persons interested in the real estate or property proposed to be taken in such county for the purposes of the company; and such court or the judge thereof, shall fix the time and place for the first meeting of such commissioners: Provided, That any person or persons, or company, whose estate or interest is to be affected by the proceedings may demand and have from such court, at the time of hearing of said petition, a jury of 12 freeholders of said county to ascertain and determine the necessity for taking such lands, franchises, or other property, and to appraise and determine the damages or compensation to be allowed therefor. Thereupon the court shall direct the sheriff or any constable of the county, to make a list, in writing, of 24 inhabitants of the county qualified to serve as jurors in the courts of record in this state. Such sheriff or officer shall, before he proceeds to make such list, be sworn by the court or judge to select such persons according to his best judgment, and without favor or partiality to either party. From such list the person or persons demanding such jury may alternately strike off 6 names, and the railroad company 6 names, and in case of either of them refusing or neglecting to do so, the judge shall strike off from said list for the party so refusing or neglecting so as to leave only 12 names thereon. Such court, or the judge thereof, shall issue a venire in the usual form, inserting therein the 12 names so remaining on said list, and requiring such jury to meet at the time and place appointed therefor by the court, which said venire may be served by the sheriff, any constable, or other proper officer of the county, as in other cases; and if at the time and place appointed by said court or judge for said jury to meet, any of the persons named as jurors do not attend, or if any named in the venire, or chosen as talesmen, shall be rejected in a challenge for cause (which right of challenge is hereby granted), it shall be competent for said court, or the judge thereof, to order the said sheriff or other officer to summon immediately as many competent persons as may be necessary, with the persons in attendance as jurors, to furnish a panel of 12 jurors; and if no jury be demanded on the part of any person mentioned in said petition, his or her right to the same shall be deemed to have been waived. In case any parcel of land is owned or occupied by parties having different interests or estates therein or in any part thereof, they may be united as respondents in respect to the same in the petition, and thereafter the proceedings touching the same shall be carried on as 1 suit. The demand of any one of the respondents for a jury shall be deemed to be a demand for all, and if they shall fail or neglect to unite in striking 6 names from the jury list, the judge shall strike off 6 names for them; and in such cases the jury shall not only determine the entire damages and compensation to be paid for the whole property taken, but shall, in their

report, also justly and impartially apportion and award the amounts to be paid to the owner or owners of each estate in the land so taken.

HISTORY: How. 3334;—CL 1897, 6245;—CL 1915, 8254;—CL 1929, 11132;—CL 1948, 464.20.

464.21 Condemnation proceedings; commissioners; jury; discontinuance, costs.

Sec. 21. The commissioners shall take and subscribe the oath prescribed by article 18 of the constitution. Any of them may issue subpoenas, administer oaths to witnesses, and a majority of them may adjourn the proceedings before them from time to time in their discretion. Whenever they meet, except by appointment of the court or judge, or by previous adjournment, they shall cause reasonable notice of such meeting to be given to the parties who are to be affected by their proceedings, or the attorneys or agents of such parties. They may view the premises described in the petition, and shall hear the proof and allegations of the parties, and shall reduce the testimony, if any is taken by them, to writing, if requested to do so by either party, and after the testimony is closed in such case, and without any unreasonable delays, and before proceeding to the examination of any other claim, all being present and acting, shall ascertain and determine the necessity of taking and using any such real estate or property for the purposes described; and if they deem the same necessary to be taken, they shall ascertain and determine the damages or compensation which ought justly to be made by the company therefor to the party or parties owning or interested in the real estate or property appraised by them. They shall also determine and certify what sum ought to be paid to the general or special guardian of an infant, idiot, or person of unsound mind, or to said court to be held for an unknown party in interest not personally served with notice of the proceedings and who has not appeared, for damages and cost or expenses and counsel fees. They shall make a report to said court, or judge signed by them, of the proceedings before them, if any, which may be filed with the clerk of the court, either in vacation or term time, or the probate court as the case may be. Said commissioners shall be entitled to 2 dollars a day for each day they are engaged in the performance of their duties, to be paid in the first instance by the company. In case a jury shall have been demanded and ordered by the court, pursuant to section 21 of this article, the said jury shall proceed to ascertain and determine the necessity of taking and using any such real estate or property, and the damage or compensation to be paid by the company therefor, in the same manner and with like effect as is provided in this section, in the case of commissioners, and as is further provided in said section 21; but they shall all be present and act together during the proceedings, and before acting shall take and subscribe an oath that they will justly and impartially ascertain and determine the necessity of taking and using any such real estate or property for the purposes proposed; and if they deem the same necessary to be taken, will ascertain and determine the damages or compensation which ought justly to be made by said company to the owners of or persons interested in each particular description of real estate mentioned in said petition who have demanded said jury; and they shall be entitled to 2 dollars for each day they are engaged in the performance of their duties, to be paid in the first instance by the company. The said judge or a circuit court commissioner to be designated by him, may attend said jury, to decide questions of law and administer oaths to witnesses, and he may appoint the sheriff or other proper officer to attend and take charge of said jury while engaged in said proceedings. And the jury shall proceed to determine the amount of damages to be awarded, and shall have all the powers hereby conferred upon commissioners; and a report signed by the jury, where the judge is or is not in attendance, shall be valid and legal. At any time before the report of the jury or commissioners shall be made to the court it shall be competent for the company, after sufficient cause has been shown and with leave of the court, to discontinue all pending proceedings in any case and to institute

new proceedings at any time thereafter; but the company in all such cases shall pay all the costs of such proceedings so discontinued, with an attorney fee to be taxed as in cases at law.

HISTORY: How. 3335;—CL 1897, 6246;—CL 1915, 8255;—CL 1929, 11133;—CL 1948, 464.21.

OATH OF COMMISSIONERS: The provisions of article 18 of the Constitution of 1850, relating to oaths, have been superseded by Const. XI, 1.

464.22 Condemnation proceedings; confirmation of report; court order, contents.

Sec. 22. On such report being made by the commissioners or jury, the court on motion, shall confirm the same on the next or any subsequent day when in session, unless for good cause shown by either party; and when said report is confirmed, said court shall make an order containing a recital of the substance of the proceedings in the matter of the appraisal, and a description of the real estate or property appraised, for which compensation is to be made, and shall also direct to whom the money is to be paid, or when and where it shall be deposited by the company. Said court, as to the confirmation of such report, shall have all the powers usual in other cases.

HISTORY: How. 3336;—CL 1897, 6247;—CL 1915, 8256;—CL 1929, 11134;—CL 1948, 464.22.

464.23 Condemnation proceedings; recording of order; payment of compensation, rights of company; appeal.

Sec. 23. A certified copy of the order so to be made shall be recorded in the office of the register of deeds for said county, in the book of deeds; and thereupon on the payment or deposit by the said company of the sum to be paid as compensation for such land franchise or other property, and for costs, expenses, and counsel fees as aforesaid, and as directed by said order, the company shall be entitled to enter upon and take possession of and use the said land franchise and other property for the purpose of its incorporation; and all persons who have been made parties to the proceedings either by publication or otherwise shall be divested and barred of all right, estate, and interest in such real estate, franchise, or other property, until such right or title shall be again legally vested in such owner; and all real estate or property whatsoever, acquired by any company under and in pursuance of this act, for the purpose of its incorporation, shall be deemed to be acquired for public use: Provided, The said sum [to] be paid as damages, and compensation, and costs, expenses, and counsel fees as aforesaid shall be paid by the company, or deposited as provided in this act, within 60 days after the confirmation of said report by the said court; and in case said company fail or neglect so to do, such failure or neglect shall be deemed as a waiver and abandonment of the proceedings to acquire any rights in said land or property. Within 20 days after the confirmation of the report of the commissioners or jury, as above provided for, either party may appeal, by notice in writing to the other, to the supreme court, from the appraisal or report of the commissioners or jury, such notice shall specify the objections to the proceedings had in the premises, and the supreme court shall pass on such objections only, and all other objections, if any, shall be deemed to have been waived; such appeal shall be heard by the supreme court at any general or special term thereof, on notice thereof being given according to the rules and practices of the court. On the hearing of such appeal, the court may direct a new appraisal, before the same or new commissioners or jury, in its discretion. The second report shall be final and conclusive upon all parties interested. If the amount of the compensation to be allowed is increased by the second report, the difference shall be a lien on the land appraised, and shall be paid by the company to the parties entitled to the same, or shall be deposited as the court shall direct; and in such case all costs of the appeal shall be paid by the company; but if the amount is diminished, the difference shall be refunded to the company by the party to whom the same may have been paid, and judgments therefor and for all costs of the appeal shall be rendered against the party so appeal-

ing. On the filing of the report, such appeal, when made by any claimant of damages shall not affect the said report as to the right and interests of any party, except the party appealing, nor shall it affect any part of said report in any case, except the part appealed from, nor shall it affect the possession of such company of the land appraised; and when the same is made by others than the company, it shall not be heard except on a stipulation of the party appealing not to disturb such possession during the pendency of such proceedings.

HISTORY: How. 3337;—CL 1897, 6248;—CL 1915, 8257;—CL 1929, 11135;—CL 1948, 464.23.

464.23a Condemnation proceedings; acquisition right of way for highway purposes, procedure; pending proceedings.

Sec. 23-a. Whenever the line of any railroad or railway company is upon or adjacent to the right of way of a trunk line highway, and such railroad right of way or any part thereof is necessary to be acquired by the state for widening, straightening, altering or otherwise improving such highway, and the state highway commissioner has, in compliance with the law, entered into an agreement with such railroad or railway company to exchange other designated property for such right of way, or any part thereof whenever such other designated property shall be acquired by him, the said state highway commissioner shall be authorized and he is hereby empowered to acquire such other property to be exchanged for such railroad or railway right of way, or any part thereof, by condemnation under the provisions of this act, so far as may be applicable: Provided, however, That in all cases where the state highway commissioner shall elect to proceed according to the terms of this act, he may make a written determination of the necessity of the particular road construction, improvement or maintenance project for which such property is desired and necessary in making the exchange as set forth herein; the necessity for taking the particular property described, and the damages which, in his opinion, should be paid as compensation for the taking of each parcel of such property. It shall not be necessary for the state highway commissioner to attempt to acquire any of such property or property rights by purchase or agreement before initiating any proceeding under the provisions of this act, and in no case shall an attempt to so acquire such property be considered a condition precedent to the acquirement of such property or property rights through the exercise of the power of eminent domain under this act or any other act. Such determination shall be made by the state highway commissioner only after a hearing, of which written notice shall be given to each person interested in the property desired, at least 7 days before the time of hearing, such notice to be served either personally or by leaving a copy at the residence of the person or persons interested, or in the case of non-residents, by posting copies thereof in 5 conspicuous places in the township, 1 of which shall be on the property, and by mailing a copy thereof by registered mail addressed to the last known postoffice address of each such non-resident person or persons. Such determination shall describe the property desired and shall give the name of each person interested therein so far as known to the commissioner.

Such determination shall be filed in the office of the state highway commissioner and a certified copy thereof shall be recorded in the office of the register of deeds of the county in which the property is situated. Compensation for the taking of the property therein described shall be paid or tendered to the owner thereof, if known and residing in the county in which the land is situated, and if such tender be not accepted or the owner shall be unknown or a non-resident of the county, by depositing the amount thereof with the state treasurer, which has been determined by the state highway commissioner as damages to be paid as compensation; the same to be paid to the person or persons entitled thereto upon the execution or delivery of the proper release

or releases, or subject to the order of the court in case of an award of damages by court commissioners as hereinafter provided.

Upon the filing of such determination and proof of payment or deposit as above provided, the commissioner shall give notice thereof to the owners or occupants of the property therein described, which notice shall state that the said commissioner is about to take possession of said property for the public highway purpose in said determination stated, and may also contain a notice to the owners or occupants of such property to remove their fence or fences and other obstructions and encroachments within 10 days thereafter. Upon the filing of such determination and the giving of such notice as aforesaid, the title and the right of possession to all of the property and property rights described in the determination shall vest in the state for the purpose therein stated; and in case the owners or occupants thereof shall neglect or refuse to move their fence, fences and other obstructions and encroachments within 10 days, the commissioner shall have full power and it shall be his duty to enter upon the premises with such aid and assistance as shall be necessary and remove such fence or fences, obstructions and encroachments without delay.

Within 90 days after the filing of any such determination of necessity as aforesaid, the state highway commissioner shall file with the circuit court of the county in which such property is situated a petition describing the project for which the property is being taken, reciting that the said state highway commissioner has made and filed the determination of necessity as herein above provided, and that the state highway commissioner has taken or is about to take possession of the property described in said determination, for the public highway purposes, stating whether it is deemed necessary to take the fee of said property, so far as known to the state highway commissioner, or an easement therein, or the fee of part and an easement in part, giving the name of each person interested in each such piece or parcel of property, so far as known, and praying for the appointment of 3 court commissioners to appraise the damages to be paid as compensation for the taking of each such piece or parcel of property for such public purposes. Upon the filing of such petition the court shall make an order appointing 3 disinterested persons commissioners, herein called court commissioners, whose duty it shall be to determine the damages to be paid as compensation for the taking of property or property rights. Such commissioners shall thereafter proceed in exactly the same manner and shall possess the same powers and duties, with regard to the determination of the damages to be paid as compensation, as though such commissioners had originally been appointed by the court under the provisions of this act, to determine both the necessity and the damages to be paid as compensation.

The provisions of this act, with relation to the powers and duties of such commissioners, shall apply to the commissioners appointed under the provisions of this section: Provided, however, That the provisions of this act, with relation to a jury to determine necessity and to fix the compensation for the taking of property, shall not apply and shall not be used in any case in which the highway commissioner shall use the provisions of this act, and in no case shall the necessity for the taking of such property by the state be determined in any way, except by the highway commissioner upon due notice and hearing as herein provided, nor shall the damages to be paid as compensation be assessed in any other manner than by the court commissioners, as herein provided.

The benefits arising out of and created by the public purpose for which property may be taken under the provisions of this act, accruing to the owners of land or lands or property rights by reason of such public use of the property taken, shall be taken into consideration in determining the damages to be paid to any such owner as compensation for the taking of his property for any such public purpose. In each such case, the court commissioners, or the jury, as the case may be, shall state such fact, and the

amount deducted on account of such benefits, in the award made and the report thereof.

The provisions of this act shall not be construed to repeal any act or any part or section of any act nor to deprive the state highway commissioner of the right to take property for the purposes set out in this section, under the provisions and according to the procedure set out in the highway condemnation statutes known as Act No. 352 of the Public Acts of 1925, as amended by Act No. 92 of the Public Acts of 1927; it being the express intention that the state highway commissioner shall have the right to proceed under the terms of this act or according to the provisions of such highway condemnation acts and also to confirm and make certain by this act the right of the state highway commissioner to use such highway statutes in taking property for such purposes.

If any proceeding to condemn property for such highway purposes be pending at the time this act takes effect, the same shall not abate or be discontinued by reason of this act, but the commissioner may, if the proceeding be one for which the provisions of this act are applicable, prepare, file and serve a determination of necessity as hereinabove provided for, and thereupon the commissioner may take possession of the property as herein provided, and such proceeding may be continued as though commenced under this act in the first instance, both as to the procedure to be taken and as the determination of damages to be paid as compensation for the taking of the property for such public highway purposes.

HISTORY: Add. 1929, p. 331, Act 140, Imd. Eff. May 10;—CL 1929, 11136;—CL 1948, 464.23a.

NOTE: Act 352 of 1925, above referred to, is Compilers' §§ 213.171 to 213.198.

464.24 Condemnation proceedings; title in doubt, payment of compensation.

Sec. 24. If there are doubts about the title, or to whom money, or any part of it, to be paid as compensation for the real estate or property taken belongs, the court may direct the money to be paid into the said court by the company, and may determine who is entitled to the same, and direct to whom the same shall be paid, and may in its discretion order a reference to ascertain the facts on which such determination and order are to be made.

HISTORY: How. 3338;—CL 1897, 6249;—CL 1915, 8258;—CL 1929, 11137;—CL 1948, 464.24.

464.25 Condemnation proceedings; new parties; commissioner, vacancy.

Sec. 25. The court shall have power at any time to amend any defect or informality in any of the special proceedings authorized by this act, as may be necessary, or to cause new parties to be added, and to direct such further notices to be given to any party in interest as it deems proper; also to appoint other commissioners in the place of any who shall die, or refuse, or neglect, or are unable to serve, or who may leave or be absent from the state.

HISTORY: How. 3339;—CL 1897, 6250;—CL 1915, 8259;—CL 1929, 11138;—CL 1948, 464.25.

464.26 Perfection of title; procedure; acquisition of title after occupancy.

Sec. 26. At any time after an attempt to acquire title by any railroad, bridge or tunnel company, by an appraisal of damages or otherwise, if it shall be found that the title thereby attempted to be acquired is defective, the company may proceed anew to acquire or perfect the same in the same manner as if no appraisal had been made, and at any stage of such new proceedings the court may authorize the corporation, if in possession, to continue in possession, and if not in possession, to take possession of and use such real estate or other property during the pendency and until the final conclusion of such new proceedings; and may stay all actions or proceedings against any company, or any officer or workman of such company, on account thereof, on such company paying into court a sufficient sum, or giving security, as the court may direct, to

pay the compensation therefor when finally ascertained; and in every such cause the party interested in such real estate or other property may conduct the proceedings to a conclusion if the company delays or omits to prosecute the same: Provided, Any railroad company which have heretofore entered upon, taken, occupied and used any lands within this state for the purpose of their road, shall have the same right to acquire title to, or right of way over, said land so taken by them, as if they had proceeded to acquire said title or right of way before having entered upon the same.

HISTORY: How. 3340;—Am. 1887, p. 8, Act 8, Imd. Eff. Feb. 5;—CL 1897, 6251;—Am. 1899, p. 450, Act 266, Eff. Sept. 23;—CL 1915, 8280;—CL 1929, 11139;—CL 1948, 464.26.

464.27 Public lands; acquisition, execution of grant; service of process.

Sec. 27. If any such company shall, for its purposes aforesaid, require any land belonging to the state, or to any city, village, county, or town, the commissioner of the state land office, and the city, village, county, and town officers respectively, having charge of the said lands, may grant such lands to such company for a compensation which shall be agreed upon between them; or in case they cannot so agree, then such lands shall be appraised as in other cases. All petitions or notices in cases when the state is the owner, shall be served on the commissioner of the state land office, where a city or village is the owner, on the mayor or other chief executive officer, when a county is the owner on the prosecuting attorney of such county, and when the township is the owner, on the supervisor of such township.

HISTORY: How. 3341;—CL 1897, 6252;—CL 1915, 8261;—CL 1929, 11140;—CL 1948, 464.27.

COMMISSIONER OF LAND OFFICE: Powers and duties now vested in department of conservation, see Sec. 2 of Act 17 of 1921, being Compilers' § 299.2.

464.28 Spur tracks or branches; subscription to stock of other companies; agreement with connecting lines; equal facilities.

Sec. 28. Any company organized under this act may build such spur tracks or branches as may be found necessary to develop business along its line of road, as the board of directors may judge to be expedient, and for that purpose shall have the same powers and rights in all respects as are conferred upon it for the construction of the main line, and may subscribe to the capital stock of any other company organized under this act with the assent of such other company; and any railroad chartered or organized under any other law of this state may subscribe to the capital stock of any company organized under this act not having the same terminal points and not being a competing line, with the assent of the company to whose stock such subscription is made, and any company organized under this act may make any arrangement with any other railroad company, whether organized or incorporated under this act or any other act, for running its cars over the road of such other company, or for the working and operating of such other roads as said companies shall mutually agree upon; and any companies organized or incorporated under this or any other act whose lines are connected, may enter into any arrangements for their common benefits, consistent with and calculated to promote the objects for which they were created. All companies owning or operating such spur or branch railroad, or making any such contract or agreement with connecting or intersecting lines of railroad shall furnish cars and transport freight over such spur, branch or connecting road at the same rates and subject to the same restrictions and regulations as shall be adopted for the transportation of freight upon the main line. All railroad companies in this state shall furnish equal facilities for the transportation of passengers and freight to all railroads that shall connect with or intersect its line of railroad without discrimination in favor of or against any such connecting or intersecting line of road.

HISTORY: How. 3342;—CL 1897, 6253;—CL 1915, 8262;—CL 1929, 11141;—CL 1948, 464.28.

464.29 Consolidation or merger of railroad companies; agreement; directors of new company; submission to stockholders.

Sec. 29. Subject to the approval of the interstate commerce commission in any case where that commission has jurisdiction and in all other cases subject to the approval of the Michigan public utilities commission, any railroad company organized under the laws of this state, or under the laws of this state and any other state or states or country, and owning or operating, or authorized by its charter to construct or acquire, a railroad forming a continuous or connecting line with that of any other railroad company, or companies, may consolidate with such other company or companies, or may merge or be merged into any such other company, so that said companies shall thereafter be a single corporation. The directors of said 2 or more companies or corporations may enter into an agreement under the corporate seal of each corporation, for the consolidation or merger of the said 2 or more corporations, prescribing the terms and conditions thereof; the mode of carrying the same into effect; the name of the new corporation in the case of a consolidation or of the corporation that is to survive in the case of a merger; the numbers of the directors thereof, and in case of a consolidation the names of those who shall be the first directors of the new corporation, which shall be deemed and taken to be the first election of the directors of the new company, which number shall not be less than 3; the time and place of holding the first election of directors of the new corporation after the consolidation, which time shall not exceed 6 months after such consolidation has been sanctioned by the stockholders of said 2 or more corporations, as hereinafter provided; the number of shares of capital stock which the new or surviving corporation is authorized to have; the amount of its authorized capital stock, which amount shall be the aggregate par value of all authorized shares having par value, plus the aggregate amount of value placed in the agreement of consolidation or merger upon all authorized shares of non-par value; the classes of stock authorized, any of which classes may be with or without nominal or par value, with such designations, relative rights, preferences, conditions, limitations, restrictions and voting rights as shall be specified; the number of shares of each class having par value, with the par value of each share; the number of shares of each class having no par value, with the value placed upon each share of each class, and the consideration for which the company may issue and sell such shares, or authorization to the board of directors to fix such consideration from time to time, which consideration shall in no event be less for any such share than the value placed thereon in the agreement of consolidation or merger,—and when the consideration for which any such share was authorized to be issued shall have been received by the company such share shall be deemed to be fully paid and non-assessable; the manner of converting the capital stock of each corporation into the capital stock of the new or surviving corporation, or the manner of otherwise disposing of said capital stock; with such other details as they shall deem necessary to perfect such consolidation or merger: Provided, however, That in case of a merger it shall not be necessary for such agreement to contain the provisions above specified with regard to directors and capital stock of the surviving corporation unless, and then only to the extent that, changes in respect to such matters are to be made by such merger agreement; and such new or surviving corporation shall possess all the powers, rights and franchises conferred upon the 2 or more corporations that are parties to such agreement: Provided, however, That any power, right, franchise, privilege or immunity possessed by either or any of the consolidating or merging companies of a kind which would not be possessed by a company organizing originally under the provisions of this act, as now existing or as hereafter amended, shall be utterly lost, annulled and abrogated; and such new or surviving corporation shall be subject to all the restrictions and perform all the duties imposed by this act as now existing or as hereafter amended as if it were a corporation originally

organized thereunder. Such agreement of the directors shall not be deemed to be the agreement of the said 2 or more corporations until after it has been submitted to the stockholders of each of said corporations separately at a meeting thereof, to be called upon a notice signed by the secretary or assistant secretary of the corporation, stating the purpose of the meeting, and published at least once in each week for 4 successive weeks in 1 daily newspaper, if any there be, published in the place where each corporation maintains its principal office within the state, the first publication to be at least 60 days before the time specified for the meeting, nor until it has been sanctioned by a majority vote of the stockholders of each class of stock having voting powers, each share entitling the holder thereof to 1 vote, which vote may be cast by the holder in person or by proxy; and when such agreement of the directors has been so sanctioned by each of the meetings of the stockholders separately, in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said 2 or more corporations. A copy of such agreement of consolidation or merger filed in pursuance of this act, and the acts amending or revising the same, with the secretary of state, and certified by him to be a copy, shall in all courts and places be presumptive evidence of the consolidation or merger, as the case may be, of said 2 or more companies, and of all the facts therein stated: And provided, That any railroad bridge company, or any railroad tunnel company, which may be organized under this act to bridge or tunnel the Detroit river, or the St. Clair river, or any of the waters in the jurisdiction of this state, shall have a right to consolidate the stock, property and assets of said company with the stock, property and assets of any connecting railroad company or of any company organized or to be organized under the laws of this state, or which may be created under the laws of any adjacent state or country, to construct any such bridge or tunnel therewith, or to merge or be merged into any such other corporation, in the manner in this section above provided, upon such terms, conditions and agreements as may by the said corporations be deemed just and equitable: Provided, That every such bridge or tunnel shall be so constructed as not to be a material obstruction to navigation.

HISTORY: How. 3343;—Am. 1891, p. 141, Act 122, Eff. Oct. 2;—CL 1897, 6254;—Am. 1899, p. 450, Act 286, Eff. Sep. 23;—CL 1915, 8263;—Am. 1927, p. 877, Act 366, Eff. Sep. 5;—CL 1929, 11142;—Am. 1933, p. 172, Act 121, Imd. Eff. Jun. 12;—Am. 1937, p. 173, Act 109, Imd. Eff. Jun. 24;—Am. 1946, 1st Ex. Ses., p. 14, Act 4, Imd. Eff. Feb. 18;—CL 1948, 469.29;—Am. 1955, p. 74, Act 47, Eff. Oct. 14.

464.30 Consolidation or merger of railroad companies; articles, approval, filing; rights and duties; creditors, liens and liabilities.

Sec. 30. Upon the approval by the interstate commerce commission or the Michigan public utilities commission, as the case may be, of any agreement of consolidation or merger provided for in the preceding section 29, a duplicate of said articles of agreement shall be filed in the office of the secretary of state; the said 2 or more corporations, parties to said agreement shall thenceforth be 1 corporation as provided in such agreement, to be known by the corporate name therein provided, and the details of such agreement shall be carried into effect as provided therein. And all and singular the powers, rights and franchises of each and all of such 2 or more corporations, parties to such agreement, of a kind which would be possessed by a company organized under the provisions of this act as now existing or as hereafter amended, and all and singular their rights and interest in and to every species of property and things in action, shall be deemed to be transferred to and vested in, or to remain vested in, such new or surviving corporation, without any other deed or transfer; and such new or surviving corporation shall hold and enjoy the same, together with all the right of way, and all other rights of property, in the same manner and to the same intent and as effectually as the same were formerly held and enjoyed by said 2 or more corporations, parties to such agreement; and the titles and real estate acquired by any of said 2 or more corporations shall not be deemed to revert or be impaired because of anything in

this act contained or anything done by virtue thereof: Provided, That all rights of creditors and all liens upon the property of any of said corporations, parties to the said agreement, shall be and hereby are preserved unimpaired, and the respective corporations shall be deemed to continue to exist so far as may be necessary to enforce the same: And provided further, That the debts, liabilities and duties of each and all of said companies, parties to said agreement shall thenceforth attach to such new or surviving corporation, and be enforceable against the same, to the same extent, and in the same manner as if such debts, liabilities and duties had been originally incurred by it.

HISTORY: How. 3344;—Am. 1883, p. 187, Act 174, Eff. Sept. 8;—Am. 1891, p. 143, Act 122, Eff. Oct. 2;—CL 1897, 6255;—CL 1915, 8264;—CL 1929, 11143;—Am. 1937, p. 175, Act 109, Imd. Eff. June 24;—CL 1948, 464.30.

BOARD OF APPROVAL: Powers were conferred on Michigan railroad commission, see Compilers' § 462.49, which in turn was superseded by the Michigan public utilities commission, see Compilers' § 450.63; which in turn was superseded by the Michigan public service commission, see Compilers' § 460.4.

464.31 Bridge or tunnel company; rights.

Sec. 31. It shall be competent for all railroad bridge companies and railroad tunnel companies organized under this act, respectively, to construct bridges over or tunnels under the waters of this state, to extend the railroad track or tracks which they may lay upon any bridge or through any tunnel which they may construct, so as to connect with any railroad whose business may pass through it, and for that purpose may acquire the right of way over or under or across any private property, in the same manner as herein provided for acquiring the right of way for railroads, and may, with the authority of the common council of any city, acquire the right to cross and use such portion of any street as may be found necessary; and to raise money, shall have the same authority as is herein conferred upon railroad companies to issue and sell bonds, and secure their payment by deeds of trust; and for all such purposes the said railroad bridge companies and railroad tunnel companies shall have the same rights as railroad companies organized under this act.

HISTORY: How. 3345;—CL 1897, 6256;—Am. 1899, p. 452, Act 266, Eff. Sept. 23;—CL 1915, 8265;—CL 1929, 11144;—CL 1948, 464.31.

CONDEMNATION: See Compilers' § 464.15 et seq.

464.32 Bridge or tunnel company; aid from connecting companies.

Sec. 32. Any such bridge or tunnel company shall have the right to negotiate with any railroad company which may connect with its bridge or tunnel for the purpose of obtaining aid in the construction of its work, and such railroad company shall have full power and authority to grant such aid upon such terms as may be agreed upon by both parties, which aid may be given by subscription to capital stock, or by guaranteeing bonds, or by both, or by lease and agreement to pay rent, or in any other form which shall be found most effectual to accomplish the purpose and enable said companies to procure the requisite means.

HISTORY: How. 3346;—CL 1897, 6257;—Am. 1899, p. 452, Act 266, Eff. Sept. 23;—CL 1915, 8266;—CL 1929, 11145;—CL 1948, 464.32.

464.33 Bridge or tunnel company; compensation for use of property.

Sec. 33. The said company shall have the right to charge such fair compensation for the use of its said road and bridge or tunnel by the railroad companies or horse railroad companies whose business shall pass along, over or through it, as shall be found by experience sufficient to enable them to pay: First, All the expense of keeping the works in repair and interest upon the money borrowed for the construction thereof, and dividends not exceeding 10 per cent upon their capital stock, and such additional sum as may furnish a sinking fund each year, not to exceed 5 per cent of the amount of its bonded debt, for the purpose of gradually extinguishing the same.

HISTORY: How. 3347;—CL 1897, 6258;—Am. 1899, p. 452, Act 266, Eff. Sept. 23;—CL 1915, 8267;—CL 1929, 11146;—CL 1948, 464.33.

464.34 Bridge or tunnel company; right of connecting companies to use property.

Sec. 34. All railroad companies whose tracks may connect with such tunnels or bridges shall have the right to send their business through or over them, respectively, upon such terms as shall be just and fair, and the charges for the passage of freight and passengers from all railroads shall be the same, and with no discrimination in favor of or against the business of any connecting road.

HISTORY: How. 3348;—CL 1897, 6259;—Am. 1899, p. 452, Act 266, Eff. Sept. 23;—CL 1915, 8268;—CL 1929, 11147;—CL 1944, 464.34.

464.35 Common line; construction; company not constructing, change in articles and capital; effect on charter obligations.

Sec. 35. Whenever 2 railroad companies shall, for a portion of their respective lines, embrace the same location of line, they may by agreement provide for the construction of so much of said lines as is common to both of them, by 1 of the companies, and for the manner and terms upon which the business thereon shall be performed. Upon the making of such agreement, the company that is not to construct the part of the line which is common to both, may alter and amend its articles of association so as to terminate at the point of intersection, and may reduce its capital to a sum not less than 8,000 dollars for each mile of the road proposed to be constructed in such amended articles of association. Nothing in this act shall be construed to release any chartered company from building any line of road which by its charter it is obligated to build, or to transfer to any other company, by virtue of this section or any agreement made in pursuance thereof, such obligation.

HISTORY: How. 3349;—CL 1897, 6260;—CL 1915, 8269;—CL 1929, 11148;—CL 1948, 464.35.

464.36 Intersecting railroad crossing; condemnation.

Sec. 36. If after the determination, as provided for in section 7 of this act, the companies cannot agree upon the terms upon which the said crossing shall be made, the company so desiring may acquire the right to make the same by condemnation in the same manner as prescribed by the act for obtaining title to real estate or other property and as provided in this act therefor.

HISTORY: How. 3350;—Am. 1883, p. 187, Act 174, Eff. Sept. 8;—Am. 1887, p. 295, Act 236, Imd. Eff. June 24;—CL 1897, 6261;—CL 1915, 8270;—CL 1929, 11149;—CL 1948, 464.36.

NOTE: Sec. 7 of this act, above referred to, is Compilers' § 464.7.

CONDEMNATION OF CROSSING: Procedure, see Compilers' § 464.15 et seq.

464.37 Deed of trust or mortgage; issuance; powers of sale in trustees.

Sec. 37. It shall be competent and lawful for the trustees, in any deed of trust or mortgage of and upon any railroad, railroad bridge or railroad tunnel, in case of the inability of said company or its default in the payment of the principal or interest money secured thereby, in pursuance of any power of sale contained therein, to offer the same for sale, according to the power, and in pursuance of its terms, and on such sale to execute a deed of the premises sold, which said deed, duly executed, shall convey the title to the purchaser or purchasers, and authorize them to enter into possession and enjoyment thereof, as fully as may be provided in said mortgage or deed of trust: and that it shall be competent and lawful for all railroad, railroad bridge and railroad tunnel companies organized under this act, for the purpose of securing their bonds, authorized to be issued in accordance with its provisions, to execute such mortgage or deed with such power contained therein for the sale of the property mortgaged or deeded as shall, in its judgment or the judgment of the board, be found expedient, and such power of sale in accordance therewith shall be lawful and valid.

HISTORY: How. 3351;—CL 1897, 6262;—Am. 1899, p. 453, Act 266, Eff. Sept. 23;—CL 1915, 8271;—CL 1929, 11150;—CL 1944, 464.37.

MORTGAGE BONDS: See Compilers' § 468.221 et seq.

464.38 Borrowing power; bonds, conversion into stock; mortgages.

Sec. 38. All companies organized under this act shall have power, from time to time, to borrow such sums of money as may be necessary for completing, finishing, equipping or operating their road, bridge or tunnel or any part thereof, or for building a double track, repairs or other improvements to facilitate the transportation of persons or property, or for paying any indebtedness incurred for any lawful purpose; and to issue and dispose of their bonds or obligations for any amount borrowed for any such purposes, for such sums and bearing such rate of interest as they may deem advisable, and to mortgage their corporate property and franchises and the income thereof, or any part thereof, to secure the payment of any debt contracted or to defray any expenditure by the company for purposes aforesaid. And the directors of any such company may confer on any holder of any such bond or obligation the right to convert the same into the stock, of any class, of said company at any time not exceeding 10 years from the date of said bond or obligation, on such terms and under such regulations as the company may see fit to adopt; and said company may sell its bonds or obligations, either within or without this state, at such rates and prices as its board of directors may deem proper from time to time.

HISTORY: How. 3352;—CL 1897, 6263;—Am. 1899, p. 453, Act 266, Eff. Sept. 23;—CL 1915, 8272;—Am. 1925, p. 50, Act 42, Eff. Aug. 27;—Am. 1927, p. 879, Act 366, Eff. Sept. 5;—CL 1929, 11151;—Am. 1933, p. 173, Act 121, Imd. Eff. June 12;—CL 1948, 464.38.

ISSUANCE OF SECURITIES: See Compilers' §§ 460.301 to 460.303.

USURY: As to whether the provision for interest not exceeding 10% is an exception to the general law in regard to usury, see Compilers' § 438.31.

464.39 Common use of tracks and station grounds; enlargement of grounds.

Sec. 39. In case 1 or more railroad companies shall use a common track into any of the cities or villages of the state, and it shall be found expedient to use a common or joint station ground therein, it shall be competent and lawful for the said companies whose interests shall be common in such track or tracks or station grounds to enter into such agreements for such purpose as may become necessary for the joint use of the same, and such agreements, duly made and approved by the boards of directors of the 2 or more companies shall be valid and binding upon all the parties thereto; and in case it shall be found necessary at any time to enlarge the station grounds at any such city or village for the convenience of said companies jointly using the same, it shall be competent and lawful for either 1 of the companies to negotiate for and obtain such grounds as may be needed for that purpose, and if they cannot be obtained by purchase, then either company may acquire the same under the provisions of the act regulating the mode and manner of obtaining lands necessary for the construction of railroads and stations; and in such case it shall be competent and lawful for such grounds so obtained to be used in common, and the companies so using may contribute in such manner as may be agreed upon between them the money to pay for the same; and such land, when obtained by purchase or by appraisal and condemnation under the provisions of this act, may and shall inure for the common benefit of all companies who by mutual arrangement and agreement shall be entitled to use them as a part of the common station ground as fully as if they had been acquired by a joint purchase by all of said companies.

HISTORY: How. 3353;—CL 1897, 6264;—CL 1915, 8273;—CL 1929, 11152;—CL 1948, 464.39.

CONDEMNATION: See Compilers' § 464.15 et seq.

464.40 Joint accommodations; disagreement.

Sec. 40. Where 2 or more railroads terminate or connect in the same city or town, each shall, for a reasonable compensation, provide upon its road at such terminus or connection, suitable depot accommodations for the passengers or merchandise of the other road terminating or connecting with it, and shall receive the same in the manner it receives and delivers its own passengers and freight, and at the rates provided by

law. If the corporations cannot agree upon the terms and conditions upon which such accommodations shall be furnished and the business transacted, the commissioner of railroads shall determine the rate of compensation to be paid for the depot accommodations required for the proper reception and delivery of such passengers and merchandise over, and other business upon and connected with said roads in which they are jointly interested, and the manner in which the business shall be done, and apportion to the corporations their respective shares of the expenses, receipts, and income of the same; and the award of the commissioner shall be binding upon the corporations.

HISTORY: How. 3354;—CL 1897, 6265;—CL 1915, 8274;—CL 1929, 11153;—CL 1948, 464.40.

COMMISSIONER OF RAILROADS: Superseded by railroad commission, see Compilers' § 462.49, which, in turn, was superseded by public utilities commission, see Compilers' § 460.53.

464.41 Equal facilities; accommodations at intersections and connections; penalty.

Sec. 41. All railroad corporations shall grant equal facilities for the transportation of passengers and freight to all persons, companies or corporations, without discrimination in favor of any individuals, companies or corporations, and shall, at all points of connection or intersection with the roads of other corporations, unite with such corporations in establishing and maintaining suitable platforms and station houses for the convenience of passengers desiring to transfer from 1 road to the other and for the transfer of baggage or freight, whenever the same shall be desired by either corporation or ordered by the railroad commission; the expense of constructing and maintaining such station house and platforms shall be paid equally by such corporations. Where it is practicable the railroad commission may, upon application, require railroad corporations to so unite and connect the tracks of said several corporations as to permit the transfer from the track of 1 corporation to the other of loaded and unloaded cars designed for transportation upon both roads. No railroad corporation shall in any manner discriminate in its rates of freight tariff, in favor of any individual, company or corporation doing business over its line of road, and shall grant the same rights and privileges to all shippers subject to the same rates and classification, without rebate or any other special privilege or rate not extended to all other shippers in the same class, who ship a like quantity or quantities. Any railroad corporation refusing to comply with any of the provisions of this section shall be liable to a penalty not exceeding 500 dollars.

HISTORY: Add. 1879, p. 188, Act 207, Eff. Aug. 30;—How. 3355;—Am. 1883, p. 188, Act 174, Eff. Sept. 8;—CL 1897, 6266;—Am. 1915, p. 364, Act 215, Eff. Aug. 24;—CL 1915, 8275;—CL 1929, 11154;—CL 1948, 464.41.

RAILROAD COMMISSION: Abolished; powers and duties transferred to the public utilities commission, see Compilers' § 460.53, which in turn has been abolished and superseded by the public service commission, see Compilers' § 460.4.

464.42 Land for yards, terminal and depots; acquisition.

Sec. 42. Any railroad company, any railroad bridge company or any railroad tunnel company organized under this act shall possess the power to acquire, either by purchase or condemnation, and to own the same, an amount of land at any and all places on the line of its railroad or in the vicinity of its bridge or tunnel sufficient to afford the necessary yards, terminals and freight and passenger depot accommodations for its own business and the business of any companies operating a railroad, bridge or tunnel at the same place, with which it may make an agreement to furnish such accommodations, and also for the necessary rights of way to afford such companies access thereto.

HISTORY: Add. 1881, p. 403, Act 289, Eff. Sept. 10;—How. 3356;—CL 1897, 6267;—Am. 1911, p. 44, Act 33, Eff. Aug. 1;—CL 1915, 8276;—CL 1929, 11155;—CL 1948, 464.42.

SECTION 43:—In numbering the sections added by amendatory Act 289 of 1881, Sec. 43 was omitted.

CONDEMNATION: See Compilers' § 464.15 et seq.

464.44 Land for yards; acquisition from other railroads, procedure.

Sec. 44. When any part of the land of any railroad company in this state, in or adjacent to its depot grounds, is not in actual use for depot or other purpose pertaining to the operation of a railroad, and such land is not needed by said railroad company for

the purpose of a depot or other terminal facilities, it shall be lawful for any other railroad company organized as aforesaid, needing such land for the purpose of a depot or terminal facilities, to acquire the same in the same manner as may now be done for such purpose from individuals. The question of actual use, and of necessity for the aforesaid purposes by said railroad company owning and not using said land, shall be determined in addition to other questions as provided by law in cases of condemnation of land for the purpose aforesaid, and the same proceedings in all respects, as near as may be, shall be had for the aforesaid purpose as now provided by law where land is acquired for such purpose from individuals.

HISTORY: Add. 1881, p. 403, Act 289, Eff. Sept. 10;—How. 3357;—CL 1897, 6268;—CL 1915, 8277;—CL 1929, 11156;—CL 1948, 464.44.

CONDEMNATION: See Compilers' § 464.15 et seq.

464.45 Vessels; power of railroad to operate, loan in aid of construction.

Sec. 45. Any railroad company in this state having either, or both, of its termini at the shore of 1 of the navigable lakes or streams through which the boundary line between this state and other states, or the dominion of Canada, passes, where physical connection between its road and other railroads without the state is impracticable by reason of such intervening navigable body of water, may own and operate on such body of water such number of steamboats, barges, or vessels as the traffic of passengers and freight between it and such other railroads shall render necessary, or it may loan money to any person or corporation in aid of the construction of steamboats, barges, or other vessels to be so operated.

HISTORY: Add. 1883, p. 188, Act 174, Eff. Sept. 8;—How. 3357a;—CL 1897, 6269;—CL 1915, 8278;—CL 1929, 11157;—CL 1948, 464.45.

VESSELS: Power of railroads and street railways to own and operate, see Act 156 of 1905, being Compilers' §§ 467.201 and 467.202.

General provisions as to operation, see Compilers' § 281.101 et seq.

AIRCRAFT AND MOTOR VEHICLES: Power of railroad to own and operate, see Act 193 of 1929, being Compilers' § 467.251.

See Compilers' §§ 207.51 et seq. and 207.441 et seq.

464.46 Passenger train; daily run, accommodations; penalty.

Sec. 46. That any railroad company or corporation owning or operating any railroad wholly or partly within this state, and which has received aid from private individuals along its line of road in the construction of the same, shall maintain and run at least 1 passenger train each way over that portion of its road within this state every week day, unless prevented by accident or the elements, which train shall not be used for the transportation of freight except express or baggage freights, and such railroad company shall furnish sufficient accommodation with such train for the transportation of all such passengers as shall within a reasonable time previous thereto be ready at the several stations on its railroad, at the junction of other railroads, and at such stopping places as may be established for receiving and discharging way passengers, and shall take, receive, transport and discharge such passengers at, from and to such stations, junctions and places, upon payment, or tender of payment, of the fare legally authorized therefor, if such payment shall be demanded. Any railroad company or corporation refusing to comply with any of the provisions of this section, shall be liable to a penalty not exceeding 500 dollars for each and every offense.

HISTORY: Add. 1883, p. 189, Act 174, Eff. Sept. 8;—How. 3357b;—Am. 1887, p. 162, Act 150, Imd. Eff. June 7;—CL 1897, 6270;—CL 1915, 8279;—CL 1929, 11158;—CL 1948, 464.46.

SUIT FOR PENALTY: See Compilers' § 467.10.

464.47 Railroads passing near state institutions; requirements.

Sec. 47. All railroad companies or other corporations or individuals owning or operating any railroad passing near any state institution located 1 mile or more from a regular station which institution or railroad company has or shall hereafter put in sidings suitable for the receipt and shipment of state property at a convenient point near said institution, or have established or shall hereafter establish a passenger station for the accommodation of officers and employes of the state, and other persons under state

control, shall at all times furnish such reasonable service and facilities for the receiving and shipment of freights [freight] and for the accommodation of officers and employees of the state and persons whom they may have in charge, in getting on and off passenger trains as the needs of the institution may demand. This act shall not be construed as requiring any railroad company to stop its trains to let passengers on or off who have come from, or are destined to a point not exceeding 3 miles from said institution. If the officers of the institution and the railroad company cannot agree as to what is reasonable service to be performed on the part of the railroad company, then the same shall be decided by the commissioner of railroads, upon application to him by the officers of the institution or the superintendent or manager of the railroad company.

HISTORY: Add. 1887, p. 163, Act 150, Imd. Eff. June 7;—How. 3357c;—CL 1897, 6271;—CL 1915, 8280;—CL 1929, 11159;—CL 1948, 464.47.

COMMISSIONER OF RAILROADS: Superseded by railroad commission, see Compilers' § 462.49, which, in turn, was superseded by public utilities commission, see Compilers' § 460.53, which in turn was superseded by the public service commission, see Compilers' § 460.4.

464.48 Neglect to comply; penalty.

Sec. 48. Every railroad company neglecting to comply with the provisions of this act shall be liable to the state in a penalty of 50 dollars for each day that its neglect shall continue; to be collected in an action for debt to be brought by the attorney general or the prosecuting attorney of the county upon the request of the commissioner of railroads in that behalf.

HISTORY: Add. 1887, p. 163, Act 150, Imd. Eff. June 7;—How. 3357d;—CL 1897, 6272;—CL 1915, 8281;—CL 1929, 11160;—CL 1948, 464.48.

SUIT FOR PENALTY: See Compilers' § 467.10.

464.49 Railroads subject to general railroad law.

Sec. 49. Every railroad and railway company operating a railroad in whole or in part in this state which company may have been by means of a consolidation under any general or special law of this state, or by means of a mortgage foreclosure and sale and reorganization, under any general law of this state, is hereby declared to be in all respects subject to the general laws of the state respecting railroads as now existing or as hereafter amended; and any franchise, right, power, privilege, immunity or exemption claimed by any such railroad or railway company of a kind which would not belong to a company organized under the general railroad laws of this state as now existing or as hereafter amended is hereby annulled and abrogated, and every such company shall be subject to all the restrictions and perform all the duties now imposed by the general laws or which may hereafter be imposed upon railroad companies.

HISTORY: Add. 1891, p. 144, Act 123, Eff. Oct. 2;—CL 1897, 6273;—CL 1915, 8282;—CL 1929, 11161;—CL 1948, 464.49.

464.50 Taxation.

Sec. 50. That in case any such railroad or railway company may have been in the past paying a tax different from that imposed upon railroads by the general law, such company may continue to pay such tax or a ratable proportion thereof up to the first day of July, 1892; but thereafter every such company shall pay a tax in the manner and in the amount now provided by the general laws relating to railways.

HISTORY: Add. 1891, p. 144, Act 123, Eff. Oct. 2;—CL 1897, 6274;—CL 1915, 8283;—CL 1929, 11162;—CL 1948, 464.50.

TAXATION: See Compilers' §§ 465.1 et seq. and 211.1 et seq.; in particular Compilers' § 207.1 et seq.

Sec. 51. (This was a repeal section.)

HISTORY: Add. 1891, p. 144, Act 123, Eff. Oct. 2;—CL 1897, 6274n;—CL 1915, 8284;—CL 1929, 11163;—Rep. 1945, p. 403, Act 25, Imd. Eff. May 25.

ARTICLE III.—TAXATION.

465.1 Specific tax; basis of computation.

Sec. 1. The commissioner of railroads shall, on or before the fifteenth day of May, 1879, and on or before the fifteenth day of May in each year thereafter, make and file with the auditor general, a computation of the amount of tax which will become due on the first of July, from each railroad company liable to pay taxes under the provi-

sions of section 3 of this article, which computation shall be based upon the report of such railroad company for the preceding year, required to be made to the commissioner of railroads; and in case any of said railroad companies shall fail to make such report to the commissioner of railroads as provided by law, then the provisions of section 2 of this article shall apply as fully as though such report was required to be made direct to the auditor general.

HISTORY: Am. 1879, p. 41, Act 45, Imd. Eff. April 22;—How. 3358;—CL 1897, 8275;—CL 1915, 8285;—CL 1929, 11164;—CL 1948, 465.1.

TAXATION: Since the constitutional amendment of 1900, railroad companies are assessed by the state board of assessors on an ad valorem basis and hence sections 1, 2, 3 and 4 of this article are obsolete. See Act 282 of 1905, being Compilers' § § 207.1 to 207.21.

COMMISSIONER OF RAILROADS: Superseded by railroad commission, see Compilers' § 462.49, which, in turn, was superseded by public utilities commission, see Compilers' § 460.53, which, in turn, was superseded by the public service commission, see Compilers' § 460.4.

465.2 Report; neglect to make, falsification; penalty, forfeiture of franchise.

Sec. 2. Any such company which shall neglect to make such report, or which shall willfully make a false report, shall be liable to a penalty of 1,000 dollars; and it shall be the duty of the auditor general, and he is hereby required, in case any such corporation incurs the penalty aforesaid, to forthwith issue his warrant for the collection of the same in the same manner, and to levy and collect the same in all respects as is herein provided for the collection of taxes against such corporation; and the collection of such penalty shall not absolve the corporation from the obligation to make such report, but it shall still be its duty to make the same, and a willful neglect or refusal to do so may be cause for a forfeiture of the corporate franchises.

HISTORY: How. 3358;—CL 1897, 8276;—CL 1915, 8286;—CL 1929, 11165;—CL 1948, 465.2.

This section is now obsolete. See note under Sec. 1 of this article.

465.3 Specific tax; rate, payment in lieu of other taxes, exception.

Sec. 3. Every railroad company and union railroad station and depot company owning or operating any railroad situated in whole or in part in this state, shall, on or before the first day of July in each year, pay to the state treasurer, on the statement of the auditor general, a specific tax upon the property and business of such railroad corporation operated within the state, which tax shall be computed in the following manner, namely: Upon all such gross income not exceeding 2,000 dollars per mile of road actually operated within this state, 2 ½ per cent of such gross income; upon such gross income in excess of 2,000 dollars and not exceeding 4,000 dollars per mile 3 ¼ per cent thereof; upon all such gross income in excess of 4,000 dollars and not exceeding 6,000 dollars per mile, 4 per cent thereof; and upon all such gross income in excess of 6,000 dollars per mile, and not exceeding 8,000 dollars per mile, 4 ½ per cent thereof; and upon all such gross income in excess of 8,000 dollars per mile of the road so operated, 5 per cent thereof; that all gross income of union railroad station and depot companies whose earnings are in excess of 20,000 dollars per mile shall pay on all such gross incomes in excess of 20,000 dollars per mile of road so operated, 10 per cent thereof. And when the railroad lies partly within and partly without this state, prima facie, the gross income of said company from such road for the purposes of taxation shall be on the actual earnings of the road in Michigan, computed by adding to the income derived from the business transacted by said company entirely within this state, such proportion of the income of said company arising from interstate business, as the length of the road over which said interstate business is carried in this state bears to the entire length of the road over which said interstate business is carried. The taxes so paid shall be in lieu of all other taxes upon the properties of such companies, except such real estate as is owned and can be conveyed by such corporations under the laws of this state, and not actually occupied in the exercise of its franchises, and not necessary or in use in the proper operation of its road, but such real estate so accepted shall be liable to taxation in the same manner, and for the same purposes, and to the same

extent, and subject to the same conditions and limitations as to the collection and return of taxes thereon, as is other real estate in the several townships or municipalities within which the same may be situated.

All acts or parts of acts contravening the provisions of this section of this act are hereby repealed.

HISTORY: How. 3360;—Am. 1883, p. 189, Act 174, Eff. Sept. 8;—Am. 1891, p. 217, Act 174, Eff. Oct. 2;—Am. 1893, p. 217, Act 129, 1md. Eff. May 27;—Am. 1897, p. 293, Act 228, Eff. Aug. 30;—CL 1897, 6277;—CL 1915, 8287;—CL 1929, 11166;—CL 1948, 465.3.

This section is obsolete. See note under Sec. 1 of this article.

465.4 Leased road; tax assessment.

Sec. 4. In case any railroad shall have been, or shall hereafter be, conveyed by way of lease, or any other agreement by which it shall be worked, or operated by another company, under the provisions and authority contained in this act, with the obligation or right on the part of the company taking or holding a lease, or other working agreement, to pay the taxes on the leased road, it shall be competent and lawful for the company so obligated, or having the right to pay the said tax, to set forth the facts, and the extent of the road so leased, and the amount and description of the property so held by it, in a statement to the auditor general; and thereupon the taxes to be assessed upon the railroad of the company, or portion of which, or the whole of which has been so leased, shall be assessed against the lessee, which shall be notified of the same; and in case a portion only of said road has been so leased or conveyed, the taxes shall be justly apportioned by the auditor general, so that the said lessee shall be required and bound only to pay the proper portion thereof, to be assessed against the property in its possession and control.

HISTORY: How. 3361;—CL 1897, 6278;—CL 1915, 8288;—CL 1929, 11167;—CL 1948, 465.4.

This section is obsolete. See note under Sec. 1 of this article.

465.5 Lien of state and citizen.

Sec. 5. This state shall have a lien upon all railroads therein, and their appurtenances, and stock therein, for all penalties, taxes, and dues which may accrue to the state from the companies owning or operating the same, which lien of the state shall take precedence of all demands, judgments, assignments by warranty deed, or otherwise, or decrees against said companies, and each citizen of the state shall have a lien upon all the personal property of said company, for all penalties, dues and demands against any such company to the amount of 100 dollars, originally incurred or contracted within this state, which, after said lien of the state, shall take precedence of all other debts, demands, judgments, assignments by warranty deed, or otherwise, or decrees, liens, or mortgages against said company.

HISTORY: How. 3362;—Am. 1883, p. 190, Act 174, Eff. Sept. 8;—CL 1897, 6279;—CL 1915, 8289;—CL 1929, 11168;—CL 1948, 465.5.

TAXES: When taxes become a lien, see Compilers' § 207.14.

ARTICLE IV.—POLICE REGULATIONS.

466.1 Brakes for passenger trains, locomotives and tenders; penalty, civil liability.

Sec. 1. On and after the thirty-first day of October, 1873, * on regular passenger trains shall be run in this state without an air brake or some equally effective device for controlling the speed of the trains, to be approved by the commissioner of railroads, which may be applied by the engineer to each car composing the train, and which shall at all times be kept in effective condition of repair and ready for use at the discretion of said engineer. And after the first day of October, 1890, all locomotive engines and tenders (used on the railroads in this state) shall be ***equipped with a suitable driver and tender brake of some pattern to be approved by the commissioner of railroads, which said device shall be at all times maintained in effective condition of repair and ready for use, and from and after the said last mentioned date * on mixed trains ** composing partly of passenger and partly of freight cars, on which the air

brakes, hereinbefore mentioned, provided and required cannot be applied by the engineer to each passenger car which shall be run in this state for the transportation of passengers, unless the engine and tender on such train shall be ***equipped with a suitable driver and tender brake, as hereinbefore provided; and every company, person or corporation owning or operating a railroad in this state which shall permit any trains to be run upon such roads without being ***equipped with brakes, as provided for in this section, shall forfeit for every train so run the sum of 100 dollars, for the recovery of which such company, person or corporation shall be liable in an action brought by the attorney general or the prosecuting attorney of any county in this state upon the application of the commissioner of railroads, in behalf of the people of the state, the penalty, when recovered to be paid into the state treasury, and said companies, persons or corporations shall also be liable for all damages which shall be sustained by any person by reason of neglect or refusal to comply with the provisions of this law.

HISTORY: Am. 1875, p. 137, Act 98, Eff. Aug. 3;—How. 3363;—Am. 1889, p. 211, Act 182, Eff. Oct. 2;—CL 1897, 6280;—CL 1915, 8290;—CL 1929, 11169;—CL 1948, 466.1.

*The word "no" appeared in brackets in the 1897, 1915 and 1929 compilations. The word "no" does not appear in the original amendatory act at this place.

**The word "composed" appeared in brackets in the 1897, 1915 and 1929 compilations. The word "composed" does not appear in the original amendatory act at this place.

***The word "equiped" should be spelled "equipped".

Air brakes on snowplows, see Compilers' §§ 469.81 to 469.84.

SUIT FOR PENALTY: See Compilers' § 467.10.

466.2 Crossing protection; penalty for neglect to maintain.

Sec. 2. On and after July 31, 1873, every company, person, or corporation owning or operating a railroad within this state, shall construct and maintain a gate or gates or bridge, or maintain a flagman to signal trains at every highway or street crossing on the line of such road, where the same shall be required by the commissioner of railroads, as hereinafter provided. Any company, person, or corporation neglecting or refusing to construct or maintain such gate or gates or bridge, or to maintain such flagman where so required as aforesaid, shall forfeit for every such neglect or refusal the sum of 100 dollars, and the further sum of 10 dollars for every day while such neglect or refusal shall continue.

HISTORY: Am. 1875, p. 137, Act 98, Eff. Aug. 3;—How. 3364;—CL 1897, 6281;—CL 1915, 8291;—CL 1929, 11170;—CL 1948, 466.2.

CROSSING PROTECTION: See Compilers' § 469.1 et seq.

Flagman, fourth class cities, see Compilers' § 91.6.

SUIT FOR PENALTY: See Compilers' § 467.10.

466.3 Crossing protection; notice of requirement, duty of railroad.

Sec. 3. Whenever, in the opinion of the commissioner of railroads, the public interests require that a gate be constructed and maintained at any railroad crossing, or a bridge be built over such railway at such crossing, or that a flagman be stationed and maintained at such crossing, he shall give to the superintendent of such railroads a written notice that the same is required; and such company, person or corporation shall construct or maintain the same within such time thereafter as said commissioner shall prescribe.

HISTORY: How. 3365;—CL 1897, 6282;—CL 1915, 8292;—CL 1929, 11171;—CL 1948, 466.3.

COMMISSIONER OF RAILROADS: Superseded by railroad commission, see Compilers' § 462.49, which, in turn, was superseded by public utilities commission, see Compilers' § 460.53.

466.4 Crossing protection; construction requirements; flagman, duties; expense; penalties.

Sec. 4. All gates constructed under this act by requirement of the commissioner of railroads, shall be built in such manner, and within such time, and of such material as shall be approved by the commissioner of railroads, and shall be located on the highway or street on 1 or both sides of the railroad track or tracks, as the commissioner may deem the public safety to require, and shall be so constructed as, when closed, to obstruct and prevent any passage across such railroad or railroads from the side on

which such gate may be located. At every gate heretofore or hereafter constructed at any crossing of a street or highway and a railroad there shall be a person in charge at such hours of the day or night as the said commissioner of railroads shall from time to time order and direct, and it shall be his duty to close the same at the approach of a train of cars or of a locomotive, and to keep it open at all other times; and it shall be the duty of the gatekeeper on either side of 1 or more tracks, to close the gate of which he is in charge on the approach of a train of cars or locomotive, on either track. For every neglect of such duty, such person, upon conviction thereof, shall pay the sum of 25 dollars, or be imprisoned in the county jail for the period of 90 days, or both, in the discretion of the court. The expense incurred in the erection and maintenance of the gates provided for in this section and of the necessary gatekeepers shall be shared equally by the railroad companies alongside whose tracks the gates shall be located. Any person who shall open or raise such gate when closed or lowered, or attempt so to do, or shall attempt to gain access with teams or vehicles to such crossing while the gate is closed or lowered, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than 10 nor more than 25 dollars with the alternative of imprisonment in the county jail for a period of not more than 30 days.

HISTORY: Am. 1875, p. 138, Act 98, Eff. Aug. 3;—How. 3366;—Am. 1893, p. 47, Act 45, Eff. Aug. 28;—Am. 1895, p. 544, Act 249, Imd. Eff. June 1;—CL 1897, 6283;—CL 1915, 8293;—CL 1929, 11172;—CL 1948, 466.4.

466.5 Employee using intoxicants; penalty for employment.

Sec. 5. No person shall be employed as an engineer, train dispatcher, fireman, baggagemaster, conductor, brakeman, or other servant upon any railroad in any of its operating departments, who uses intoxicating drinks as a beverage; and any company in whose service any such person shall knowingly be employed, shall be liable to a penalty of 500 dollars for every such offense, to be sued for in the name of the people of the state of Michigan.

HISTORY: How. 3367;—CL 1897, 6284;—CL 1915, 8294;—CL 1929, 11173;—CL 1948, 466.5.

SUIT FOR PENALTY: See Compilers' § 467.10.

466.6 Employee using intoxicants; liability for damages, misdemeanor; liability of company.

Sec. 6. If any person shall be intoxicated while in charge of a locomotive engine, running upon the road of any such company or while acting as the conductor of any train of cars on any such road, he shall be liable for all damages incurred or produced in consequence thereof, and shall be deemed guilty of a misdemeanor: Provided, That this shall not affect or release the railroad company from any such liability.

HISTORY: How. 3368;—CL 1897, 6285;—CL 1915, 8295;—CL 1929, 11174;—CL 1948, 466.6.

MISDEMEANOR: Penalty, see Compilers' § 750.504.

466.7 Repealed. 1962, p. 45, Act 55, Eff. Mar. 28, 1963.

Section required that copies of railroad corporation's rules be furnished its employees, imposed criminal penalties for violations of such rules by employees.

466.8 Passenger refusing to pay fare or obey regulation; putting off train.

Sec. 8. If any person shall refuse to pay his fare, or refuse to obey such regulations as may be established for the convenience and safety of passengers, it shall be lawful for the conductor of the train and servants of the company to put him off the train at any usual stopping place or opposite any dwelling house the conductor may select.

HISTORY: How. 3370;—CL 1897, 6287;—CL 1915, 8297;—CL 1929, 11176;—CL 1948, 466.8.

466.9 Disorderly passenger; removal to baggage car, putting off train.

Sec. 9. In case it shall become necessary for the protection of the passengers on any railroad car from the violent, abusive, profane, or indecent language or conduct of any passenger, the conductor of such train is hereby authorized and empowered, to arrest such passenger and remove him to the baggage car, or some safe and secure place on such train, until its arrival at some usual stopping place, where he may be put off of

the train and put into the custody of some proper officer for prosecution if necessary; for this purpose railroad conductors, while in charge of trains, are hereby invested with the powers of sheriffs and constables.

HISTORY: How. 3371;—CL 1897, 6288;—CL 1915, 8298;—CL 1929, 11177;—CL 1948, 466.9.

466.10 Disorderly passenger; penalty; conductor and peace officers, powers and duties.

Sec. 10. Any person who shall, while riding in the car either of a freight or passenger or other train, on any railroad in this state, use or utter indecent, obscene, or profane language in the hearing of other passengers, or riotously or boisterously conduct himself or herself to the annoyance of other passengers, or who shall obtain any money or property from any passenger or person in such car by means of any game or device, or attempt so to do, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be punished by a fine not exceeding 100 dollars, or imprisonment in the county jail for a period not exceeding 90 days, or both, in the discretion of the court. Railroad conductors are hereby invested with the powers of sheriffs and constable in regard to offenses under this section occurring upon trains or cars in their charge, and are empowered to arrest and detain any person violating any of its provisions until the car or train shall arrive at some usual stopping place, where a sheriff, deputy, or undersheriff of any county, or constable, or marshal, or policeman of any city or village in this state may be, to whose custody he may deliver such offender, with a written statement specifying generally in what respect such person has misbehaved; or if there be no such officer present to receive the offender, the conductor may deliver him to the ticket or freight agent at such stopping place, with such statement, who shall detain the offender in his custody and may exercise the powers of sheriffs and constables in regard to persons charged with crimes in doing so until such officer may be obtained to take charge of the offender to whom he shall be delivered, with such statement made by the conductor, and such officer shall take the person so offending into custody, and it shall be his duty to institute a complaint against such person for such offense before a justice of the peace in his county, and such justice shall have jurisdiction to try such offender, and to impose the judgment authorized by this section.

HISTORY: Am. 1877, p. 189, Act 177, Eff. Aug. 21;—How. 3372;—CL 1897, 6289;—CL 1915, 8299;—CL 1929, 11178;—CL 1948, 466.10.

INTOXICATION: Prohibited intoxication or drinking on railroad trains or interurban cars, see Compilers' §§ 436.201 to 436.205.

466.11 Train arrangement; misdemeanor.

Sec. 11. In forming a passenger train upon any railroad operated in this state, the engine shall be placed at the head of the train, and no baggage or freight car shall be placed in the rear of any passenger car unless said passenger car is of steel construction; and any officer, agent, or other employe who shall cause them to be so placed, or who shall knowingly suffer the same to be done, shall be deemed guilty of a misdemeanor, and be punished accordingly.

HISTORY: How. 3373;—CL 1897, 6290;—CL 1915, 8300;—Am. 1927, p. 119, Act 82, Eff. Sept. 5;—CL 1929, 11179;—CL 1948, 466.11.

466.12 Endangering road; penalty; throwing missile at passenger train, penalty.

Sec. 12. If any person shall, by the placing of any impediment upon the track of any railroad, or by any other means whatsoever throw from said track any engine or cars used thereon, or attempt so to do, whether such engine or cars be thrown from said track or not, or shall by any other means whatsoever willfully endanger or attempt to endanger the lives of persons engaged in the work of said road, or persons traveling on the engine or cars of said road, he shall be subject to imprisonment in the state prison during his natural life, or any number of years, in the discretion of the court. And it shall not be necessary for the people to allege or prove in any such case that the person thereby intended to injure or endanger the life of any particular person or persons.

Or if any person shall throw any stone, brick or other missile at any passenger train he shall be deemed to be guilty of a misdemeanor, and on conviction thereof he shall be fined in an amount not less than 10 dollars or more than 300 dollars, or in default of fine, imprisonment in the county jail for not less than 10 or more than 90 days, or by both fine and imprisonment in the discretion of the court.

HISTORY: Am. 1879, p. 58, Act 63, Imd. Eff. May 6;—How. 3374;—CL 1897, 6291;—CL 1915, 8301;—CL 1929, 11180;—CL 1948, 466.12.

MISSILE: Throwing at passenger train, see Compilers' § 750.394.

OFFENSES: See Compilers' § 750.511 et seq.

466.13 Bells, whistles or sirens on locomotives; equipping and use; penalty; civil liability; signal boards; crossing markers.

Sec. 13. A bell of at least 30 pounds weight, and a steam or air whistle or siren, shall be placed on each locomotive engine, and except in incorporated cities and villages said whistle or siren shall be twice sharply sounded at least 40 rods before any highway crossing is reached, and at street crossings in incorporated cities and villages the bell shall be rung continuously until the crossing is passed, under a penalty of \$100.00 for each neglect. At street crossings within the limits of incorporated cities or villages, the sounding of the whistle or siren may be omitted unless required by the city or village ordinance. The company shall also be liable for all damages which shall be sustained by any person, by reason of such neglect. Unless some other form of warning sign or device is required by law or by order of the public service commission, every railroad corporation shall, and they are hereby required to cause signal boards to be placed, well supported by posts or otherwise, and maintained at each public road or street where the same is crossed by the railroad track at grade. The board shall be so elevated as not to obstruct travel and as to be seen by people before reaching the crossing, and on each side of such board shall be painted in letters not less than 12 inches in height, the words "railroad crossing;" but such boards need not be put up in incorporated cities or villages, unless required by city or village ordinance or by order of the public service commission.

HISTORY: How. 3375;—Am. 1885, p. 354, Act 234, Imd. Eff. Jun. 20;—CL 1897, 6292;—CL 1915, 8302;—CL 1929, 11181;—CL 1948, 466.13;—Am. 1949, p. 99, Act 89, Eff. Sep. 23;—Am. 1959, p. 120, Act 117, Eff. Mar. 19, 1960.

466.14 Crossing other railroads; stopping, precedence; penalty.

Sec. 14. Every locomotive engine, passenger, freight, or other train of cars running on any railroad shall be brought to a full stop not nearer than 200 feet nor further than 800 feet from any railroad crossing, and shall not cross until the way is clear; and when 2 passenger or freight trains come up at the same time, the train on the road first built shall have precedence, provided they are both main tracks over which passengers and freights on said road are transported, but if only 1 is such main track, and the other is a side or depot track, then the train on the main track shall take precedence; but if 1 of said trains is a passenger and the other a freight train, then the former shall take the precedence, and every engineer, conductor, or other person having charge or control of said engine or train, who shall offend against the provisions of this section, shall be liable to a fine of not exceeding 100 dollars for each violation: Provided, That whenever there shall be adopted and used at any such crossing an interlocking switch and signal system, or other device which in the judgment of the commissioner of railroads will render it safe to permit engines and trains to pass over such crossings without being brought to a stop as above provided, said commissioner may, by a written order, a copy of which shall be filed and retained in his office, give permission for engines and trains to pass under such regulations as to rate of speed, and in other respects as he may deem proper, which order, however, said commissioner may at any time modify or revoke.

HISTORY: Am. 1883, p. 190, Act 174, Eff. Sept. 8;—How. 3376;—CL 1897, 6293;—CL 1915, 8303;—CL 1929, 11182;—CL 1948, 466.14
SUIT FOR PENALTY: See Compilers' § 467.10.

466.15 Fences, cattleguards and crossings; erection; injury to animals; destruction; penalties and civil liability.

Sec. 15. Every railroad company formed under this act or any former act, and every corporation owning or operating any such railroad, shall erect and maintain in effective condition of repair, fences on each side of the right of way to their respective roads, as hereinafter provided. A legal railroad fence shall not be less than 4 ½ feet high, and shall be made of boards and posts in combination as follows: The boards to be of pine or hemlock, 6 inches in width and 16 feet in length; the posts to be of cedar, tamarack or oak, not less than 7 feet in length and 5 inches in diameter, to be set not less than 2 ½ feet in the ground at a distance apart not more than 8 feet from center to center. First a board shall be nailed to the posts close to the ground; 5 inches above such first board, a second; 6 inches above the second, a third; 6 inches above the third, a fourth; 6 inches above the fourth, a fifth; all to be capped with a like board securely nailed to the fifth board and to the posts, all the boards to be firmly nailed to the posts with not less than 2 eightpenny or tenpenny fence nails at each post; or it may be constructed of posts, boards and wire in combination, as follows: The posts shall be of cedar, tamarack or oak, not less than 7 feet in length and 5 inches in diameter, to be set not less than 2½ feet in the ground at a distance apart of not more than 8 feet from center to center; at a height of 16 inches from the ground a pine or hemlock fence board 6 inches in width, and 7 inches above such first pine or hemlock board, a second of the same width, both fence boards to be firmly nailed to the posts with 2 eightpenny or tenpenny fence nails at each post; at a height of 5 inches from the ground a barbed fence wire and at 10 inches from the ground a second barbed wire; 44 inches from the ground, or 9 inches from the second pine or hemlock board, a third barbed wire; and 53 inches from the ground, or 9 inches above the third barbed wire, a flat Brinkerhoof strip, or some other metallic strand of similar pattern; or it may be constructed with such posts and set as above described and made as follows: At a height of 4 inches from the ground a barbed fence wire; at 9 inches from the ground a second barbed wire; at 14 inches from the ground a third barbed wire; at 20 inches from the ground a fourth barbed wire; at 28 inches from the ground a fifth barbed wire; at 37 inches from the ground a sixth barbed wire; at 48 inches from the ground a 6-inch pine or hemlock fence board, capped with a 6-inch pine or hemlock fence board; such wires and strips to be properly strained, and the posts sufficiently braced wherever necessary to prevent the wires from becoming loose or sagging, and the wires to be securely fastened to the posts with sufficient staples; all inequalities of the ground under the fence to be surfaced and leveled so that no animals can pass under the lower strand: Provided, That any fence or cattle-guard which shall have the written approval and endorsement of the Michigan railroad commission of this state and which fence is not less than 4 ½ feet in height and is otherwise equal in durability, strength and sufficiency to turn animals and stock to the fences herein described shall be a legal railroad fence or cattle-guard: Provided further, Any railroad company that has already erected fences along the line of its right of way may allow the same to remain until otherwise ordered by the Michigan railroad commission; but in such case said railroad company or corporation shall be liable for all damages done to animals or stock coming upon its right of way through or over such fence, but on the trial of any action for damages, if it shall be shown that the fence through or over which such animals or stock entered upon such right of way was 4 feet in height and otherwise equal in strength and sufficiency to turn animals or stock to the fence provided for in this act, then no damages shall be recovered. Such right of way fences shall be provided with suitable connecting fences and cattle-guards at all highway and street crossings, which shall at all times be kept in effective repair and sufficient to prevent stock of all kinds from passing upon the track of the railroad at such highway or street crossings. Con-

venient farm crossings shall also be constructed by any such railroad corporation across the right of way and track of its railroad, with the necessary gates or bars therefor, as the owner or occupant of the premises may elect, at the sides of the right of way, which said gates or bars shall be of sufficient width to admit the free and easy transportation of all farm machinery, including harvesters or binders, in form as the same are usually drawn, upon the application of the owner or owners of land lying upon both sides of such railroad track, the same being enclosed by exterior fences, and being adjacent to such right of way. In cases where a railroad is immediately adjacent to or laid upon a highway and intervenes between said highway or the usually traveled portion thereof and the residence buildings of real property fronting upon said highway, open, unobstructed residence crossings, suitably guarded, substantially as are provided for highway and street crossings, shall be provided and maintained by the railroad corporation operating said railroad: Provided, The same shall be so ordered by the Michigan railroad commission. It shall also be the duty of each railroad company or corporation to construct and maintain a convenient and suitable crossing across its right of way to any private property, summer home or summer resort, whenever request therefor is made by any owner or owners or occupants of any such property. In case of disagreement between the owner of any such land and the railroad corporations as to the necessity for, location of, or character of farm crossings, or such private residence or other crossing so applied for, or as to the plan or construction of the gate or guards as herein provided, then either party may present the matter in dispute to the Michigan railroad commission, which may proceed to investigate the same as soon as may be and render its decision thereon, which shall be final and binding upon the parties, respectively, and such farm crossings and such private residence or other crossings shall be constructed within the time prescribed by the said Michigan railroad commission under a penalty of 10 dollars for each and every day that such complete construction of the farm crossing, private residence or other crossing shall be delayed beyond the expiration of the time fixed for its completion by the said Michigan railroad commission. Such railroad corporation shall also be liable to the owner or occupant of said adjacent lands for all actual damages resulting from its failure to construct and maintain and properly guard such open and unobstructed way as herein provided for such private residence or other crossings. Until such crossings, fences and cattle-guards as hereinbefore provided for shall be duly constructed, the company or corporation owning or operating such road shall be liable for all damages done to cattle or other animals thereon which may result from the neglect of such company or corporation maintaining or operating such road, to construct and maintain in repair such crossings, fences and cattle-guards as aforesaid, to be recovered by the owner of such cattle or other animals in a civil action before any court of competent jurisdiction, and after such company or corporation shall have constructed such crossings, fences and cattle guards as hereinbefore provided, and while it shall continue to maintain the same in good and sufficient repair, it shall not be liable for any such damages as aforesaid, unless negligently or wilfully done. Every such company or corporation owning or operating any such railroad shall, within 3 months from the time any section or portion of such road is finished and put in general use by running regular trains thereon, and in the case of any roads now in use from the time this act shall take effect, erect and maintain the crossings, fences and cattle-guards as herein provided. Any violation of the provisions of this section on the part of any railroad corporation owning or operating any railroad in this state, by failure or neglect to construct and maintain crossings, fences and cattle-guards as herein required, shall be punished by a penalty of 25 dollars per day for each and every day that such neglect or failure shall continue: Provided, That if such fences and cattle-guards shall not be built as aforesaid along such portions of any line of road as is or may be constructed north of a line extending due

west from the mouth of the Saginaw river, the corporation or company owning or operating any such line of road shall not be liable to the said penalty unless such fence or cattle-guards shall be ordered by the Michigan railroad commission, but shall be liable to all the other provisions of this section; and if any person shall ride, lead or drive, or intentionally permit any horse or other animal upon such road and within such fences or cattle-guards other than farm crossings, private residence or other crossings, or shall injure or destroy, or make openings or passages through or over such fences or cattle-guards, or neglect to close any gates or bars immediately after passing through the same, without the consent of such company or corporation, he shall, for every such offense, be liable to a fine not exceeding 100 dollars, and shall also pay all damages which shall be sustained thereby to the party aggrieved: Provided further, That nothing herein contained shall be construed to prevent the erection of any other fence than that herein provided for, as may be agreed upon in writing between the duly authorized agent or officer of any railroad corporation and the owner of any land through which the road of such corporation may be in operation.

HISTORY: Am. 1875, p. 139, Act 98, Eff. Aug. 3;—Am. 1881, p. 404, Act 289, Eff. Sept. 10;—How. 3377;—Am. 1885, p. 355, Act 234, Imd. Eff. June 20;—Am. 1887, p. 338, Act 261, Eff. Sept. 28;—Am. 1889, p. 26, Act 26, Imd. Eff. Mar. 26;—Am. 1889, p. 186, Act 165, Imd. Eff. June 19;—CL 1897, 6294;—Am. 1909, p. 754, Act 308, Eff. Sept. 1;—CL 1915, 8304;—CL 1929, 11183;—CL 1948, 466.15.

MICHIGAN RAILROAD COMMISSION: Abolished; powers and duties transferred to the public service commission, see Compilers' §§ 460.4 and 460.53.

466.16 Loss by fire; liability, exceptions.

Sec. 16. Any railroad company, building, owning, or operating any railroad in this state, shall be liable for all loss or damage to property by fire originating from such railroad, either from engines passing over such roads, fires set by company employes by order of the officers of said road, or otherwise originating in the constructing or operating of such railroad: Provided, That such railroad company shall not be held so liable if it prove to the satisfaction of the court or jury, that such fire originated from fire by engines, whose machinery, smoke-stack, or fire boxes were in good order and properly managed, or fires originating in building, operating, or repairing such railroad, and that all reasonable precautions had been taken to prevent their origin, and that proper efforts had been made to extinguish the same in case of their extending beyond the limits of such road, when the existence of such fire is communicated to any of the officers of such company.

HISTORY: How. 3378;—CL 1897, 6295;—CL 1915, 8305;—CL 1929, 11184;—CL 1948, 466.16.

466.17 Unfenced railroad; permission of land-owner or occupant to operate; complaint, injunction.

Sec. 17. All railroads through lands enclosed by exterior fences that shall not be fenced as required by section 15 of this article, within the time therein required, shall not be operated through such enclosed lands without the consent in writing of the owner or occupant thereof. Upon complaint being made under oath to said commissioner of railroads, by any person or persons owning or occupying such lands, that any railroad is being operated through the same in violation of the provisions of this section, he shall proceed to ascertain the facts in regard thereto, and if satisfied that such railroad is being so operated, he shall cause notice to be served upon the company, or corporation owning or operating such railroad, requiring the fences and cattle-guards to be constructed within such time, not less than 15, or more than 60 days, as may be specified in such notice, at the discretion of said commissioner of railroads. In case of the refusal, or neglect of any such company, or corporation as aforesaid, to comply with the requirements of the order of the commissioner of railroads, and to fence their road, and put in the necessary cattle-guards, within the time prescribed in the said notice of the commissioner, then it shall be the duty of the said commissioner, first giving at least 5 days' notice previous thereto, to the corporation so refusing or neglecting to comply with his said order, to present, either in open court, or at his chambers, to the

judge of the circuit court in and for the county in which the land so remaining unfenced, as herein provided, is situated, his petition setting forth the fact of said railroad company, or corporation refusing to comply with the requirements of his said order and praying for an injunction restraining such company, or corporation from operating its road through the enclosed lands described in the said order of the said commissioner, until such fences and cattle-guards are constructed in accordance with the requirements of said order. If upon the hearing of such petition, the circuit judge to whom the same shall be presented, shall be satisfied that the facts set forth in the petition of said commissioner of railroads are true, he shall grant an injunction as prayed for, restraining the corporation, or company from operating its road through the land described in the said petition, until such time as the requirements of the commissioner's order to fence shall have been fully complied with, and the fact of such compliance duly certified by the said commissioner of railroads to the corporation, or company so enjoined from operating its road as herein provided, shall relieve such company, or corporation from the further restraint imposed by such injunction.

HISTORY: Add. 1879, p. 189, Act 207, Eff. Aug. 30;—How. 3379;—Am. 1885, p. 357, Act 234, Imd. Eff. June 20;—CL 1897, 6296;—CL 1915, 8306;—CL 1929, 11185;—CL 1948, 466.17.

COMMISSIONER OF RAILROADS: Superseded by railroad commission, see Compilers' § 462.49, which, in turn, was superseded by public utilities commission, see Compilers' § 460.53, which, in turn, was superseded by public service commission, see Compilers' § 460.4.

FENCES: See Compilers' §§ 462.39, 466.15 and 471.23.

466.18 Uniform, cap and badge furnished certain employees; forfeiture.

Sec. 18. Every railroad corporation shall provide a uniform hat or cap and distinguishing badge to be worn by all its employes whose duties relate to the immediate transportation of passengers or their baggage. A corporation neglecting to furnish and provide such uniform hat, or cap and badges shall forfeit 100 dollars for each week such neglect shall continue; and if any employe for whom such uniform hat, or cap and badge is provided shall neglect when on duty to wear the same, the corporation employing him, shall for each case of such neglect, forfeit the sum of 5 dollars; and said corporation may retain the same out of the wages of the employe so offending; no employe unless wearing his uniform, hat or cap and badge shall be permitted to exercise any authority, or perform any of the duties of his office. The provisions of this section shall not apply to engineers and firemen.

HISTORY: Add. 1879, p. 189, Act 207, Eff. Aug. 30;—How. 3380;—CL 1897, 6297;—CL 1915, 8307;—CL 1929, 11186;—CL 1948, 466.18.

CONSTITUTIONALITY: Unconstitutional as class legislation. *Woodward v. Pere Marquette Ry. Co.*, 312 Mich. 67, 19 N.W. 2nd 499.

SUIT FOR PENALTY: See Compilers' § 467.10.

466.19 Lighting cars with certain oils; forfeiture.

Sec. 19. No passenger car on any railroad shall be lighted by naphtha, or by any illuminating oil or fluid made in part of naphtha, or wholly or in part from coal oil or petroleum, or other substance, or material which will ignite at a temperature of less than 300 degrees Fahrenheit. Any railroad corporation which violates the provisions of this section shall forfeit a sum not exceeding 500 dollars.

HISTORY: Add. 1879, p. 190, Act 207, Eff. Aug. 30;—How. 3381;—CL 1897, 6298;—CL 1915, 8308;—CL 1929, 11187;—CL 1948, 466.19.

SUIT FOR PENALTY: See Compilers' § 467.10.

466.20 Bill of lading for goods not received; issuance by employee, penalty.

Sec. 20. If any officer, agent, clerk, servant or employe of any railway company of this state, or which may be doing business in this state, shall execute and deliver to any person or corporation, or execute to be delivered, a bill of lading, receipt or certificate, which shall purport to be property at the time of executing such bill of lading, receipt or certificate in possession of such railway company or its agent, when the property is not in the possession or control of said railway company, he shall be deemed guilty of a felony, and on conviction thereof, shall be punished by fine not exceeding 2,000 dol-

lars, or imprisonment in the state prison not exceeding 3 years or both in the discretion of the court.

HISTORY: Add. 1879, p. 263, Act 252, Eff. Aug. 30;—How. 3383;—CL 1897, 6299;—CL 1915, 8309;—CL 1929, 11188;—CL 1948, 466.20.

BILLS OF LADING: Uniform act, see Compilers' §§ 482.44 to 482.50.

FALSE STATEMENTS: See Compilers' § 482.44 et seq.

466.21 Bill of lading for goods not received; disposal, penalty.

Sec. 21. If any person having possession or control of a bill of lading, receipt or certificate of any such railway company, knowing the same to have been executed when the property described therein, was not in possession of the railway company or agent issuing the same, who shall sell, pledge or otherwise dispose of such bill of lading, receipt, or certificate for a valuable consideration or as security for a past debt, shall be deemed guilty of a felony, and on conviction thereof, shall be punished by fine not exceeding 3,000 dollars or imprisonment in the state prison not exceeding 3 years or both in the discretion of the court.

HISTORY: Add. 1879, p. 263, Act 252, Eff. Aug. 30;—How. 3384;—CL 1897, 6300;—CL 1915, 8310;—CL 1929, 11189;—CL 1948, 466.21.

DISPOSAL OF FALSE BILL: See also Compilers' § 482.48.

466.22 Restoration of stream, road or other thoroughfare; penalty; culverts and openings, construction; actions for penalties.

Sec. 22. Every railroad corporation constructing its road upon, or across any stream of water, watercourse, private road, street, lane, alley or highway, across any road, railroad or canal, which the line of its road shall lie along or intersect, and shall fail, neglect or refuse to restore such stream, watercourse, private road, street, lane, alley, highway, road, railroad or canal to its former condition as nearly as possible, as is provided by the fifth subdivision of section 9 of article 2 of this act, shall be liable to a penalty of not less than \$5.00, nor more than \$25.00, for each and every day that they shall fail, neglect or refuse to perform the things hereinbefore specified and required to be performed. All culverts, or other openings in, or under the roadbed of any such railroad corporation, made for the flow of water, shall be so constructed as not to interfere with the proper and thorough drainage of the land above such railroad. The penalties provided for each case herein shall be recovered in an action to be brought in the name of the people of the state of Michigan by the prosecuting attorney of the proper county, in which the offense charged shall have been committed, upon the complaint of the proper authorities of any city, village or township, or of any citizen injured or aggrieved by the violation by any railroad corporation, or company, of the provisions of this section.

History: Add. 1885, p. 358, Act 234, Imd. Eff. Jun. 20;—How. 3384a;—CL 1897, 6301;—CL 1915, 8311;—CL 1929, 11190;—CL 1948, 466.22;—Am. 1965, p. 411, Act 239, Eff. Mar. 31, 1966.

NOTE: Sec. 9 of Art. 2, above referred to, is Compilers' § 464.9.

SUIT FOR PENALTY: See Compilers' § 467.10.

466.23 Obstruction of vehicular traffic for more than five minutes; unlawful.

Sec. 23. It shall be unlawful for a railroad company to permit any of its trains to obstruct any vehicular traffic on public streets or highways for a longer period than 5 minutes at any one time.

HISTORY: Add. 1965, p. 412, Act 239, Eff. Mar. 31, 1966.

466.24 Obstruction of vehicular traffic for more than five minutes; clearing of delayed traffic, delay between train movements.

Sec. 24. It shall be unlawful for a railroad company to permit successive train movements to obstruct any vehicular traffic on any public streets or highways until all vehicular traffic previously delayed by such train movements has been cleared or a period of 5 minutes has elapsed between train movements.

HISTORY: Add. 1965, p. 412, Act 239, Eff. Mar. 31, 1966.

466.25 Violation of sections; penalty.

Sec. 25. Each offense under sections 23 and 24 of this article shall be a separate violation punishable by a fine of \$500.00 or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment in the discretion of the court.

HISTORY: Add. 1965, p. 412, Act 239, Eff. Mar. 31, 1966.

ARTICLE V.—MISCELLANEOUS PROVISIONS.

467.1 Stockholder's liability; contribution.

Sec. 1. All the stockholders of any such company shall be individually liable for all the labor performed; but they shall not be liable to an action therefor until an execution shall be returned unsatisfied, in whole or in part, against the corporation, and the amount due on such execution shall be prima facie evidence of the amount recoverable with cost against any such stockholder, and every stockholder against whom any such recovery for labor, ties, wood and supplies shall have been had, shall have the right to recover the same of the other stockholders in said corporation, in ratable proportion to the amount of stock they shall respectively hold.

HISTORY: How. 3385;—CL 1897, 6302;—CL 1915, 8312;—CL 1929, 11191;—CL 1948, 467.1.

467.2 Passenger killed or injured while violating regulations; liability of company.

Sec. 2. In case any passenger on any such road shall be killed or injured while on the platform of a car, or while in or on any baggage or freight car, in violation of the printed regulations of the company, posted up at the time in a conspicuous place inside its passenger cars, then in the train, such company shall not be liable for the injury, if the injury be occasioned by the person being improperly on such platform or within such baggage or freight car, or after having been notified by the conductor or any other person having charge of any train, that such person is not in the proper place: Provided, said company at the time furnished room and seats inside its passenger cars sufficient for the proper accommodation of its passengers.

HISTORY: How. 3386;—CL 1897, 6303;—CL 1915, 8313;—CL 1929, 11192;—CL 1948, 467.2.

467.3 Dividend payment when company insolvent; penalty on directors.

Sec. 3. If the directors of any corporation organized under this act, shall declare and pay any dividend when the company is insolvent, or the payment of which would render it insolvent, they shall be severally liable to a penalty of 500 dollars.

HISTORY: How. 3387;—CL 1897, 6304;—CL 1915, 8314;—CL 1929, 11193;—CL 1948, 467.3.

SUIT FOR PENALTY: See Compilers' § 467.10.

467.4 False statement; penalty.

Sec. 4. If any certificate or report made or public notice given by the officers of any such company, in pursuance of the provisions of this act, shall be wilfully false in any material representations, all the officers who shall have signed the same, knowing it to be false, shall be severally liable to a penalty of 500 dollars each.

HISTORY: How. 3388;—CL 1897, 6305;—CL 1915, 8315;—CL 1929, 11194;—CL 1948, 467.4.

SUIT FOR PENALTY: See Compilers' § 467.10.

467.5 Railroads to carry United States mails; compensation.

Sec. 5. Any corporation organized under this act or any former act shall, when applied to by the postmaster general, carry the mails of the United States on their road or roads respectively, but the prices shall not be less for carrying said mails in the regular passenger trains than the amount which said corporation would receive as freight on a like weight of merchandise transported in their merchandise train and a fair compensation for their postoffice car.

HISTORY: How. 3389;—CL 1897, 6306;—CL 1915, 8316;—CL 1929, 11195;—CL 1948, 467.5.

467.6 Forfeiture of corporate rights.

Sec. 6. If any railroad company shall not, within 3 years after its organization begin the construction of its road and expend thereon 10 per cent on the amount of the capital stock subscribed, and finish the road and put it in full operation in 10 years from the time of its organization, it may be adjudged to have forfeited its corporative rights and privileges by any court of competent jurisdiction, on the petition of 1/4 in value of its stockholders, except as to so much thereof as shall be completed at the time of filing such petition.

HISTORY: How. 3390;—CL 1897, 6307;—CL 1915, 8317;—CL 1929, 11196;—CL 1948, 467.6.

467.7 Death; liability of railroad causing.

Sec. 7. Whenever the death of a person shall be caused by wrongful act, neglect, or default, of any railroad company, or its agents, and the act, neglect, or default is such as would (if death had not ensued) entitle the party injured to maintain an action and recover damages in respect thereof, then and in every such case, the railroad corporation which would have been liable if death had not ensued shall be liable to an action on the case for damages, notwithstanding the death of the person so injured, and although the death shall have been caused under such circumstances as amount in law to felony.

HISTORY: How. 3391;—CL 1897, 6308;—CL 1915, 8318;—CL 1929, 11197;—CL 1948, 467.7.

LIEN: Judgment for death or personal injury to constitute lien, see Compilers' § 468.452.

DEATH ACT: Compilers' §§ 600.2921 and 600.2922.

467.8 Death; liability of railroad causing; parties to action; damages, distribution; saving clause.

Sec. 8. Every such action shall be brought by and in the names of the personal representatives of such deceased person, and the amount recovered in any such action, shall be distributed to the persons, and in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate; and in every such action the jury may give such amount of damages as they shall deem fair and just, to the persons who may be entitled to such damages when recovered: Provided, Nothing herein contained shall affect any suit or proceedings heretofore commenced and now pending in any of the courts of this state.

HISTORY: How. 3392;—CL 1897, 6309;—CL 1915, 8319;—CL 1929, 11198; CL 1948, 467.8.

467.9 Fraudulent securities; issuance or sale, penalty.

Sec. 9. If any president, secretary, or other officer of any railroad corporation within this state shall wilfully and with intent to defraud said corporation, or any other person, make, sign, issue, sell, or offer to sell, any false or fraudulent stock, or other evidence of debt of said corporation, he shall be deemed guilty of felony and shall be punished by imprisonment in the state prison at hard labor for a term not exceeding 10 years.

HISTORY: How. 3393;—CL 1897, 6310;—CL 1915, 8320;—CL 1929, 11199;—CL 1948, 467.9.

ISSUANCE OF SECURITIES: Fraud in, see Compilers' § 750.271.

See Compilers' § 460.301 et seq.

467.10 Suits for penalties.

Sec. 10. All penalties incurred under this act, when not otherwise provided for, may be sued for in the name of the people of the state of Michigan, and if such penalty be for a sum not exceeding 100 dollars, then such suit may be brought before a justice of the peace.

HISTORY: How. 3394;—CL 1897, 6311;—CL 1915, 8321;—CL 1929, 11200;—CL 1948, 467.10.

SUIT FOR PENALTY: See (Jud. Act) Compilers' § 600.4805 et seq.

467.11 Effect of amendment or repeal of act or dissolution; application of act.

Sec. 11. This act may at any time be altered, amended, or repealed, but such alteration, amendment or repeal shall not affect the rights of property of companies organized under it; nor shall the dissolution of any such company take away or impair any remedy given for or against such corporation, its stockholders or officers, for any liability which shall have been previously incurred; and the provisions of this act shall apply to all companies incorporated or existing under the laws of this state, except the Paw Paw railroad company which shall in no manner be affected by the passage of this act, in respect to the franchises and privileges heretofore granted to said company.

HISTORY: How. 3395;—CL 1897, 6312;—CL 1915, 8322;—CL 1929, 11201;—CL 1948, 467.11.

467.12 Repeal; saving clause.

Sec. 12. All acts and parts of acts contravening any of the provisions of this act are hereby repealed; but all proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this act takes effect, are hereby saved, and such proceedings may be consummated under and according to the law in force at the time such proceedings were commenced, or they may be abandoned and new proceedings taken under this act.

HISTORY: How. 3396;—CL 1915, 8323;—CL 1929, 11202;—CL 1948, 467.12.

NOTE: There is no repealing clause in the title of this act.

467.13 Repeal; corporations organized under repealed acts; saving clause.

Sec. 13. The following entitled acts are hereby repealed, viz: "An act to provide for the incorporation of railroads," approved February twelfth, 1855; "An act supplementary to an act entitled 'An act to provide for the incorporation of railroad companies,' approved February 12, 1855," approved March 20, 1863; "An act supplementary to an act entitled 'An act to provide for the incorporation of railroad companies,' approved February twelfth, 1855," approved March 27, 1867; "An act to compel railroad companies to provide their passenger coaches with aprons between the coaches for the protection of passengers, and for other purposes," approved March 27, 1867; "An act for the relief of railroads in the upper peninsular [peninsula] ," approved March 27, 1867; also, "An act to revise the laws providing for the incorporation of railroad companies," approved April 18, 1871; also, all laws amendatory thereto, or in any of the parts thereof in conflict with the provisions of this act; but the organization of all corporations, under the provisions of either of said acts, shall be deemed and taken to be organizations under this act, and all rights, obligations, and liabilities contracted or incurred by any of such corporations thereunder, or under the provisions of any law now in force, not inconsistent with the provisions of this act, shall continue of the same force and effect as though such acts or law had not been repealed, and all such companies, from and after the taking effect of this act, shall be subject to all the provisions hereof as fully as though such organization had been perfected hereunder.

HISTORY: How. 3397;—CL 1915, 8324;—CL 1929, 11203;—CL 1948, 467.13.

NOTE: Act 82 of 1855, Act 229 of 1863, Act 120 of 1867, Act 148 of 1867, Act 155 of 1867 and Act 195 of 1871 are the acts above referred to. See Compilers' § 468.201.

NOTE: There is no repealing clause in the title of this act.

467.14 Immediate effect.

Sec. 14. This act shall take immediate effect.

HISTORY: CL 1915, 8325;—CL 1929, 11204;—CL 1948, 467.14.

467.22 Blocking of frogs, switches and guard rails; penalty for failure.

Sec. 22. All person or persons, railroad companies or corporations owning or operating roads in this state shall, and are hereby required on or before the first day of January, 1884, to so adjust, fill or block the frogs, switches and guard rails on their roads, in all yards, divisional and terminal stations, and where trains are made up as to prevent the feet of employes or other persons from being caught therein. Any railroad company or corporation, which shall fail to comply with the provisions of this section shall be liable to a fine of not less than 100 dollars, nor more than 1,000 dollars, and the neglect of any such person, company, or corporation to comply with the provisions of this section, shall be deemed a violation of the same. All penalties incurred under this act may be recovered in the manner provided by law for the recovery of penalties incurred by private persons.

HISTORY: Add. 1883, p. 191, Act 174, Eff. Sept. 8;—How. 3397-a;—CL 1897, 6313;—CL 1915, 8326;—CL 1929, 11205;—CL 1948, 467.22.

COMPILERS' NOTE: This section is numbered 22 in Act 174 of 1883, although the last section of article 5 of Act 198 was section 14. The intention of the legislature at the time was to add it to article 4 of Act 198 of 1873. However, a Sec. 22 was added to article 4 by Act 234 of 1885.

SUIT FOR PENALTY: See Compilers' § 467.10.

467.24 System of accounts; inspection by commissioner; penalty.

Sec. 24. The accounts of all railroad companies doing business in this state, shall be kept in accordance with a uniform system to be prescribed by the commissioner of railroads, and which shall not be liable to be changed by such commissioner oftener than once in 2 years, and then only on notice of such contemplated change, to the accounting officer of each company at least 6 months before the beginning of the calendar year in which such change is to take effect. The above mentioned accounts shall be at all reasonable times open to the inspection of the commissioner of railroads for verification and examination of detail. Any company neglecting or refusing to comply with the provisions of this section shall be liable to a penalty of 200 dollars for each and every week it shall so neglect or refuse.

HISTORY: Add. 1881, p. 129, Act 144, Eff. Sept. 10;—How. 3398;—CL 1897, 6314;—CL 1915, 8327;—CL 1929, 11206;—CL 1948, 467.24.

COMPILERS' NOTE: This section and the following one are numbered 24 and 25 in the amendatory act of 1881. They were added before Sec. 22 was added by Act 174 of 1883 and several numbers are omitted.

SUIT FOR PENALTY: See Compilers' § 467.10.

467.25 Location of general office; penalty.

Sec. 25. Every railroad company owning or operating a line of railroad in this state, shall keep a general office, at some point on its line of railroad and within the United States, where the general accounts of the company and the detailed accounts of its current business shall be kept. Any company refusing or neglecting for the period of 6 months to comply with the provisions of this section shall be liable to a penalty of 1,000 dollars for such refusal or neglect.

HISTORY: Add. 1881, p. 129, Act 144, Eff. Sept. 10;—How. 3399;—CL 1897, 6315;—CL 1915, 8328;—CL 1929, 11207;—CL 1948, 467.25.

SUIT FOR PENALTY: See Compilers' § 467.10.

467.26 Ordinary baggage, baggage; definitions.

Sec. 26. The words "ordinary baggage" and "baggage" wherever used in this act and in the acts amendatory thereto, shall be deemed to include bicycles, baby carriages and go-carts, and no passenger shall be required to crate, cover or otherwise protect any such baggage: Provided, Each passenger shall be entitled to have but 1 bicycle, baby carriage or go-cart transported under the provisions of this act.

HISTORY: Add. 1897, p. 114, Act 104, Imd. Eff. April 28;—CL 1897, 6316;—Am. 1911, p. 47, Act 39, Eff. Aug. 1;—CL 1915, 8329;—CL 1929, 11208;—CL 1948, 467.26.

467.27 Equipment of baggage cars; liability.

Sec. 27. All railroad companies shall equip their baggage cars with hooks, racks or other appliances for the safe and convenient storage and transportation of bicycles, baby carriages and go-carts. Such hooks, racks or other appliances shall be of such construction as not to scratch, mar or injure the bicycle, baby carriage or go-cart in any way. Any railroad company whose baggage cars are equipped as above provided shall not be liable for any damage to any bicycle, baby carriage or go-cart while being stored or transported, unless such damage results from carelessness or negligence of its employees.

HISTORY: Add. 1897, p. 114, Act 104, Imd. Eff. April 28;—CL 1897, 6317;—Am. 1911, p. 48, Act 39, Eff. Aug. 1;—CL 1915, 5330;—CL 1929, 11209;—CL 1948, 467.27.

467.28 Railroad, bridge or tunnel company; dissolution.

Sec. 28. Any railroad, bridge or tunnel company formed under this act or any former act may be wound up or dissolved either voluntarily or involuntarily. If the proceedings are voluntary they may be conducted either out of court or subject to the supervision of the court. If the proceedings are involuntary they must be subject to the supervision of the court. If the corporation shall be wound up or dissolved subject to the supervision of the court, the proceedings shall be under the judicature act—Act No. 314 of the Public Acts of 1915, being sections 600.1 to 681.3, inclusive, of the Compiled Laws of 1948; except that any corporation whose assets had been wholly disposed of under court order in receivership or bankruptcy proceedings may be summarily dissolved by order of the court having jurisdiction of such proceedings, and a copy of such order shall be filed by the clerk of such court with the secretary of state.

HISTORY: Add. 1955, p. 76, Act 47, Eff. Oct. 14.

467.29 Railroad, bridge or tunnel company; dissolution before beginning business; refund of contributions.

Sec. 29. Before beginning the business for which any corporation was created, the incorporators may surrender all their corporate rights and franchises, by filing in the manner provided for original articles a certificate, verified by the oath of a majority of the incorporators, that such part of the capital as has been paid in, less any proper disbursements actually made in connection with such organization, if any, has been refunded to the subscribers contributing the same and that such business has not been begun, and surrendering all rights and franchises, and thereupon such corporation shall be dissolved.

HISTORY: Add. 1955, p. 76, Act 47, Eff. Oct. 14.

467.30 Railroad, bridge or tunnel company; cessation of business, audit, inventory, appraisal.

Sec. 30. Any solvent corporation which shall desire to cease doing business, surrender its franchises and wind up its corporate affairs, may do so by the following procedure with the consent of the holders of at least 2/3 of each class of the outstanding capital stock of the corporation given at a meeting duly called and held. The shareholders may then appoint 3 or more of the directors or trustees to make an audit of the books, accounts and papers, and to make an inventory and appraisal of the property of such corporation, which audit and inventory shall be filed with the board. Upon receiving such audit and inventory, the directors shall proceed to liquidate all of the debts and obligations of the corporation, and to sell the property, rights and franchises, to collect all claims due the corporation, and reduce all of such assets to possession.

HISTORY: Add. 1955, p. 76, Act 47, Eff. Oct. 14.

467.31 Railroad, bridge or tunnel company; dissolution, notice to creditors.

Sec. 31. It shall be the duty of the directors to cause a public notice of such approaching dissolution to be inserted once each week for 3 successive weeks next preceding the date fixed in such notice in some newspaper published in the city or village where such corporation has its registered office, calling the attention of all creditors to the same, and requesting such creditors to present their claims at the office of such corporation on or before a date to be fixed in such notice. It shall also be the duty of the directors to notify each known creditor by registered mail of such intention to dissolve.

HISTORY: Add. 1955, p. 76, Act 47, Eff. Oct. 14.

467.32 Railroad, bridge or tunnel company; settlement of claims, conveyances.

Sec. 32. The directors shall have full power and authority to settle, compromise and pay all claims against the corporation, and to receive, receipt and give acquittance for all debts due the corporation, and to authorize the officers thereof to execute and deliver such deeds or instruments as may be necessary in the sale or conveyance of any of the real or personal property of such corporation.

HISTORY: Add. 1955, p. 77, Act 47, Eff. Oct. 14.

467.33 Railroad, bridge or tunnel company; final meeting of shareholders; financial statement; distribution of surplus.

Sec. 33. As soon as may be convenient after the property has been sold, all assets reduced to cash and all debts paid, the directors shall call a final meeting of the shareholders and shall present at such meeting a detailed financial statement showing the exact surplus to be distributed among the shareholders. Such statement shall be subject to such audit as the holders of a majority of the outstanding capital stock of the corporation may direct, and the directors may then proceed to order the distribution of such surplus in such manner as they shall determine as the respective interests may appear.

HISTORY: Add. 1955, p. 77, Act 47, Eff. Oct. 14.

467.34 Railroad, bridge or tunnel company; certificate of dissolution filed.

Sec. 34. It shall be the duty of the president and secretary of such corporation to execute and file with the secretary of state a certificate reciting the resolution to dissolve, a copy of the final statement, and the affidavit of the treasurer or an assistant treasurer of such corporation that all of the debts of such corporation have been paid and the surplus distributed to the shareholders and giving the name and address of the custodian of the records of such corporation.

HISTORY: Add. 1955, p. 77, Act 47, Eff. Oct. 14.

467.35 Railroad, bridge or tunnel company; dissolution; rights of creditors.

Sec. 35. Upon filing such final certificate, the said corporation shall be deemed to be dissolved, its franchise surrendered, and all of its powers, rights and privileges extinguished: Provided, That nothing in this act contained shall be construed as taking away or prejudicing any right of creditors to pursue any remedy at law or in chancery given by any law of this state with respect to such corporation or its shareholders within such period as may be prescribed in the statutes of limitations.

HISTORY: Add. 1955, p. 77, Act 47, Eff. Oct. 14.

467.36 Railroad, bridge or tunnel company; dissolution by sale of part or all of assets; distribution.

Sec. 36. Any solvent railroad, bridge or tunnel company may also be dissolved by the vote or written consent of the holders of at least 3/4 of each class of its outstanding stock in the following manner: By the sale of a part or the whole of its assets, the

payment of all its debts and liabilities, or making provision for the payment thereof, and the distribution of the residue pro rata among its shareholders; or, after payment of all its debts and liabilities, or making provision for the payment thereof, the remaining assets may be distributed in kind pro rata among its shareholders. If there is more than 1 class of shares, any such distribution shall be in accordance with the preferences thereof, if any. Within 30 days after any such dissolution a certificate signed by the holders of at least 3/4 of each class of its outstanding stock shall be filed with the secretary of state, showing that all the debts and liabilities have been paid or provision for the payment thereof made and the assets have been distributed pro rata among the shareholders or provision for such distribution made.

HISTORY: Add. 1855, p. 77, Act 47, Eff. Oct. 14.

Act 64, 1885, p. 64; Eff. Sep. 19.

AN ACT supplementary to an act entitled "An act to revise the laws providing for the incorporation of railroad companies and to fix the duties and liabilities of all railroad, and other corporations, owning or operating any railroad in this state," approved May first, 1873.

The People of the State of Michigan enact:

467.101 Cable railway companies; incorporators, directors.

Sec. 1. That it shall be lawful for any number of persons, not less than 7, to form themselves into a company for constructing, maintaining, and operating, either a surface or elevated railway for the public use in the conveyance of persons and property, by means of a propelling rope, or cable attached to stationary power, and upon compliance with the provisions of the aforesaid act, the same being Act No. 198 of the laws of 1873, and of the acts amendatory thereof, they shall become a body corporate; Provided, That the directors may be limited to any number not less than 5, to be specified in the articles of association.

HISTORY: How. 3399a;—CL 1897, 6318;—CL 1915, 8331;—CL 1929, 11210;—CL 1948, 467.101.

NOTE: Act 198 of 1873, above referred to, is Compilers' §§ 463.1 to 467.27.

467.102 Cable railway companies; name, powers, liabilities.

Sec. 2. Any such company may style itself by the name of the inventor or patentee of the particular method of propulsion or traction used, together with such local designation as the associates may deem desirable, and shall by such name set forth in their articles of association, have and enjoy all the powers and privileges, and be subject to the liabilities mentioned in the provisions of the aforesaid acts.

HISTORY: How. 3399b;—CL 1897, 6319;—CL 1915, 8332;—CL 1929, 11211;—CL 1948, 467.102.

467.103 Cable railway companies; fare.

Sec. 3. Corporations formed under the provisions of this act may fix and collect rates of fare on their respective roads, not to exceed 3 cents per mile or any fraction of a mile for each passenger carried.

HISTORY: How. 3399c;—CL 1897, 6320;—CL 1915, 8333;—CL 1929, 11212;—CL 1948, 467.103.

RATES: See Compilers' §§ 460.54, 460.57 and 466.32.

Act 124, 1867, p. 165; Eff. Jun. 27.

AN ACT to fix the liability of railroad companies as common carriers in certain cases.

The People of the State of Michigan enact:

467.151 Common law liabilities of railroads; changing.

Sec. 1. That no railroad company shall be permitted to change or limit its common law liability as a common carrier, by any contract or in any other manner, except by a written contract, none of which shall be printed, which shall be signed by the owner or shipper of the goods or property to be carried.

HISTORY: CL 1871, 2386;—How. 3418;—CL 1897, 5239;—CL 1915, 8334;—CL 1929, 11574;—CL 1948, 467.151.

467.152 Freight; right to collect and deliver.

Sec. 2. Nothing in this act shall be so construed as to interfere in any way with the right of railroad companies to collect or deliver freights from and to any of their depots or elsewhere, and said railroad companies shall under this act have the right to collect and deliver said property; Provided, That no additional charge shall be made therefor; Provided further, That nothing herein contained shall be so construed as to preclude any owner or shipper of any such goods, freight or property, from hauling the same to or from any place or places connected with any railroad, where such property, freight or goods are deliverable.

HISTORY: CL 1871, 2387;—How. 3419;—CL 1897, 5240;—CL 1915, 8335;—CL 1929, 11575; CL 1948, 467.152.

Act 156, 1905, p. 219; Imd. Eff. Jun. 1.

AN ACT authorizing street railway companies or any railroad company organized under the laws of this state to own, maintain and operate steamboats, barges or vessels.

The People of the State of Michigan enact:

467.201 Vessels; ownership and operation by railroads.

Sec. 1. Any street railway, or any railroad company, organized under the laws of this state, may own and operate, in connection with its railway lines, such number of steamboats, barges or vessels, as its traffic of passengers or freight shall render necessary to make complete its different routes. And it may own and operate such steamboats, barges and vessels beyond the boundary lines of the state of Michigan for the purpose of making connections with its lines in the carriage of passengers and freights.

HISTORY: CL 1915, 8441;—CL 1929, 11501;—CL 1948, 467.201.

VESSELS: Power of railroad to own and operate, see also Compilers' § 464.45.

General provisions as to operation, see Compilers' § 281.801 et seq.

AIRCRAFT AND MOTOR VEHICLES: Power of railroad to own and operate, see Act 193 of 1929, being Compilers' § 467.251. Power of street railway to own and operate motor vehicles, see Compilers' § 472.15.

467.202 Vessels; ownership and operation by railroads; restrictions.

Sec. 2. Said companies shall operate such steamboats, barges or vessels subject to such restrictions as are now imposed on other corporations and private individuals owning and operating steamboats, barges and vessels.

HISTORY: CL 1915, 8442;—CL 1929, 11502;—CL 1948, 467.202.

Act 193, 1929, p. 513; Eff. Aug. 28.

AN ACT to authorize railroad corporations to engage in the business of transporting persons and property for hire upon the public highways and the business of aerial transportation; to own capital stock and securities of corporations organized for or engaged in such transportation; to operate the property or any part or parts thereof of such corporations and to enter into working arrangements with them.

The People of the State of Michigan enact:

467.251 Railroad; operation of motor vehicles; aerial transportation; purchase of stock; leases and agreements.

Sec. 1. Any railroad company operating a railroad in this state, may own and operate automobile buses or motor vehicles and trailers for the purpose of transporting persons and property upon the public highways, for hire, subject to the provisions of the law regulating such transportation upon the public highways; but only after having obtained a certificate of public convenience and necessity from the Michigan public utilities commission as provided in Act No. 209 of the Public Acts of 1923 and all acts amendatory thereto; and may also own and operate equipment for, and engage in, aerial transportation; and any such railroad company may purchase and own capital stock and securities of corporations organized for, or engaged in, the business authorized in this act, may operate the properties or any part or parts thereof of such corporations by way of lease or any other agreement, and to enter into working arrangements and agreements with such corporations.

HISTORY: CL 1929, 11505;—CL 1948, 467.251.

NOTE: Act 209 of 1923, above referred to, is CL 1929, 11342 to 11352. For present law on common carriers, see Compilers' § 475.1 et seq.
MOTOR VEHICLES: Regulation, see Part Two of Title IX, being Compilers' § 256.1 et seq., and notes. For power of street railway to own, and operate, see Compilers' § 472.15.

AIRCRAFT: Regulation of, see Compilers' § 259.1 et seq.

VESSELS: Power of railroad to own and operate, see Act 156 of 1905, being Compilers' §§ 467.201 and 467.202.

CITED IN OTHER SECTIONS: The above section is cited in § 467.302.

Act 137, 1956, p. 249; Eff. Aug. 11.

AN ACT to authorize railroad corporations organized under the laws of this state to diversify their investments and business activities by permitting such corporations to organize and hold an interest in noncommon carrier subsidiary corporations and to invest in the stock of other corporations.

The People of the State of Michigan enact:

467.301 Railroad corporations; interest in noncommon carrier subsidiaries.

Sec. 1. Subject to the approval of the Michigan public service commission as required in section 2 of this act, a railroad corporation, where not prohibited by its articles of association or consolidation, may make use of such part of its property and assets as is not required in the performance of adequate service as a common carrier to the public to organize and hold an interest in subsidiary corporations engaged in noncommon carrier activities and business, and to hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of any other corporation or corporations of this or any other state, territory or country, and while owners of such stock may exercise all rights, powers and privileges of ownership, including the right to vote thereon.

HISTORY: New 1956, p. 249, Act 137, Eff. Aug. 11.

467.302 Railroad corporations; approval of investment.

Sec. 2. Property or other assets of a railroad corporation shall not be transferred to a subsidiary corporation or invested in the stock of another corporation, in pursuance of section 1 of this act, until a petition requesting such authority has been filed with the Michigan public service commission and an order approving such transfer or investment has been issued. The commission shall issue such order when the petitioning railroad has met the following conditions: That the value of the assets to be transferred to a subsidiary corporation or invested in corporate stock does not exceed the appropriated and unappropriated earned surplus of the railroad as of the date of the petition:

and that any real estate that is to be transferred from the railroad to a subsidiary corporation is not required in the performance of adequate service by the railroad as a common carrier to the public: Provided, That nothing in this act shall be construed to in any way extend, change or modify the privileges now enjoyed by any railroad corporation under Act No. 193 of the Public Acts of 1929, being section 467.251 of the Compiled Laws of 1948, or any other present act, to engage in the business of motor or air transportation.

HISTORY: New 1956, p. 249, Act 137, Eff. Aug. 11.

CHAPTER 468. RAILROAD RATES, FINANCING AND REGULATION

PASSENGER RATES Act 382 of 1919		GUARANTEE OF OBLIGATIONS OF OTHER CORPORATIONS Act 240 of 1929	
468.1-468.4	Repealed.	468.241	Railroad corporation; power to guarantee Obligations of other corporations.
Act 115 of 1921		ACQUISITION OF RIGHT OF WAY Act 138 of 1863	
468.31	Electric interurban railroads; passenger rates.	468.301	Acquisition of right of way; tender of damages, effect.
468.32	Electric interurban railroads; regulation by utilities commission, limit; examination of conditions.	ANIMALS AND PERISHABLE FREIGHT Act 236 of 1901	
468.33	Examination expenses paid by railroad; amortization.	468.321	Repealed.
468.34	Review of order.	INSPECTION BY ATTORNEY GENERAL Act 160 of 1905	
468.35	Temporary rates.	468.351	Records of railroad; inspection by attorney general.
468.36	Municipal rights not impaired.	468.352	Records of railroad; inspection by attorney general; enforcement of right.
468.37	Failure to comply; penalty, disposition; other remedies.	468.353	Records of railroad; inspection by attorney general; general designation in order sufficient.
SPECIAL RATES AND CONDITIONS Act 142 of 1875		468.354	Records of railroad; inspection by attorney general; defenses not available.
468.51	Reduced rate tickets.	468.355	Records of railroad; inspection by attorney general; rights of parties.
SECURING OF SETTLERS Act 74 of 1913		468.356	Records of railroad; inspection by attorney general; notice to show cause, service.
468.71	Transportation for persons engaged in securing settlers; certificate.	FORECLOSURE SALE, PREFERRED STOCK AND DELIVERY OF GOODS Act 96 of 1859	
468.72	Certificate; statement, filing.	468.371	Foreclosure sale; procedure to reorganize and issue stock; cancellation of old stock; prior liens; liability.
468.73	Certificate; cancellation.	468.372	Preferred stock; terms, dividends.
CARS MOVED TO AND FROM SIDE TRACKS Act 252 of 1889		468.373	Personal delivery of goods; rights of consignor and consignee; draymen's municipal licenses.
468.101	Cars moved to or from side tracks; charges.	PROTECTION OF LABORERS AND MATERIALMEN Act 100 of 1871	
PULLMAN, PARLOR OR CHAIR CARS Act 38 of 1875		468.401	Laborers and materialmen; preference in payment, exception.
468.121	Pullman, parlor or chair cars; use, rules, compensation.	468.402	Laborers and materialmen; collection of sums due.
468.122	First-class passenger cars; obligation to furnish.	468.403	Disagreement; proceedings.
FRAUDULENT AND PART PAID STOCK Act 289 of 1865		LIENS ON PROPERTY Act 110 of 1899	
468.151	Fraudulent or part paid stock; issuance or sale; fictitious increase in stock; penalty.	468.451	Liens on property; labor claims.
468.152	Annual capital stock report; contents.	468.452	Liens on property; death or personal injury judgments.
468.153	Violation of act; penalty.	468.453	Foreclosure proceedings; filing of labor and accident claims, duty of court.
OBLIGATIONS IN AID OF OTHER ROADS Act 134 of 1869			
468.201	Aid in construction, equipment and operation of other roads.		
MORTGAGE BONDS Act 86 of 1891			
468.221	Mortgage bonds; issuance.		
468.222	Mortgage bonds; determination of provisions.		
468.223	Stockholders' meetings; calling.		

468.1-468.4 Repealed. 1967, p. 170, Act 144, Eff. Nov. 2.

Sections related to railroad passenger rates; application; exceptions; failure to comply; penalty; repeal.

Act 115, 1921, p. 244; Eff. Aug. 18.

AN ACT to fix the rates of fare for the transportation of passengers, within this state, which may be charged by any interurban railroad, and to provide for the regulation of such rates of fare by the Michigan public utilities commission.

The People of the State of Michigan enact:

468.31 Electric interurban railroads; passenger rates.

Sec. 1. The maximum rate of fare for the transportation of passengers within this state by any electric interurban railroad shall be 3 cents per mile for all persons over 12 years of age and 1 ½ cents per mile for all persons between the ages of 5 and 12 years. Persons under 5 years of age accompanied by a person over 12 years of age shall be carried free.

HISTORY: CL 1929, 11484;—CL 1948, 468.31.

RATES: Regulation, see Compilers' §§ 460.54, 460.57 and 460.58.

468.32 Electric interurban railroads; regulation by utilities commission, limit; examination of conditions.

Sec. 2. The Michigan public utilities commission is hereby given power and authority to regulate the rates of fare for the transportation of passengers to be charged by any electric interurban railroad within this state, but shall have no power to fix any such rates of passenger fare in excess of 3 cents per mile. The maximum rate of fare provided in section 1 of this act shall in no case be charged by any interurban railroad except in the cases hereinafter set forth. The Michigan public utilities commission is hereby authorized and directed, with all convenient speed, to make a complete inventory, appraisal, audit and study of all the interurban railroads within this state, and from said inventory, appraisal, audit and study to determine the reasonable requirements of such railroads to meet operating costs, taxes, property retiral, and return upon a fair value. When these requirements shall have been determined, the Michigan public utilities commission shall as often as deemed necessary, fix a rate of fare per passenger mile, which in connection with all other revenues of such interurban railroad shall yield a total annual revenue equal to said requirements: Provided, That such rate of fare shall in no instance exceed the rate as fixed by section 1 of this act: Provided, That a minimum trip fare of 5 cents may be charged.

HISTORY: CL 1929, 11485;—CL 1948, 468.32.

468.33 Examination expenses paid by railroad; amortization.

Sec. 3. All costs of such inventory, appraisal, audit, and study shall be paid by the interurban railroad receiving the same, into the treasury of the state of Michigan, under such rules and at such times as the Michigan public utilities commission shall direct, and said payments shall only be used by said commission for the purposes of this act. The cost of such payments may be amortized by said railroads over a period of years to be fixed by the said commission.

HISTORY: CL 1929, 11486;—CL 1948, 468.33.

468.34 Review of order.

Sec. 4. Any interurban railroad, municipal corporation or person interested in any order of the Michigan utilities commission may cause such order to be reviewed in the circuit court of Ingham county in the same manner as the orders of the said commission are now reviewed by virtue of Act No. 300 of the Public Acts of the state of Michigan for 1909, and amendments thereto.

HISTORY: CL 1929, 11487;—CL 1948, 468.34.

NOTE: Act 300 of 1909, above referred to, is Compilers' §§ 462.2 et seq. See, in particular, Compilers' §§ 462.26 and 462.27.

REHEARING: See Compilers' §§ 460.351 and 460.352.

468.35 Temporary rates.

Sec. 5. Until such time as the rates of fare for the transportation of passengers within this state are fixed for the several interurban railroads by the Michigan public utilities commission under the provisions of this act, or otherwise, it shall be lawful for any interurban railroad to charge for transporting within this state, of any passenger, not to exceed the following rates of fare, namely: A minimum fare of 5 cents for a distance not exceeding 5 miles, and for all other distances not to exceed the following rates:

(a) For all such railroads whose gross passenger earnings as reported to the Michigan public utilities commission for the year 1920 equaled or exceeded 14,000 dollars per mile of first line main track operated by such company, on which regular passenger service was maintained, including all branch roads owned, leased, operated, controlled, occupied, or managed by such company, not to exceed a rate of fare of 1 ½ cents per mile;

(b) For all companies whose said gross earnings, so reported as aforesaid, equaled 12,000 dollars but did not exceed 14,000 dollars per mile of first line main track, so operated as aforesaid, not to exceed a rate of fare of 2 cents per mile;

(c) For all companies whose said gross earnings, so reported as aforesaid, equaled 10,000 dollars but did not exceed 12,000 dollars per mile of first line main track, so operated as aforesaid, not to exceed a rate of fare of 2 ½ cents per mile;

(d) For all companies whose said gross earnings, so reported as aforesaid, did not exceed 10,000 dollars per mile of first line main track, so operated as aforesaid, not to exceed a rate of fare of 3 cents per mile: And provided, That in the future until rates of fare shall be fixed as hereinbefore provided, or otherwise, whenever such gross earnings of any of such interurban or suburban railroads, as reported to the said Michigan public utilities commission for any year subsequent to 1920 shall be increased or diminished, such interurban or suburban railroad shall charge not to exceed the rates of passenger fare hereinbefore provided for the class in which such gross earnings, so reported, shall place such railroad: Provided further, That children of the age of 5 years or under, accompanied by a person over 12 years of age, shall be transported free, and children of the age of 12 years or under shall be transported for not to exceed 1/2 the rates of passenger fare herein provided for adult passengers for each of such railroads: Provided further, That nothing in this act contained shall apply to any street railroads engaged solely in the transportation of passengers within the corporate limits of any city or within a distance of 5 miles of the corporate boundaries thereof.

HISTORY: CL 1929, 11488;—CL 1948, 468.35.

468.36 Municipal rights not impaired.

Sec. 6. Nothing in this act contained shall be construed to impair any rights possessed by any municipality for the reasonable control and regulation over its streets, alleys and public places, nor to prevent any municipality from hereafter granting franchises for the use thereof to any public utility upon such terms and conditions as may be agreed upon under existing laws, the obligations of which shall be entitled to the protection of the provisions of the constitution of this state and of the United States.

HISTORY: CL 1929, 11489;—CL 1948, 468.36.

468.37 Failure to comply; penalty, disposition; other remedies.

Sec. 7. Any such railroad company which shall within 30 days after notification by the Michigan public utilities commission, fail to comply with the provisions of this act, shall immediately after such failure become liable to the people of the state of Michigan in a penalty of 1,000 dollars per day for each and every secular day during the pendency of such failure, which said penalty shall be collected in action to be brought by the Michigan public utilities commission in any court of competent jurisdiction

within this state, and which said penalty when collected shall be paid into the state treasury and credited to the primary school fund. The penalty in this section mentioned shall be supplemental to and shall not be deemed to supersede any extraordinary remedy by mandamus or otherwise authorized by law to be instituted by the state, the Michigan public utilities commission or any state officer or board or any other person to compel compliance with the provisions of this act.

HISTORY: CL 1929, 11490;—CL 1948, 468.37.

PENALTY: Suit for, see (Jud. Act) Compilers' § 600.4905 et seq.

Sec. 8. (This was a severing clause section.)

HISTORY: CL 1929, 11491;—Rep. 1945, p. 413, Act 267, Imd. Eff. May 25.

Act 142, 1875, p. 176; Eff. Aug. 3.

AN ACT to regulate the sale of tickets by railroad companies at special rates and on special conditions.

The People of the State of Michigan enact:

468.51 Reduced rate tickets.

Sec. 1. That any railroad corporation doing business in this state may make contracts for the conveyance of passengers upon designated trains, for a specific distance, at fixed times, at such reduced rates of fare as the parties may agree upon. Tickets may be issued for such passengers, upon which shall be plainly printed the terms upon which they may be used. Such tickets shall not entitle the holder to ride upon any train not therein designated, or at any time beyond that stipulated therein.

HISTORY: How. 3416;—CL 1897, 5255;—CL 1915, 8350;—CL 1929, 11492;—CL 1948, 468.51.

Act 74, 1913, p. 108; Eff. Aug. 14.

AN ACT to provide for railroad companies issuing free transportation or reduced rate tickets to persons actually engaged in securing settlers for unimproved farm lands within the state of Michigan.

The People of the State of Michigan enact:

468.71 Transportation for persons engaged in securing settlers; certificate.

Sec. 1. Any railroad company may issue free transportation or reduced rate tickets to persons actually engaged for more than 1/2 of their time each year in the business of securing actual settlers for unimproved farm lands within the state of Michigan: Provided, That no transportation shall be issued to or used by any person until the railroad commission, upon application of such person and after such investigation as it may deem necessary, shall have determined that the person making the application is actually engaged in the business of securing actual settlers for unimproved farm lands within this state, and shall have issued to such applicant a certificate to that effect.

HISTORY: CL 1915, 8412;—CL 1929, 11493;—CL 1948, 468.71.

RAILROAD COMMISSION: Abolished; powers and duties transferred to the public service commission, see Compilers' §§ 460.4 and 460.53.

FREE TRANSPORTATION: In general, see Compilers' § 462.5.

468.72 Certificate; statement, filing.

Sec. 2. Any person holding a certificate as provided in section 1 of this act shall on or before the tenth day of each month file a sworn statement with the railroad commission, showing the total miles traveled, if any, upon the railroads of this state during the preceding calendar month.

HISTORY: CL 1915, 8413;—CL 1929, 11494;—CL 1948, 468.72.

468.73 Certificate; cancellation.

Sec. 3. Any person holding a certificate as provided in this act who shall fail to comply with any of its provisions, shall forfeit the right to the use of any transportation he may have, and the railroad commission shall forthwith rescind and cancel the certificate held by said person.

HISTORY: CL 1915, 8414;—CL 1929, 11495;—CL 1948, 468.73.

Act 252, 1889, p. 373; Eff. Oct. 2.

AN ACT regulating the charges for transporting loaded or empty cars from or to the side track [tracks] of any manufacturing or other establishment located on the line of any railroad, and for transporting such cars to the main line or side tracks of any other railroad.

The People of the State of Michigan enact:

468.101 Cars moved to or from side tracks; charges.

Sec. 1. That in transporting loaded or empty cars from or to the side tracks of any manufacturing or other establishments located on the line of any railroad, no charge shall be made, and for transporting such cars to the main line or side tracks of any other railroad, no railroad company shall charge for each of such cars to or from such side tracks a sum exceeding 1 dollar for each 1/2 mile of distance so transported.

HISTORY: How. 3422c;—CL 1897, 5246;—CL 1915, 8342;—CL 1929, 11496;—CL 1948, 468.101.

This act is probably superseded by Act 300 of 1909, being Compilers' § 462.2 et seq.; in particular, see Compilers' § 462.14.

RATES: See Compilers' §§ 460.54, 460.57 and 460.58.

Act 38, 1875, p. 33; Imd. Eff. Mar. 19.

AN ACT relative to the use of sleeping, parlor and chair cars upon the railroads of this state.

The People of the State of Michigan enact:

468.121 Pullman, parlor or chair cars; use, rules, compensation.

Sec. 1. It shall be lawful for any railroad company operating any railroad within this state, to construct or use for the transportation of passengers, sleeping cars, parlor cars, or chair cars, for the use of such passengers as may desire to use the same, and such company may make such reasonable rules and regulations concerning the use of these, as such company may think proper, and may charge a reasonable compensation for such use in addition to the regular passenger fares allowed by law.

HISTORY: How. 3414;—CL 1897, 5252;—CL 1915, 8348;—CL 1929, 11503;—CL 1948, 468.121.

468.122 First-class passenger cars; obligation to furnish.

Sec. 2. Nothing herein contained shall release any such railroad company from its obligations to furnish first-class passenger cars for the use of the public for the regular passenger fares now fixed by law.

HISTORY: How. 3415;—CL 1897, 5253;—CL 1915, 8349;—CL 1929, 11504;—CL 1948, 468.122.

Act 289, 1865, p. 584; Imd. Eff. Mar. 20.

AN ACT relative to the issuing of false, fraudulent and part paid shares of the stock of railroad companies, and to repeal sections 4 and 5, of Act No. 229 of the session laws of 1863.

The People of the State of Michigan enact:

468.151 Fraudulent or part paid stock; issuance or sale; fictitious increase in stock; penalty.

Sec. 1. That it shall not be lawful for any railroad company existing by virtue of any of the laws of this state, nor for any officer of any such company, to sell, dispose of, or pledge any shares in the capital stock of such company, nor to issue certificates of shares in the capital stock of such company until the shares so sold, disposed of, or pledged and the shares for which such certificates are to be issued shall have been fully paid, nor issue any stock or bonds except for money, labor or property actually received and applied to the purpose for which such corporation was created; and all fictitious stock dividends and other fictitious increase of the capital stock or indebtedness of any such corporation shall be void; and if any officer or officers of any such company shall issue, sell, pledge or dispose of any shares or certificates of shares of the capital stock of such company, in violation of the provisions of this act, such officer or officers so doing shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law in case of issuing false or fraudulent railroad stocks. The provisions of this act shall apply as fully to the stocks and officers of consolidated railroad companies, as existing in whole or in part within this state, as to original unconsolidated companies existing as aforesaid.

HISTORY: Am. 1867, p. 208, Act 151, Imd. Eff. March 27;—CL 1871, 7757;—Am. 1879, p. 272, Act 257, Eff. Aug. 30;—How. 3409;—CL 1897, 6344;—CL 1915, 8359;—CL 1929, 11385;—CL 1948, 468.151.

ISSUANCE OF SECURITIES: See Compilers' § 460.301 et seq.

468.152 Annual capital stock report; contents.

Sec. 2. It is hereby made the duty of every such railroad company as aforesaid to file with the secretary of state in the month of July in each year, a special report and statement sworn to by the president and treasurer of the company setting forth explicitly the number of shares of capital stock actually issued, sold, pledged or disposed of by the company to the date of such report, and the amount of capital stock issued during the year last past, and the amount received therefor in money and the amount received therefor, if any, in property and other effects.

HISTORY: Am. 1867, p. 208, Act 151, Imd. Eff. March 27;—CL 1871, 7758;—How. 3410;—CL 1897, 6345;—CL 1915, 8360;—CL 1929, 11386;—CL 1948, 468.152.

468.153 Violation of act; penalty.

Sec. 3. Any violation of the provisions of this act or any neglect to comply with the requirements of this act, or the making of any false statement to the secretary of state in relation to any of the matters required by the preceding section to be reported to him, shall render the officers and directors of any such railroad company as aforesaid, guilty of any such violation or neglect, or making or permitting any such false statement liable to the state for the penalties heretofore provided by law.

HISTORY: Am. 1867, p. 208, Act 151, Imd. Eff. March 27;—CL 1871, 7759;—How. 3411;—CL 1897, 6346;—CL 1915, 8361;—CL 1929, 11387;—CL 1948, 468.153.

PENALTY: See Compilers' § 750.504.

Sec. 4. (This was a repeal section.)

HISTORY: CL 1871, 7760;—How. 3412;—CL 1915, 8362;—CL 1929, 11388;—Rep. 1945, p. 402, Act 267, Imd. Eff. May 25.

ACT REPEALED: Secs. 4 and 5, Act 82, 1855, and of Act 229, 1863.

Act 134, 1869, p. 229; Imd. Eff. Apr. 3.

AN ACT to authorize existing railroad companies to aid by subscription of stock, °guaranteeing of bonds, or making running connections with any road constructed or to be constructed, under the general laws of this state.

The People of the State of Michigan enact:

468.201 Aid in construction, equipment and operation of other roads.

Sec. 1. That it shall be competent for any existing railroad company in this state to aid by subscription of stock, by guaranteeing bonds, or making running and business arrangements, or in any other form which may be deemed expedient by its board of directors, in the construction of any road, or part of a road constructing or to be constructed, under the general laws of this state, and any company organized under the general laws of this state, may avail itself of such aid, and to make it available, may enter into such agreements as shall be deemed expedient by the board of directors of said companies; and when any company organized under the general law shall be unable to finish or equip and operate its said road or any section thereof, it may make arrangements with any other railroad company to equip, operate, manage and work such road, or section thereof, upon such terms as may be deemed just and fair and for such length of time as may be agreed upon by the board of directors of the 2 companies.

HISTORY: CL 1871, 2392;—How. 3413;—CL 1897, 6327;—CL 1915, 8423;—CL 1929, 11389;—CL 1948, 468.201.

*NOTE: It is evident that the word "guaranteeing" should be "guaranteeing".

Act 86, 1891, p. 94; Imd. Eff. May 19.

AN ACT to authorize any railroad company who owns, has possession of, and is operating a railroad constructed and equipped, and whose railroad, and railroad property and franchises are not mortgaged, to issue bonds, and to secure the same by a mortgage on its property and franchises.

The People of the State of Michigan enact:

468.221 Mortgage bonds; issuance.

Sec. 1. That any railroad company who owns, has possession of, and is operating a railroad constructed and equipped, and whose railroad, and railroad property and franchises are not mortgaged, shall have the right to issue bonds, and to mortgage its corporate property and franchises to secure the payment of the said bonds, and may issue such bonds and dispose of the same in such manner as shall be determined upon by a vote of the owners of the entire capital stock of the said company, at a meeting duly called for that purpose.

HISTORY: CL 1897, 6333;—CL 1915, 8429;—CL 1929, 11390;—CL 1948, 468.221.

MORTGAGE BONDS: See also Compilers' § 464.37.

ISSUANCE OF SECURITIES: See Compilers' § 460.301 et seq.

468.222 Mortgage bonds; determination of provisions.

Sec. 2. It shall be lawful for the owners of the entire capital stock of any such railroad company, at a meeting duly called for that purpose, to determine the form of the bonds referred to in section 1 of this act, and the length of time they shall have to run, and the rate of interest that they shall bear, not exceeding 10 per cent; and also the form of the said mortgage or trust deed and what provisions the same shall contain, and the trustee or trustees to whom the same shall be made, and the rights, powers, and duties of said trustee or trustees, and to make such provisions therein for the sale

and transfer of the corporate property and franchises therein described as they shall deem best; and the sale and transfer of the said corporate property and franchises in accordance therewith shall be lawful and valid.

HISTORY: CL 1897, 6334;—CL 1915, 8430;—CL 1929, 11391;—CL 1948, 468.222.

468.223 Stockholders' meetings; calling.

Sec. 3. Meetings of stockholders under the provisions of this act shall be called by mailing to each of said stockholders notice in writing of such meeting, stating the purpose for which the same is called, which notice shall be addressed to each of said stockholders at his last known postoffice address, with postage prepaid, at least 30 days prior to the day appointed for such meeting, and by publishing the said notice in a daily newspaper published in the city of Detroit, once a week for 4 weeks previous to the day appointed for the said meeting; and a meeting called in accordance with the provisions of this section shall be deemed to have been duly called in accordance with the provisions of this act.

HISTORY: CL 1897, 6335;—CL 1915, 8431;—CL 1929, 11392;—CL 1948, 468.223.

Act 240, 1929, p. 583; Eff. Aug. 28.

AN ACT authorizing railroad corporations to guarantee bonds and other obligations of other corporations.

The People of the State of Michigan enact:

468.241 Railroad corporation; power to guarantee Obligations of other corporations.

Sec. 1. Any railroad corporation, now or hereafter organized and existing under the laws of this state or now or hereafter existing by consolidation of different railroad corporations under the laws of this state and any other state or states, which owns singly or with other railroad corporations any of the capital stock of any corporation, capital stock in which it is authorized to own, is hereby authorized by action of its board of directors to guarantee the payment of the principal and interest, or principal or interest of bonds or other obligations of such other corporation, capital stock in which is so owned by it, and to join with such other railroad corporations in guaranteeing the payment of principal and interest or principal or interest of bonds or other obligations of such other corporation.

HISTORY: CL 1929, 11393;—CL 1948, 468.241.

Act 138, 1863, p. 199; Imd. Eff. Mar. 18.

AN ACT relative to tender of damages by railroad companies.

The People of the State of Michigan enact:

468.301 Acquisition of right of way; tender of damages, effect.

Sec. 1. That when any railroad company desires to acquire the right of way through any lands or premises, such company may, previous to or after proceedings are commenced for such purpose, tender to the owner or owners of said lands or premises, any sum of money, which such company shall conceive sufficient amends for the damages for such right of way, together with the costs to the time of making such tender; and if it shall appear in the progress of such proceedings, or upon the assessment of damages, that the amount so tendered was sufficient to pay such damages, and 25 per cent over and above the same, and the costs of the suit or proceedings up to the time of such

tender, the owner or owners of such lands or premises shall not be entitled to recover or collect any costs incurred subsequent to the time of such tender, but shall be liable to such railroad company for the costs incurred by it subsequent to such time.

HISTORY: CL 1871, 2378;—How. 3400;—CL 1897, 6322;—CL 1915, 8356;—CL 1929, 11400;—CL 1948, 468.301.

CONDEMNATION: By railroad company, see Compilers' § 464.15 et seq.

468.321 Repealed. 1962, p. 317, Act 174, Eff. Jan. 1, 1964.

Section related to common carrier sale of freight, animals and perishables.

Act 160, 1905, p. 222; Imd. Eff. Jun. 1.

AN ACT to provide for the inspection and examination by the attorney general of books, papers and documents in the custody or control of any railroad company.

The People of the State of Michigan enact:

468.351 Records of railroad; inspection by attorney general.

Sec. 1. That whenever the state of Michigan, or any officer on its behalf, is either plaintiff or defendant in any action, suit or proceeding at law or in equity now or hereafter defended or prosecuted by any railroad company organized or existing by or under any law of this state, the books, papers and documents belonging to or in the custody or control of any such railroad company, whether plaintiff or defendant, or in the custody or control of its successor, whether formed under section 6225 of the Compiled Laws of 1897, or otherwise, shall so far as such inspection and examination is necessary to enable the attorney general either to plead or prepare for the trial or hearing of such suit, action or proceeding, be subject to the inspection and examination of the attorney general and of his assistants and clerks, when acting under his instructions.

HISTORY: CL 1915, 8372;—CL 1929, 11578;—CL 1948, 468.351.

NOTE: Sec. 6225 of CL 1897, above referred to, is Compilers' § 463.3.

468.352 Records of railroad; inspection by attorney general; enforcement of right.

Sec. 2. The right of the attorney general, and of his clerks and assistants as aforesaid, to such inspection and examination may be enforced by an order made in such action, suit or proceeding on the motion or petition of the attorney general, or by mandamus issued by any court of competent jurisdiction.

HISTORY: CL 1915, 8373;—CL 1929, 11579;—CL 1948, 468.352.

468.353 Records of railroad; inspection by attorney general; general designation in order sufficient.

Sec. 3. It shall not be necessary in any proceeding for an order or for a mandamus, under this act, to specify in detail and with particularity, the books, papers and documents sought to be examined and inspected. It shall be sufficient in all cases to designate generally, such books, papers and documents.

HISTORY: CL 1915, 8374;—CL 1929, 11580;—CL 1948, 468.353.

468.354 Records of railroad; inspection by attorney general; defenses not available.

Sec. 4. It shall be no defense or answer to any motion or petition or to an application for a mandamus under this act, that the production of such books, papers and documents can be procured by subpoena duces tecum; or that the railway company

having the custody or control of such books, papers or documents is willing to furnish copies, excerpts from or compilations of such books, papers or documents, or that such railway company against whom such order or mandamus is sought to be obtained, is not a party to such action, suit or proceeding.

HISTORY: CL 1915, 8375;—CL 1929, 11581;—CL 1948, 468.354.

468.355 Records of railroad; inspection by attorney general; rights of parties.

Sec. 5. The court making such order or allowing such mandamus shall provide for the protection of the rights of the parties concerned in the inspection and examination of the books, papers and documents under this act.

HISTORY: CL 1915, 8376;—CL 1929, 11582;—CL 1948, 468.355.

468.356 Records of railroad; inspection by attorney general; notice to show cause, service.

Sec. 6. Any notice of motion, petition or order to show cause why a mandamus shall not issue under this act may be served upon the general attorney, or upon any officer of such railroad company.

HISTORY: CL 1915, 8377;—CL 1929, 11583;—CL 1948, 468.356.

Act 96, 1859, p. 252; Imd. Eff. Feb. 10.

AN ACT in relation to mortgages, against, preferred stock in, and the delivery of goods by railway companies.

The People of the State of Michigan enact:

468.371 Foreclosure sale; procedure to reorganize and issue stock; cancellation of old stock; prior liens; liability.

Sec. 1. That upon the foreclosure of any mortgage or pledge of the property and franchises of any railway corporation, if the railway track and its appurtenances are sold at the sale thereunder, and if the purchaser or purchasers shall, either by purchase from said company or otherwise, provide suitable equipments for running said road, and performing in all respects the duties to the public by law incumbent upon said corporation, and shall transfer to said corporation again its railway track and appurtenances, and all and singular the equipments necessary to run the same, and perform all its duties to the public, and shall, under their hands and seals, and verified by their oaths, declare that he or they, having become such purchaser or purchasers, are desirous of continuing to perform the duties and enjoying the franchises and immunities of said corporation, and state in said declaration, under oath that they have so provided the means for continuing the same, and set forth the name which he or they desire said corporation to be thereafter called, and shall file said declaration with the secretary of state, together with a copy of the order confirming the sale to him or them and notify the attorney general, then such purchaser or purchasers shall be at liberty to issue, and themselves hold, new stock in said corporation to such an amount and of such denomination as they shall deem proper: Provided, That unless additional stock shall be in good faith subscribed by persons able fully to pay up the same, new stock to a greater amount shall not be issued than sufficient at par to represent the fair value of all the property and rights then owned by said corporation. When said new stock shall be issued, and the holders thereof shall proceed as they are hereby authorized to do, to elect officers for said corporation, and said officers shall duly qualify for the same, as by the charter required, the old officers of said company shall be superseded, and the old stock in said corporation shall be deemed forfeited, and may be canceled on the

books of said corporation, and the new stockholders and officers shall, in the law, be deemed, and taken to be the stockholders and officers of said corporation, the charter and all laws appertaining thereto, continuing to be the charter and laws regulating and governing said corporation, except that it may be known and called, and sue and be sued, and may contract and do all acts which in the law it could have done in its old name, in and by the name set forth in the declaration aforesaid. And the said corporation shall not be liable for any debts or obligations except those by it thereafter contracted. But no prior mortgage or lien shall be in any way affected by such proceeding, and all property whatsoever, if any, that shall not be sold, shall remain liable for all the debts of such corporation, and no liability of any corporator, director, or other person whatsoever, shall be in any wise lessened or affected by any proceeding or act authorized by this act.

HISTORY: CL 1871, 2373;—How. 3406;—CL 1897, 6341;—CL 1915, 8438;—CL 1929, 11584;—CL 1948, 468.371.

468.372 Preferred stock; terms, dividends.

Sec. 2. When it shall be necessary to make loans in order to meet the just liabilities, or to carry out the lawful objects and duties of any railroad corporation within this state, or, if any of its creditors, holding its bonds, or other obligation of indebtedness whatsoever, shall be willing to exchange the same for preferred or secured stock, it shall be lawful for any such corporation, a vote of a majority of the stockholders being first obtained therefor, to issue such stock, and to secure in any lawful mode the prescribed dividends thereon and to make the same payable in preference to dividends upon the other stock of said corporation: Provided That no dividend shall be secured greater than the rate of 8 per cent, unless all the stockholders shall vote therefor, and in no case greater than the rate of interest allowed by law at the time such stock shall be issued. Such preference may be full or partial, and subject to such conditions and terms as said corporation may deem proper; and such stock shall be redeemable and payable upon such terms, and at such times as shall be provided in the resolution authorizing the issue thereof, but no such stock shall be sold at less than its par value.

HISTORY: CL 1871, 2374;—How. 3407;—CL 1897, 6342;—CL 1915, 8439;—CL 1929, 11585;—CL 1948, 468.372.

468.373 Personal delivery of goods; rights of consignor and consignee; draymen's municipal licenses.

Sec. 3. Every railway company in this state is authorized to make personal delivery of every parcel, package, or quantity of goods or property, if the consignee of such property shall reside within 2 miles of the terminus, or railway station, or other terminus of the carriage of such property by the main line of such carrier, and they are hereby authorized to employ or own all the means necessary to perform such duty, and to place the men and vehicles therefor under the government and sole regulation of the superintendent or other proper officer of such companies. Such delivery shall be at the house, shop, office or other place of business of the consignee, according to the nature of such property, and where the owner or consignee desires to have the same: Provided, That in all cases where the consignor or consignee shall desire to have said property taken at the depot, station, or terminus of the carriage of the same, he shall be at liberty to do so, and on notice given, either by a party sending goods, or a party expecting to receive any that he or they so desire, they shall remain in the usual manner, and for the usual time, in the custody of said carrier, subject to the order of the owner thereof: Provided, That when the by-laws or ordinances of any municipal corporation requires any sum of money to be paid annually or otherwise, for licenses by draymen or other common carriers in each municipal corporation, said railway companies shall not have the benefit of this section without paying into the treasury of such municipal corporation such sum or sums of money for each and every of the drays or other vehicles of carriage, for the delivery of goods provided for in this section, as may

be provided in said by-laws or ordinances for licensed draymen and other like common carriers.

HISTORY: CL 1871, 2375;—How. 3406;—CL 1897, 6343;—CL 1915, 8440;—CL 1929, 11596;—CL 1948, 468.373.

Act 100, 1871, p. 163; Imd. Eff. Apr. 13.

AN ACT to provide for the protection of laborers and persons furnishing material for the construction and repairing of railroads in this state.

The People of the State of Michigan enact:

468.401 Laborers and materialmen; preference in payment, exception.

Sec. 1. That it shall be lawful for all railroad companies, when contracts are made by them with contractor or contractors, for work, labor, or materials to be used in repairing or constructing railroads, to provide in the contract or contracts with said contractor or contractors, for the payment of laborers and persons furnishing material to said contractors or sub-contractors to be used in said contract, and if no such provision is made in said contract or contracts, it shall be lawful for said railroad companies to withhold payment until such laborers and persons furnishing material are paid, and it shall be the duty of such railroad companies, by agent or otherwise, at each pay-day on said road or roads to see that all laborers and persons furnishing material employed by contractor or contractors, or sub-contractors, are paid before payment is made to said contractors, not to exceed however the amount due to said contractors: Provided, The provisions of this act shall not apply to any iron or other materials and property used in ironing and equipping said railroad: Provided further, That a bill of items of the material and labor furnished to said contractor or sub-contractors shall be furnished to the company through their agent or otherwise, together with the amount claimed, prior to the usual pay-day of said company, when such claim shall be due, or in case the contractor or contractors are not then paid, then prior to the payment then due.

HISTORY: CL 1871, 2393;—How. 3423;—CL 1897, 5243;—CL 1915, 8336;—CL 1929, 11394;—CL 1948, 468.401.
MECHANIC'S LIENS: See Compilers' § 570.1 et seq.

468.402 Laborers and materialmen; collection of sums due.

Sec. 2. On compliance with the provisions of section 1 of this act, the persons performing the labor, or furnishing the materials mentioned in said section 1, shall have the right to collect pay for the same from said railroad companies by action, as in case of other claims against said railroad companies, if the said claim or claims are undisputed and acknowledged to be due from said contractor or sub-contractors.

HISTORY: CL 1871, 2394;—How. 3424;—CL 1897, 5244;—CL 1915, 8337;—CL 1929, 11395;—CL 1948, 468.402.

468.403 Disagreement; proceedings.

Sec. 3. If the amount claimed to be due from the contractor or sub-contractor is disputed by them, then said company shall withhold the payment from both till the same has been adjudicated, as in other actions, before some court having jurisdiction of the amount in controversy, and judgment duly rendered, when the company shall pay over the amount of the judgment to the party recovering the same against said contractor or sub-contractors, provided the amount of said judgment is due to said contractor or contractors from said company; if not, then so much as is due on said contract.

HISTORY: CL 1871, 2395;—How. 3425;—CL 1897, 5245;—CL 1915, 8338;—CL 1929, 11396;—CL 1948, 468.403.

Act 110, 1899, p. 159; Imd. Eff. Jun. 9.

AN ACT to provide for prior liens against the property of railroad companies and street railway companies in certain cases.

The People of the State of Michigan enact:

468.451 Liens on property; labor claims.

Sec. 1. That when any person shall have any claim for the labor of himself or any minor child against any railroad company or street railway company, organized and doing business under any of the laws of this state, and which claim shall be duly presented to the proper officer of said company, and shall remain unpaid for a period of 10 days after such presentation, said claim shall constitute a lien upon all the property, both real and personal, of said corporation, and shall be a prior lien to any and all judgments or attachments which may be existing against said corporation, by reason of any other debt, claim or demand, than those claims or demands against said corporation for personal work or labor. All persons employed by said corporation shall have the advantages of this act, in whatever capacity they may be employed.

HISTORY: CL 1915, 8339;—CL 1929, 11397;—CL 1948, 468.451.

468.452 Liens on property; death or personal injury judgments.

Sec. 2. All claims arising out of the death or personal injury of any person, when such death or personal injury shall result from the negligence of any street railway company or steam railroad company, organized and doing business under the laws of this state, shall, after judgment is obtained therefor, against any such corporation, constitute a lien upon all of the assets of said corporation, and all of the property thereof, and all of its rights and franchises, and over any and all other judgments, executions or attachments levied upon said property, except such as may be issued in favor of persons having obtained judgments for personal work and labor of themselves or their minor children.

HISTORY: CL 1915, 8340;—CL 1929, 11398;—CL 1948, 468.452.

DEATH: Recovery for, see Compilers' § 467.7.

468.453 Foreclosure proceedings; filing of labor and accident claims, duty of court.

Sec. 3. It shall be the duty of all courts of this state, in which proceedings may be pending, for the foreclosure of any mortgage, trust deed or other lien upon any of the property of any street railway company or steam railroad company, doing business in this state, to cause said company, before final decree is entered in said cause, to file with said court, through the register thereof, a statement of all claims and demands made against said company by any and all persons for personal work or labor, and for damages resulting from death or personal injuries, and which claim shall have arisen within 6 years prior to the date of filing the same with said court. And it shall be the duty of said court, upon the filing of the same, to notify any and all persons interested in said claims, or their attorneys, to be and appear before said court upon a certain day to present their said claims, and the proof thereof, when such claims are claims for personal work and labor, and to inform said court in case of claims for personal injury or death, whether it is the design of said claimant to prosecute the same to final judgment or not.

HISTORY: CL 1915, 8341;—CL 1929, 11399;—CL 1948, 468.453.

CHAPTER 469. RAILROAD PROPERTY, EQUIPMENT AND SERVICES

RAILROAD GRADE CROSSINGS

Act 270 of 1921

- 469.1 Railroad grade crossings at highways; improvement, maintenance, alteration, apportionment of cost.
- 469.2 New grade crossings; improvement of existing grade crossings; cost.
- 469.3 Warning signs; distance from tracks, vision.
- 469.4 Warning signs; speed of vehicles after passing.
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- 469.31 Intersecting railroad tracks; approval of construction.
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- 469.33 Intersecting railroad tracks; determination of commission, scope.
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- 469.35 Examination by commission; crossings of tracks; order for changes, apportionment of expense.
- 469.36 Examination by commission; wires strung; order for changes, apportionment of expense.
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TREES ALONG TRACKS

Act 27 of 1875

- 469.51 Dangerous trees along tracks; cutting.

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Act 189 of 1921

- 469.61 Railroad switches; signal lights or reflectorized switch banners; hours of operation; exceptions.
- 469.62 Signal light or banners; maintenance at derail switches or devices; exceptions.
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- 469.63 Lighted switches or derails; molestation, unlawfulness.
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- 469.81 Snowplows; equipment.
- 469.82 Violation of act; penalty.
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- 469.101 Locomotive headlights; installation, exception.
- 469.102 Locomotive headlights; inspection; repair of defects; completion of trip.
- 469.103 Penalty; collection.

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- 469.111 Automatic bell ringer on engine.
- 469.112 Penalty; completion of trip.
- 469.113 Enforcement.

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- 469.121 Street car platforms; weather protection.
- 469.122 Open platform cars; unlawfulness of operation.
- 469.123 Penalty; exception.
- 469.124 Prosecuting attorney to prosecute.

EQUIPMENT OF PASSENGER CARS AND TRAINS

Act 118 of 1887

- 469.131 Fire precautions for passenger cars; extinguishing; exception.
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ABANDONMENT OF TRACKS

Act 56 of 1919

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Act 190 of 1873

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- 469.281 Resale by purchaser of railroad property at foreclosure; authority.
469.282 Resale by purchaser of railroad property at foreclosure; approval; filing of papers.

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SALE, LEASE OR PURCHASE OF RAILROAD

Act 30 of 1901

- 469.301 Sale, lease or purchase of railroad; consent of stockholders; rights and obligations.
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LEASEHOLD RIGHTS FOR ELEVATORS AND BUILDINGS

Act 303 of 1921

- 469.351 Leasehold rights for elevators and buildings; charges.
469.352 Leasehold rights for elevators and buildings; disagreement, application to commission.
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Act 177 of 1881

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		Act 180 of 1956	
		469.601	Railroad tracks; inspection, rules, violation.

Act 270, 1921, p. 501; Imd. Eff. May 18.

AN ACT to promote the public safety and make more safe crossings of streets and highways with railroads and railways.

The People of the State of Michigan enact:

469.1 Railroad grade crossings at highways; improvement, maintenance, alteration, apportionment of cost.

Sec. 1. The parties owning railroad tracks crossing any public highway at grade shall improve, if necessary, and thereafter maintain, renew and repair all railroad roadbed, track and railroad culverts within the confines of the highway, and the surfacing lying between the rails and for a distance outside the rails of 1 foot beyond the end of the ties, and the public authorities having jurisdiction over such highway shall improve, if necessary, and thereafter maintain, renew and repair all the rest and remainder of said highway. The space between the rails and for a distance outside of the rails of 1 foot beyond the end of the ties shall be surfaced with a material which shall be as durable as the adjacent highway surfacing, if reasonably practicable, and shall have minimum qualifications not inferior to wooden planks, and shall be maintained, as nearly as reasonably may be, in a condition as smooth as that of the adjacent highway, and such surfacing of planks or other material at all state trunk line highways and county highways shall have a width of not less than the width between the established curb lines, or, in the absence of such curb lines, the width between the established shoulder lines of the highway, but not less than 16 feet. The full cost of maintaining and repairing all existing crossings shall be borne by the respective parties responsible for the work as herein provided. The cost of improving an existing crossing, where such improvement is necessary, shall be borne in the same manner as herein provided for maintenance and repair. At any new crossing at grade or at any existing crossing at grade to be improved, any alteration in the existing elevation of top of railroad track rails to provide a satisfactory gradient shall be mutually determined by the highway and railroad authorities; but in case of failure to agree, the Michigan public utilities commission is hereby authorized to establish such reasonable elevations after due hearing thereon. The elevation of railroad track rails shall not be altered as now existing across any improved state trunk line or county highway without the approval of both railroad and highway authorities, unless and except in the amount ordered by the Michigan public utilities commission and no variation in such elevation of more than substantially 1 inch will be allowable for track maintenance. Where the elevation of track rails is

agreed upon or authorized for purposes other than to conform to the requirements of the adjacent highway as now existing, the entire cost of both the work conducted by the railroad company or companies and highway authorities shall be borne by the party requesting the change. The railroad authorities shall not perform any work of any kind excepting emergency and minor repairs on state trunk line and county highways between the established curb lines, or, in the absence of established curb lines, between the established lines of the highway, without first notifying the highway authorities having jurisdiction over such highway, and without first providing and thereafter maintaining necessary barricades, lights, watchmen and traffic detours.

HISTORY: CL 1929, 11402;—Am. 1931, p. 801, Act 336, Eff. Sept. 18;—CL 1948, 469.1.

NOTE: The public utilities commission has been abolished and superseded by the public service commission, see Compilers' § 460.4.

FORMER ACT: Act 136 of 1897, being CL 1915, 8389-8393, was repealed by Act 178 of 1925.

RAILROAD CROSSINGS: Separation of highway and railroad grades, see Compilers' § 253.1 et seq.

Method of laying out highway across railroad right of way, see Compilers' §§ 221.27 and 464.9 subd. 5.

Flagman and crossing protection, see Compilers' §§ 462.36 and 462.37.

469.2 New grade crossings; improvement of existing grade crossings; cost.

Sec. 2. The full cost of constructing a new highway over an existing railroad, or of a new railroad track or tracks over an existing highway, shall be borne by the party requesting such crossing. Thereafter the terms of this act shall apply to such new crossing. In respect of state trunk line or county highways at grade, the plans for such crossing shall be approved by both railroad and highway authorities. In the event of failure to agree on the part of the railroad authorities, the Michigan public utilities commission shall settle the points of disagreement by the terms of its order. The relocation of an existing crossing or the establishment of a new crossing at which the adjacent public highway grade crossing is completely and legally abandoned, shall be constructed and the cost borne in the same manner as in the case of a new crossing. Temporary crossings shall be constructed, maintained and removed at the sole expense of the parties requesting the same. Nothing in this act shall require any railroad company or railroad companies to reconstruct, change or alter an existing crossing of a public highway with its railroad tracks at grade unless and until the railroad company or railroad companies shall improve said crossing or the public authorities having jurisdiction thereover shall improve said crossing in which event each party shall notify the other in sufficient time in advance so as to permit the other party to conform to such improvements. After the completion of said improvements at any such crossing neither the grade of the top of the rails of the railroad tracks or of the highway and its surfacing shall be changed except by mutual agreement of the parties interested, subject to limitations for track maintenance as specified in section 2, but, in the event of failure to so agree, then upon order of the Michigan public utilities commission after due hearing thereon: Provided, That the highway authorities having jurisdiction over such highway, if they deem such improvement necessary, may request a railroad company or companies in writing to improve any existing crossing at grade of such railroad or railroads with any state trunk line or county highway, and, in the event of such railroad company or companies refusing so to do, may make application to the Michigan public utilities commission for such improvement, and the commission after due hearing thereon shall determine the matters in dispute under this section by order.

HISTORY: CL 1929, 11403;—Am. 1931, p. 802, Act 336, Eff. Sept. 18;—CL 1948, 469.2.

HIGHWAY TRAFFIC SIGNS: See Compilers' § 257.606 et seq.

469.3 Warning signs; distance from tracks, vision.

Sec. 3. The highway authorities shall at their own expense furnish, renew, and maintain on the right hand side of the highway approaching all crossings of highways with railroad tracks, at a distance from the intersection of the center line of highway with the nearest rail inasfar as practicable, of not less than 250 feet nor more than 350 feet, advance warning signs of a design to be prescribed by the state highway commis-

sioner and subject to such revision from time to time as the state highway commissioner may deem necessary in the best interests of public safety for highway traffic. All such signs must be maintained, free from obstruction to vision, for not less than 300 feet in advance of the signs.

HISTORY: CL 1929, 11404;—Am. 1931, p. 803, Act 336, Eff. Sept. 18;—CL 1948, 469.3.

469.4 Warning signs; speed of vehicles after passing.

Sec. 4. The person controlling the movement of any self-propelled vehicle or other vehicle, upon passing said sign board going toward the railroad or railway, shall reduce the speed of such vehicle so that within a distance of 100 feet from the nearest rail of such crossing, such vehicle shall be under control and shall not be proceeding at a greater speed than 10 miles per hour. This provision shall be deemed to require a precaution in addition to those now prescribed by law.

HISTORY: CL 1929, 11405;—CL 1948, 469.4.

SPEED OF VEHICLES: In general, see Compilers' § 257.627 et seq. Stopping at certain crossings, see Compilers' § 257.668.

469.5 Warning signs; standard crossbuck design; reflector buttons; expense, location; flashing signals.

Sec. 5. Except as herein provided, at all state trunkline and county highway crossings with railroad tracks, the highway authorities shall, at all crossings of public highways with railroad tracks outside of the corporate limits of cities and villages, at the equal expense of railroad and highway authorities, furnish, renew and maintain on the right hand side of the highway approaching the railroad tracks, and at a distance from the nearest rail to be established by the railroad authorities, and from the center line of the highway to be established by the highway authorities, standard railroad crossing signs embodying a crossbuck design and provided with the designation "railroad crossing tracks" (insert number of tracks), indicating the actual number of tracks to be crossed, and all signs with this designation shall be provided with reflector buttons or reflectorized with reflectorizing material in accordance with Michigan state highway department specifications. Such signs shall conform to a design prescribed by the state highway commissioner and shall be subject to such revision from time to time as the state highway commissioner may deem necessary in the interests of public safety for highway traffic; but the cost of any change or changes after the original installation as herein provided, except in the case of renewals on account of destruction or decay through lapse of time, shall be borne solely by the highway authorities. Nothing in this section five (5) shall be so construed as to require the railroad and highway authorities to replace existing railroad crossing signs until such existing railroad crossing signs need replacement or renewal because of obsolescence, destruction or decay. The material of construction and the mounting of such signs may be of timber provided that the essential features of the signs conform to the requirements of the state highway commissioner. Such railroad crossing signs shall be located as nearly as may be in the same position as would be specified for the location of flashing signals approved by the state highway commissioner, and when such flashing signals are provided or already existing, the railroad crossing signs shall be omitted or removed.

HISTORY: CL 1929, 11406;—Am. 1931, p. 803, Act 336, Eff. Sept. 18;—CL 1948, 469.5;—Am. 1951, p. 188, Act 156, Eff. Sep. 28;—Am. 1964, p. 299, Act 223, Eff. Aug. 28.

469.6 Clear vision areas; regulation.

Sec. 6. Whenever the railroad company or railroad companies and the public authorities having jurisdiction over such highway shall so agree in writing in connection with the establishment of a new crossing, or the improvement of an existing crossing, that portion of the right of way and property owned and controlled by either highway or railroad authorities within the limiting area to be provided for clear vision as herein-after described, shall be considered as dedicated to the joint usage of both highway and railroad improvements, and without charge to either party. The portion of prop-

erty so included shall be maintained for clear vision, and the spotting of cars on railroad tracks, parking of automobiles on the highway, construction of buildings, signs and/or other obstructions of vision, and the growth of weeds, brush or similar obstructions shall be prohibited, controlled and maintained to such an extent as may be reasonably practicable.

HISTORY: CL 1929, 11407;—Am. 1931, p. 804, Act 336, Eff. Sept. 18;—CL 1948, 469.6.

469.7 Clear vision areas; development and maintenance as highway expense.

Sec. 7. Whenever the railroad company or companies and the public authorities having jurisdiction over such highways shall so agree in writing as provided in section 6 hereof, and it shall be reasonably practicable, the improvement of an existing crossing and the establishment of a new crossing shall include a clear vision area covering each of the 4 quadrants determined by the intersection of the highway and the railroad. These areas shall be provided and improved to furnish a clear vision to the driver approaching the crossing on the highway for a reasonable distance back from the crossing and thereafter until the vehicle reaches the crossing, insofar as the same may be reasonably practicable. The acquisition of right of way, purchase and removal of obstructions to vision within such areas, including buildings and other artificial constructions, trees, brush and other growths, and grading or earthwork, and including the maintenance of such conditions, shall be at the sole cost and expense of the highway authorities.

HISTORY: CL 1929, 11408;—Am. 1931, p. 804, Act 336, Eff. Sept. 18;—CL 1948, 469.7.

469.8 Flashing light protection standards; cost.

Sec. 8. When in the discretion of the Michigan public utilities commission the safety of the public shall hereafter require that some protection device or improvement in existing devices be provided at a railway crossing to warn of the approach of trains about to cross the highway, it shall be the duty of the Michigan public utilities commission and it is hereby empowered to order the railway authorities owning the tracks of such crossings to provide protection of a flashing light type equipped with a gong of approved type at each signal which shall, unless otherwise agreed upon by the highway authorities responsible for the maintenance of the highway, be installed on the right hand side of the highway approaching the crossing from each direction on the near side of and at a distance from the center line of the outside tracks to be determined by the railway authorities and at a distance from the center line of the highway and above the crown of the roadway to be determined by the highway authorities responsible for the maintenance of the highway. All flashing light types of protection shall consist of two 8 inch diameter lights equipped with red lenses and reflectors mounted side by side on an appropriate standard arranged to flash alternately each light to be visible from both directions on the highway. All standards carrying flashing lights shall also carry at a height to be specified by the highway authorities, a cross-buck design bearing the designation "Railroad Crossing ... Tracks" with letters studied with reflecting buttons, this design conforming to the requirements for "Crossing Signs" as specified in this act. The standard shall in addition bear the designation "Stop on Red" in reflecting button design of similar type to the crossing sign. Whenever flashing lights are installed at any crossing and the Michigan public utilities commission shall find it necessary, they shall be so arranged that for every train or switching movement over the crossing, the flashing lights shall be in operation for a period of not less than 20 seconds nor more than 60 seconds in advance of the train movement reaching the nearest established curb line of the highway and the flashing lights shall continue to operate until the train movement has passed the established curb line on the near side of the highway. The cost of all flashing light installations and alterations

or relocations of same shall be borne equally by the railway and highway authorities, and thereafter they shall be maintained by the railway authorities at their own expense except that the highway authorities shall pay \$10.00 per month to the railroad authorities for each crossing protected by flash light signals. The railway authorities shall, however, furnish standard equipment uniform for all railroads and on a cost and installation basis consistent for all railroads and unusual or unbalanced costs shall be subject to the review and adjustment of the Michigan public utilities commission.

HISTORY: CL 1929, 11409;—Am. 1931, p. 804, Act 336, Eff. Sept. 18;—CL 1948, 469.8.

FORFEITURE: Suit for, see (Jud. Act) Compilers' § 600.4805 et seq.

469.9 Failure of railroad authorities to comply; penalty.

Sec. 9. Any person or persons having jurisdiction of the railroad or highway at any crossing who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than 50 dollars or imprisonment in the county jail for not more than 30 days or both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1929, 11410;—Am. 1931, p. 805, Act 336, Eff. Sept. 18;—CL 1948, 469.9.

469.10 Molesting warning sign; penalty.

Sec. 10. Any person who removes, throws down, destroys, injures or defaces any warning sign mentioned in this act shall be guilty of a misdemeanor and shall be punished by a fine not exceeding 100 dollars or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1929, 11411;—CL 1948, 469.10.

469.11 Enforcement; notice to parties in charge of tracks and highways.

Sec. 11. The Michigan public utilities commission is hereby charged with the duty of carrying out the provisions of this act and investigating complaints of violations of this act. The commission will take up with the proper railroad and highway authorities any and all omissions or violations which it may find on investigation to exist and it is hereby made the duty of all parties in charge of railroad tracks and highways to comply with all orders of the Michigan public utilities commission issued in accordance with the provisions of this act. The Michigan public utilities commission is hereby required to notify all public highway authorities in this state, calling particular attention to the mandatory provisions and obligations of this act within 30 days after the taking effect of this act.

HISTORY: CL 1929, 11412;—Am. 1931, p. 805, Act 336, Eff. Sept. 18;—CL 1948, 469.11.

469.12 Maintenance of crossing signs; notice of omissions.

Sec. 12. Nothing in this act shall be so construed as to permit the authorities in charge of any railroad tracks at crossings of existing highways to remove or disturb or cease to maintain crossing signs now maintained at such crossings where the same are required by law until such time as these shall have been satisfactorily replaced by new signs as provided under section 5 hereof. All railway authorities shall advise the Michigan public utilities commission of failure on the part of the highway authorities to provide the crossing signs in this act provided, when such failure shall come to their notice.

HISTORY: CL 1929, 11413;—Am. 1931, p. 805, Act 336, Eff. Sept. 18;—CL 1948, 469.12.

469.13 Crossings affected.

Sec. 13. This act shall only apply to the crossings of railroads and highways at grade.

HISTORY: Add. 1931, p. 805, Act 336, Eff. Sept. 18;—CL 1948, 469.13.

Act 171, 1893, p. 270; Eff. Aug. 28.

AN ACT to regulate the construction of the tracks of railroads and street railroads across each other, and the stringing of wires, electric or other, over railroad tracks, and relative to the maintenance of such tracks heretofore so constructed and wires heretofore strung and providing for the construction of tracks of municipally owned or operated street railways and privately owned railroads and street railways across each other and the stringing of wires, electric or other, over railroad tracks, and relative to the maintenance of such tracks so constructed and wires so strung. Am. 1921, p. 536. Act 288, Imd. Eff. May 18.

The People of the State of Michigan enact:

469.31 Intersecting railroad tracks; approval of construction.

Sec. 1. It shall hereafter be unlawful to construct the tracks of any railroad or street railway across the tracks of another railroad or street railway until the place where and the manner in which such crossing shall be made shall have been approved by the Michigan public utilities commission: Provided, That when an application for such crossing is made to the commission as hereinafter provided by a municipality owning or operating a municipal railway for permission and authority to cross the line of a privately owned railroad or railway at a point within the limits of the municipality applying for permission and authority to cross, and where the point of contemplated intersection is within the public street or highway of such municipality, then in such case the right of the municipality to cross shall not be denied and the jurisdiction of the public utilities commission shall extend only to the imposition of such terms and conditions with respect to such crossing as shall be deemed necessary to promote public safety and the apportionment of the expense as hereinafter provided.

HISTORY: CL 1897, 6349;—Am. 1905, p. 175, Act 127, Imd. Eff. May 17;—CL 1915, 8365;—Am. 1921, p. 536, Act 288, Imd. Eff. May 18;—CL 1929, 11414;—CL 1948, 469.31.

NOTE: The public utilities commission has been abolished and superseded by the public service commission, see Compilers' § 460.4.

469.32 Intersecting railroad tracks; notice to railroad whose tracks are to be crossed.

Sec. 2. Any person, firm or corporation, municipal or otherwise, desiring to make any such crossing shall give the person, firm or corporation whose tracks are to be crossed, notice in writing of the place where and the manner in which it desires to make such crossing, and the place where and the time when it will apply to the Michigan public utilities commission for approval thereof, which notice shall be served at least 10 days before the hearing of the proposed application.

HISTORY: CL 1897, 6350;—CL 1915, 8366;—Am. 1921, p. 537, Act 288, Imd. Eff. May 18;—CL 1929, 11415;—CL 1948, 469.32.

469.33 Intersecting railroad tracks; determination of commission, scope.

Sec. 3. The commission shall have power and authority upon such application to determine whether the crossings shall be permitted at grade or otherwise than at grade. When made at grade the commission shall provide such safeguards as may be deemed necessary to prevent accidents thereat and if otherwise than at grade the commission shall prescribe the manner of separation of grades and the necessary plan for the same. Upon the hearing of such application if the crossing be permitted and authorized either at grade or otherwise than at grade, the commission shall apportion as between the person, firm or corporation applying for permission to effect said crossings and the person, firm or corporation whose line of railroad or street railway is to be crossed, the

cost and expense of installing said crossing, wires and safety devices and appliances upon such a basis as may be reasonable, equitable and legal and shall incorporate such clause in its order permitting and authorizing the crossing.

HISTORY: CL 1897, 6351;—CL 1915, 8367;—Am. 1921, p. 537, Act 288, Imd. Eff. May 18;—CL 1929, 11416;—CL 1948, 469.33.

469.34 String wires over track; permission, procedure.

Sec. 4. It shall hereafter be unlawful for any corporation or person to string any wire, electrical or other, over the tracks of any railroad or street railway company except at such places and in such manner as shall be approved by the Michigan public utilities commission, and any corporation or person desiring to so string any wire shall give the railroad company notice in writing of the place where and the manner in which it desires to string the same, and the place where and the time when it will apply to the Michigan public utilities commission for its approval as above required, which notice shall be served at least 10 days before the time of hearing of such application.

HISTORY: CL 1897, 6352;—CL 1915, 8368;—Am. 1921, p. 537, Act 288, Imd. Eff. May 18;—CL 1929, 11417;—CL 1948, 469.34.

469.35 Examination by commission; crossings of tracks; order for changes, apportionment of expense.

Sec. 5. The Michigan public utilities commission shall, as soon as practicable after the passage of this act, examine the crossings of the tracks of the railroads and street railways then existing, and order such changes made in the manner of such crossings, or such safeguards for protection against accidents to be provided thereat, as in its judgment ought to be so made or provided; and shall apportion any expense incident thereto between the persons, firms or corporations affected as it deems just and reasonable.

HISTORY: CL 1897, 6353;—CL 1915, 8369;—Am. 1921, p. 537, Act 288, Imd. Eff. May 18;—CL 1929, 11418;—CL 1948, 469.35.

469.36 Examination by commission; wires strung; order for changes, apportionment of expense.

Sec. 6. Said commission shall also, as soon as practicable after the passage of this act, either by personal examination or otherwise, obtain information as to all places where the tracks of railroads or street railways are crossed by wire strung over said tracks and wherever, in its judgment, such wires should be raised to a greater height or other thing done with reference thereto, to guard against accidents, it shall order such change or changes to be made and shall apportion any expense incident thereto between the companies or persons affected as it may deem just and reasonable: Provided, That in no case shall the height of any wire strung across such railroad tracks be less than 22 feet from the established grade of said railroad or street railway tracks.

HISTORY: CL 1897, 6354;—CL 1915, 8370;—Am. 1921, p. 538, Act 288, Imd. Eff. May 18;—CL 1929, 11419;—CL 1948, 469.36.

469.37 Violation of act; penalty; recovery.

Sec. 7. It shall be the duty of every corporation and person to whom an order made by the Michigan public utilities commission under this act shall be directed, to comply with such order in accordance with its terms and for any neglect to so comply and for any violation of the provisions of this act, or for construction of any such crossing before the same shall have been authorized by the Michigan public utilities commission any such corporation or person shall be liable to a penalty of 250 dollars and to a penalty of 100 dollars for every 10 days during which such neglect shall continue or during which such crossing shall be permitted to remain in existence without the necessary approval. Any such penalty may be recovered in an action of assumpsit brought in

the name of the people of this state and it shall be the duty of the prosecuting attorney of the proper county to bring any such action at the request of the Michigan public utilities commission.

HISTORY: CL 1897, 6355;—Am. 1905, p. 175, Act 127, Imd. Eff. May 17;—CL 1915, 8371;—Am. 1921, p. 538, Act 298, Imd. Eff. May 15, —CL 1929, 11420;—CL 1948, 469.37.

PENALTY: Suit for, see Compilers' § 800.4805 et seq.

Act 27, 1875, p. 24; Eff. Aug. 3.

AN ACT to authorize railroad companies to cut decayed or dangerous trees standing within a certain distance of either side of their track.

The People of the State of Michigan enact:

469.51 Dangerous trees along tracks; cutting.

Sec. 1. That any railroad company owning, controlling, or operating any line or lines of railroad in this state, be and is hereby authorized and required to cut any tree or trees that are dangerous and liable to fall or blow over and obstruct such track.

HISTORY: How. 3442;—CL 1897, 6323;—CL 1915, 8357;—CL 1929, 11425;—CL 1948, 469.51.

Act 189, 1921, p. 375; Eff. Aug. 18.

AN ACT requiring railroad companies to maintain signal lights at all their switches and derail switches; providing a penalty for the violation of this act; and making it the duty of the Michigan public utilities commission to enforce the provisions hereof.

The People of the State of Michigan enact:

469.61 Railroad switches; signal lights or reflectorized switch banners; hours of operation; exceptions.

Sec. 1. Every railroad company shall place and maintain upon each switch a signal light of sufficient candlepower or a reflectorized switch banner of sufficient reflective properties and so located that it may be seen a distance of 2,000 feet, under normal weather conditions, attached in such manner to the moving panel of such switch that it will indicate safety when such switch is set for such track, and will indicate danger when such switch is not set for such track. When a signal light is used, it shall be kept brightly burning constantly between the hours of sunset and sunrise and on such days or parts of days as are dark or foggy. This section shall not apply to any switch that is presently lighted by electricity or which is both electrically locked and is located within the limits of an interlocking plant or centralized traffic control territory or automatic block territory.

HISTORY: CL 1929, 11426;—CL 1948, 469.61;—Am. 1954, p. 106, Act 88, Eff. Aug. 13;—Am. 1955, P. 384, Act 242, Eff. Oct. 14.—Am. 1967, p. 129, Act 105, Eff. Nov. 2.

469.62 Signal light or banners; maintenance at derail switches or devices; exceptions.

Sec. 2. Every railroad company operating wholly or partly in the state, shall maintain a signal light or banner, as in section 1 described and provided, attached to and operated by the moving panel of every derail switch in the state. The light or banner shall be attached to such derail switch and be in plain view of all approaching trains and when a light is used, it shall be kept brightly burning constantly between the hours of sunset and sunrise. At every derailing device placed upon or over a track or rail used by any railroad company in this state for the purpose of derailing cars, trains or parts of trains, there shall be placed and maintained such a light or banner

kept in plain view of approaching cars, trains or engines, indicating and showing the location and position of such derailing device, and when a light is used, it shall be kept burning brightly from sunset of each day until sunrise of the following day. This section shall not apply to the derails which are connected, mechanically or otherwise, with what is generally known as the home signal at interlockers, nor to derailing devices used on tracks used exclusively for private purposes. The provisions of this act shall not apply to tracks used for private purposes, to short lines of 100 miles or under, to spurs, or to side lines or railroads on which night trains are not operated, unless so ordered by the public service commission.

HISTORY: CL 1929, 11427;—CL 1948, 469.62;—Am. 1967, p. 129, Act 105, Eff. Nov. 2.

469.62a Lighted switches or derails; continued use; reinstallation.

Sec. 2a. All switches and derails that are lighted by electric signal lights shall continue to be so lighted electrically unless the public service commission shall find that employee and public safety no longer require the use of an electrically lighted signal light: Provided, further, That if the public service commission shall find that employee and public safety require the use of a lighted signal light on any switch or derail where a reflectorized switch banner has been established, the commission may order the installation of a lighted signal light.

HISTORY: Add. 1967, p. 129, Act 105, Eff. Nov. 2.

469.63 Lighted switches or derails; molestation, unlawfulness.

Sec. 3. It shall be unlawful for any person to destroy, remove, change, extinguish or tamper with in any manner, any light attached to or connected with any switch or derailing device maintained by any railroad as provided for by sections 1 and 2 of this act, except to fill, clean or repair said lights, or to light and extinguish them at the times specified in this act.

HISTORY: CL 1929, 11428;—CL 1948, 469.63.

469.64 Violation of act; penalty.

Sec. 4. Any person violating any of the provisions of this act shall for each violation thereof be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than 25 dollars, nor more than 500 dollars, or by imprisonment in the county jail for not less than 10 days nor more than 60 days.

HISTORY: CL 1929, 11429;—CL 1948, 469.64.

469.65 Enforcement of act.

Sec. 5. It shall be the duty of the Michigan public utilities commission to enforce the provisions of sections 1 and 2 of this act.

HISTORY: CL 1929, 11430;—CL 1948, 469.65.

NOTE: The public utilities commission has been abolished and superseded by the public service commission, see Compilers' § 460.4.

Act 102, 1927, p. 141; Eff. Sep. 5.

AN ACT to promote the safety of railroad employes and the traveling public by providing that snowplows or other cars equipped with devices for clearing the tracks of snow, coupled ahead of the locomotive or motor, be equipped with proper signaling and air-breaking devices, and authorizing and empowering the Michigan public utilities commission to make and enforce rules relative thereto, and to provide a penalty for the violation thereof.

The People of the State of Michigan enact:

469.81 Snowplows; equipment.

Sec. 1. Every snowplow or other car equipped with devices for the removal of snow from the tracks, coupled ahead of the locomotive or motor, operated by any common carrier by railroad operating in the state of Michigan, shall be equipped with suitable signaling or air-braking devices so as to enable the operator of such snowplow or car to readily communicate with the engineer on the locomotive or motor and to reduce the speed of or bring the locomotive or motor to a stop when necessary.

HISTORY: CL 1929, 11431;—CL 1948, 469.81.

469.82 Violation of act; penalty.

Sec. 2. Any railroad violating any of the provisions of this act or neglecting or refusing to comply with the order, rule or regulation of the commission made in pursuance thereof, shall be punished by a fine of not less than 100 dollars nor more than 500 dollars for each offense. Any superintendent, trainmaster, or other officer or agent of the railroad company, officer of any court, receiver or any person or persons who shall violate any of the provisions of this act, who shall order or permit any such violation, shall be guilty of a misdemeanor and upon conviction in any court of competent jurisdiction, shall be punished by a fine of not less than 100 dollars and not more than 500 dollars, or by imprisonment in any county jail, workhouse, or other prison authorized to receive prisoners for a term of not less than 30 days nor more than 90 days, or both such fine and imprisonment in the discretion of the court for each offense. Each instance of violation shall constitute a separate offense.

HISTORY: CL 1929, 11432;—CL 1948, 469.82.

469.83 Inapplicability of act.

Sec. 3. The provisions of this act will not apply to the operation of snowplows or other cars equipped with devices for the removal of snow from the tracks within yard limits or upon industrial tracks.

HISTORY: CL 1929, 11433;—CL 1948, 469.83.

469.84 Enforcement.

Sec. 4. It shall be the duty of the Michigan public utilities commission to enforce the provisions of this act.

HISTORY: CL 1929, 11434;—CL 1948, 469.84.

Act 77, 1913, p. 112; Eff. Aug. 14.

AN ACT to require railroads to equip locomotives with proper headlights.

The People of the State of Michigan enact:

469.101 Locomotive headlights; installation, exception.

Sec. 1. Every railroad corporation operating a railroad or a part of one in this state, shall on or before the first day of July, 1914, equip each of its locomotives, except locomotives used exclusively in yard service, with a headlight of such construction, and with sufficient candle power to render plainly visible at a distance of not less than 350 feet in advance of such engine, whistling posts, landmarks and other warning signs, and it shall be unlawful, after such date for any such railroad to use a locomotive, except locomotives used exclusively in yard service, upon any part of its road lying within this state, that is not equipped with a headlight of such construction and candle power as will enable the engineer to see whistling posts, land marks and other warning signs at a distance of not less than 350 feet in advance of the engine: Provided, That

not less than 30 per cent of all the locomotives hereinbefore required to be provided with such headlights shall be so equipped on or before March 1, 1914.

HISTORY: CL 1915, 8378;—CL 1929, 11435;—CL 1948, 469.101.

CONSTITUTIONALITY: See note to Compilers' § 469.111.

469.102 Locomotive headlights; inspection; repair of defects; completion of trip.

Sec. 2. The state railroad commission shall from time to time inspect or cause to be inspected the headlights of all locomotives found in use on any railroad in this state. On discovering any defective headlight, the commission shall report the fact to the superintendent or other officer having charge of the road on which it is found, and the railroad corporation receiving such notice, shall thereupon cause such defective headlight to be immediately repaired, and if so ordered by the railroad commission shall put the locomotive containing such defective headlight out of service until repaired and put in good working order: Provided, That should a headlight on any locomotive become defective when being used in transportation, it shall not be considered a violation of the provisions of this act to continue the operation of said locomotive to its destination.

HISTORY: CL 1915, 8379;—CL 1929, 11436;—CL 1948, 469.102.

RAILROAD COMMISSION: Abolished; powers and duties transferred to the public service commission, see Compilers' §§ 460.4 and 460.53.

469.103 Penalty; collection.

Sec. 3. Any railroad corporation using or permitting to be used on its line in this state, a locomotive in violation of any provisions of this act, shall be liable to a penalty of 100 dollars for each violation, to be recovered in a suit or suits to be brought by the prosecuting attorney in the circuit court of the county having such jurisdiction in the locality where such violation occurred. Upon duly verified information being given him of such violation, such prosecuting attorney shall bring such suits. The railroad commission shall give the proper prosecuting attorney such information of any such violations as may come to its knowledge.

HISTORY: CL 1915, 8380;—CL 1929, 11437;—CL 1948, 469.103.

PENALTY: Suit for, see (Jud. Act) Compilers' § 600.4805 et seq.

Act 158, 1923, p. 249; Eff. Aug. 30.

AN ACT to promote the safety of the general public by requiring railroad companies to equip their locomotives with automatic bell ringers.

The People of the State of Michigan enact:

469.111 Automatic bell ringer on engine.

Sec. 1. That from and after January first, 1924, it shall be unlawful for any railroad company to operate on its tracks within the state of Michigan any engine that is not equipped with an automatically operated bell ringer for ringing the bell on such engine. The automatic bell ringer required by this act may be any appliance so constructed as will cause the bell on such engine to continue to ring after being set in motion by the engineer or fireman. The device for starting or stopping such bell ringer shall be placed in such a position in the cab of such engine that it can be operated by the engineer or fireman from his usual position in the cab.

HISTORY: CL 1929, 11438;—CL 1948, 469.111.

CONSTITUTIONALITY: The Boiler Inspection Act, being 45 U.S.C.A. § 22 et seq., has so occupied the field of regulating highways, that state legislation requiring automatic firebox doors, is precluded and such matters are left to the regulatory power reposed by the act in the Interstate Commerce Commission. *Napier v. Atlantic Coast Line R.R. Co.*, 272 U.S. 605, 27 S. Ct. 207. This case is inserted for analogy.

469.112 Penalty; completion of trip.

Sec. 2. Each and every steam railroad company failing to provide and maintain in good condition and working order an automatic bell ringer as in the first section of this act required shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than 25 dollars nor more than 100 dollars for each day that any locomotive engine is used in violation of the provisions of this act: Provided, That where such automatic bell ringer shall become inoperative while such engine was being used by such railroad company, said engine may complete its trip or tour of duty without such railroad company being liable for the penalties provided by this act.

HISTORY: CL 1929, 11439;—CL 1948, 469.112.

469.113 Enforcement.

Sec. 3. It shall be the duty of the Michigan public utilities commission to enforce the provisions of this act.

HISTORY: CL 1929, 11440;—CL 1948, 469.113.

Act 9, 1895, p. 73; Eff. Aug. 30.

AN ACT to require street railway companies operating electric cars, cable or other cars propelled by steam, cable or electricity, to protect certain of their employes from the inclemency of the weather during certain months of the year.

The People of the State of Michigan enact:

469.121 Street car platforms; weather protection.

Sec. 1. On and after January 1, 1920, it shall be unlawful for any person, partnership or corporation, owning or operating a street railway in this state, or for any officer or agent thereof, superintendent or other person having charge or control of the management of such line of railway, or the cars thereof, operating electric, cable or other cars propelled either by steam, cable or electricity, which require the constant services, care or attention of any person or persons upon the platforms of such car, to require or permit such services, attention or care of any of its employees or any other person or persons between the first day of November and the first day of April thereafter of each year unless such person, partnership or corporation, its said officers or superintending or managing agents, have first provided the platforms of said car or cars with a proper and sufficient enclosure, constructed of wood, iron and glass, or similar suitable material, sufficient to protect such employees from exposure to the winds and inclemencies of the weather which said platforms so enclosed shall be so heated as to be suitably and adequately warm: Provided, That such enclosure shall be so constructed as not to obstruct the vision of the person operating such car, or to endanger or interfere with its safe management by the operator.

HISTORY: CL 1897, 5522;—CL 1915, 8581;—Am. 1919, p. 559, Act 320, Eff. Aug. 14;—CL 1929, 11445;—CL 1948, 469.121.

469.122 Open platform cars; unlawfulness of operation.

Sec. 2. From and after the taking effect of this act, it shall be unlawful for any such person, partnership or corporation so owning or operating street railways, using steam, electric or cable cars, or any superintending or managing officer or agent thereof, to cause or permit to be used upon such line of railway, between said November first and April first of each and every year thereafter, any car or cars upon which the services of any employee, such as is specified in section 1 of this act, is required, unless said car or cars shall be provided with the enclosure required by section 1 of this act.

HISTORY: CL 1897, 5523;—CL 1915, 8582;—Am. 1919, p. 560, Act 320, Eff. Aug. 14;—CL 1929, 11446;—CL 1948, 469.122.

469.123 Penalty; exception.

Sec. 3. Any person, partnership or corporation owning, operating, superintending or managing any such line of street railway, or managing or superintending officer or agent thereof, who shall be found guilty of a violation of the provisions of section 1 or 2 of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than 50 dollars nor more than 100 dollars, and in default of payment of the same, by imprisonment in the common jail of the county in which such conviction is had until such fine shall be paid, but for a period not exceeding the term of 3 months. Each day that any of said person or persons, partnership or corporation, cause or permit any of their said employees to operate such cars in violation of the provisions of sections 1 and 2 of this act, or cause or permit cars to be used or operated in violation of said section 2 of this act, shall be deemed a separate offense: Provided, That the provisions of this act shall not apply to cars used and known as trailing cars.

HISTORY: CL 1897, 5524;—CL 1915, 8583;—CL 1929, 11447;—CL 1948, 469.123.

469.124 Prosecuting attorney to prosecute.

Sec. 4. It is hereby made the duty of the prosecuting attorney of any county in which any such street railway is situated and operated, upon any information given him by any credible person, or upon knowledge that he may possess that any person, partnership or corporation has violated any of the provisions of this act, to promptly prosecute such person, members of such partnership or corporation for such violation.

HISTORY: CL 1897, 5525;—CL 1915, 8584;—CL 1929, 11448;—CL 1948, 469.124.

Act 118, 1887, p. 134; Eff. Sep. 28.

AN ACT to provide for the better protection of lives of passengers and employes on railroad trains.

The People of the State of Michigan enact:

469.131 Fire precautions for passenger cars; extinguishing; exception.

Sec. 1. That on and after the first day of November, 1889, every railroad company owning or operating any railroad wholly or partly within this state, shall make some effective provision against the burning of cars in which passengers are carried, or of cars which form part of passenger trains, in some 1 or more of the following, or other equally effective, methods: By generating the heat for warming the cars outside and independent of said cars, or by the use of heaters in the cars, so constructed that in case of accident, it will be practically impossible for the fire to escape from the stove or heater so as to set fire to the cars, or provided with some automatic or quickly and easily operated provision for extinguishing fire, and when the heat is generated outside of the cars, heaters constructed as provided for in this section may be retained within for use in case of emergencies: Provided, That the provisions of this section shall not apply to caboose cars on freight trains.

HISTORY: How. 3434b;—Am. 1889, p. 296, Act. 211, Eff. Oct. 2;—CL 1897, 5506;—CL 1915, 8397;—CL 1929, 11453;—CL 1948, 469.131.

HEATING OF CARS: Duty of company, see Compilers' § 325.302.

469.132 Fire precautions for passenger cars; approval of device; commissioner, duty, powers.

Sec. 2. No device shall be adopted for general use until approved by the commissioner of railroads, and he shall have the power, and it is hereby made his duty to order any stoves or heaters removed, which, in his judgment, are unsafe in case of accident. And he is hereby empowered to use such reasonable means to provide for

carrying out the spirit of this law (to promote the safety of passengers and employes in railway cars), as the condition of the road and experience in the use of the various methods of heating have demonstrated to be practicable and necessary.

HISTORY: How. 3434c;—Am. 1889, p. 298, Act 211, Eff. Oct. 2;—CL 1897, 5509;—CL 1915, 8398;—CL 1929, 11454;—CL 1948, 469.132.

COMMISSIONER OF RAILROADS: Superseded by railroad commission, see Compilers' § 462.49, which, in turn, was superseded by public service commission, see Compilers' §§ 460.4 and 460.53.

469.133 Enforcement by court; penalty.

Sec. 3. The provisions of this act may be enforced by any circuit court of this state in any county through which the railroad of any company refusing to comply with such provisions may run, upon the application of the commissioner of railroads, under such penalty as the said court may determine, of not less than 100 dollars for each violation of the provisions of this act.

HISTORY: How. 3434d;—CL 1897, 5510;—CL 1915, 8399;—CL 1929, 11455;—CL 1948, 469.133.

COMMISSIONER OF RAILROADS: See note under preceding section.

Act 167, 1871, p. 255; Eff. Jul. 18.

AN ACT to provide for the better protection of human life on railroad trains.

The People of the State of Michigan enact:

469.141 Tools in passenger, baggage and mail cars; duty of company.

Sec. 1. That every railroad company running trains upon any railroad within the limits of this state, or any portion thereof, shall provide and carry at each end of each and every car owned or used by said company for the conveyance and carriage of passengers, baggage, mail, or express, a good and serviceable ax, of not less than 3 pounds weight, properly sharpened, provided with a proper helve or handle, and at all times in a condition for immediate use; also, a good and serviceable carpenter's saw, with not less than 24 inch cut, also properly fitted and at all times in a condition for immediate use, each of which implements shall be suspended by brackets or straps upon the inside of each car, near the door thereof, and within easy view, reach and access of passengers occupying said car; also in the baggage-car or engine of each train of which any car for the conveyance of passengers, forms a part, 2 or more lifting jacks or screws, of not less than 14 inch lift and of sufficient power to readily lift 1 end of any loaded car attached to said train, and each of which shall be so carried and secured as to be within easy view, reach and access.

HISTORY: CL 1871, 2397;—Am. 1881, p. 49, Act 56, Eff. Sept. 10;—How. 3433;—CL 1897, 5505;—CL 1915, 8394;—CL 1929, 11456;—CL 1948, 469.141.

SUBURBAN AND STREET RAILWAYS: Similar provisions, see Compilers' §§ 469.151 and 469.152.

FIRST AID KIT: See Compilers' § 469.161 et seq.

469.142 Tools in passenger, baggage and mail cars; neglect to carry, penalty, civil liability.

Sec. 2. In case any railroad corporation shall run any train of cars within the limits of this state for the carriage and transportation of passengers, or upon which passengers are transported, without carrying the implements and tools prescribed in section 1 of this act, in the manner therein particularly described, it shall be liable to a penalty of 50 dollars and cost of prosecution for each and every train so run, to be sued for in the name of the people of this state; and such railroad corporation shall also be liable for all damages which shall be sustained by any person by reason of such neglect.

HISTORY: CL 1871, 2398;—Am. 1881, p. 49, Act 56, Eff. Sept. 10;—How. 3434;—CL 1897, 5506;—CL 1915, 8395;—CL 1929, 11457;—CL 1948, 469.142.

PENALTY: Suit for, see (Jud. Act) Compilers' § 600.4905 et seq.

469.143 Tools in passenger, baggage and mail cars; removal, penalty.

Sec. 3. Any person or employe of any railroad company who shall remove or carry away from their proper place, except in case of an accident, the tools required to be kept in the passenger, baggage, mail, or express cars, by the provisions of this act, shall be deemed guilty of an offense, and upon conviction thereof may be punished by a fine not exceeding 50 dollars or imprisonment in the county jail not exceeding 30 days, or both such fine and imprisonment at the discretion of the court.

HISTORY: Add. 1883, p. 11, Act 18, Eff. Sept. 8;—How. 3434a;—CL 1897, 5507;—CL 1915, 8396;—CL 1929, 11458;—CL 1948, 469.143.

469.144 Tools in passenger, baggage and mail cars; change of requirements by commission.

Sec. 4. If the railroad commission after investigation shall determine a different equipment of tools or a different location therefor in the cars than provided for in section 1 to be desirable, it may upon its own motion or upon application of any party interested after hearing the railroad companies to be affected thereby, by general regulation or by special permission as to particular cars, suspend the requirements contained in section 1 of this act with respect to the tools to be carried or the location in the cars at which such tools are to be placed and put into effect substitute regulations in regard thereto.

HISTORY: Add. 1917, p. 454, Act 204, Eff. Aug. 10;—CL 1929, 11459;—CL 1948, 469.144.

RAILROAD COMMISSION: Abolished; powers and duties transferred to the public service commission, see Compilers' §§ 460.4 and 460.53.

Act 178, 1901, p. 253; Eff. Sep. 5.

AN ACT to secure greater safety and comfort for persons traveling on suburban and certain street railways.

The People of the State of Michigan enact:

469.151 Equipment for certain railway cars.

Sec. 1. That every railroad company or railway company operating a suburban railroad or railway, or operating any street railroad or railway except a street railway, the greater part of whose railroad or railway is without the limits of an incorporated city or village, shall provide and carry at 1 end of each and every car owned or used by such company for the convenience and carriage of passengers, a good and serviceable axe of not less than 3 pounds weight, properly sharpened, provided with a proper helve or handle, and at all times in condition for immediate use; also a good carpenter's saw with not less than 24 inch cut, also properly fitted and at all times in condition for immediate use; each of which implements shall be suspended by brackets or straps upon the inside of each car near the door thereof and within easy view, reach and access of passengers occupying such car. Such railroad company or railway company shall also provide and carry in each car a suitable water tank of reasonable size, and keep and maintain therein a reasonable supply of wholesome water for drinking purposes for the use of passengers in such car. Such railroad company or railway company shall also provide, maintain and keep in proper condition upon each passenger car a suitable water closet with proper conveniences for the use of passengers traveling upon such car: Provided, That such closet shall not be allowed to be opened or used while said car is within the corporate limits of any city or village.

HISTORY: CL 1915, 8585;—CL 1929, 11460;—CL 1948, 469.151.

RAILROADS: Similar provisions, see Compilers' §§ 469.141 to 469.144.

DRINKING WATER: See also Compilers' § 325.303.

WATER CLOSETS: See also Compilers' §§ 325.304 and 325.306.

FIRST AID KIT: See Compilers' §§ 469.161 et seq.

469.152 Penalty; civil liability; exception.

Sec. 2. In case any suburban or street railway companies or corporations shall run any train of cars or any car within the limits of this state for the carrying or transportation of passengers, and upon which passengers are transported in violation of any of the provisions of section 1 of this act, it or they shall be liable to a penalty of 50 dollars, and costs of prosecution, for each and every train and car so run, to be sued for in the name of the people of the state of Michigan, and such suburban or street railway company or corporation shall also be liable for all damages which shall be sustained by any person by reason of such neglect: Provided, That this act shall not apply to any street railway or suburban road that is less than 20 miles in length from terminus to terminus.

HISTORY: CL 1915, 8586;—CL 1929, 11461;—CL 1948, 469.152.

PENALTY: Suit for, see (Jud. Act) Compilers' § 600.4905 et seq.

Act 176, 1927, p. 364; Eff. Sep. 5.

AN ACT to provide for the better protection of lives of passengers and employes on railroad trains and interurban electric trains and cars and to prescribe penalties for the violation thereof, and to repeal an act, entitled "An act to provide for the better protection of lives of passengers and employes on railroad trains and interurban electric trains and cars", being Act No. 342 of the Public Acts of 1919.

The People of the State of Michigan enact:

469.161 First aid kit on railroad and interurban trains; location; exception.

Sec. 1. On and after the first day of November, 1927, every railroad company owning and operating any steam railroad or any interurban electric railway wholly or partly within this state, shall provide and carry on each train operated by said company, 1 first aid kit, which shall be placed near the door of 1 of the coaches on passenger trains, and near the door of the caboose on freight trains so as to be readily accessible to passengers and employes for use in emergencies: Providing, This act shall not apply to trains in switching operations nor to electric street cars operated wholly within cities for local traffic.

HISTORY: CL 1929, 11462;—CL 1948, 469.161.

FORMER ACT: Act 342 of 1919.

469.162 First aid kit on railroad and interurban trains; contents.

Sec. 2. The first aid kit shall at all times be equipped with and contain the following contents in a clean and sanitary condition:

- (1) One-half dozen 4 inch by 4 inch, gauze squares
- (2) One-half dozen 3 ½ inch by 3 ½ inch, bandage compress with bandage attached 3 ½ inches by 72 inches
- (3) One-half dozen 2 ½ inch by 2 ½ inch, bandage compress with bandage attached 2 ½ inches by 36 inches
- (4) One-fourth dozen rolls 3 inch by 10 yards gauze bandage, plain
- (5) One first aid packet
- (6) One tourniquet
- (7) One-third dozen 9 inch wood splints
- (8) One copy first aid instructions
- (9) One roll adhesive tape.

HISTORY: CL 1929, 11463;—CL 1948, 469.162.

469.163 First aid kit on railroad and interurban trains; removal of contents, penalty.

Sec. 3. Any person or employe of any railroad company or interurban railway company who shall remove or carry away from their proper place, except in case of accident or emergency, any of the contents specified in section 2 shall be deemed guilty of an offense, and upon conviction thereof may be punished by a fine not exceeding 50 dollars, or imprisonment in the county jail not exceeding 30 days or both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1929, 11464;—CL 1948, 469.163.

469.164 Failure to comply; penalty.

Sec. 4. Any railroad company or interurban railway company failing, refusing or neglecting to carry out the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not exceeding 100 dollars for each offense.

HISTORY: CL 1929, 11465;—CL 1948, 469.164.

469.165 Enforcement.

Sec. 5. The provisions of this act shall be enforced by the state commissioner of health.

HISTORY: CL 1929, 11466;—CL 1948, 469.165.

Sec. 6. (This was a severing clause section.)

HISTORY: CL 1929, 11467;—Rep. 1945, p. 406, Act 267, Imd. Eff. May 25.

ACT REPEALED: Act 342, 1919.

Act 234, 1907, p. 303; Imd. Eff. Jun. 27.

AN ACT to promote the safety of employes and travelers upon railroads, by compelling common carriers in this state to equip their cars with automatic couplers and to provide a penalty for violations hereof.

The People of the State of Michigan enact:

469.181 Automatic couplers on railroad cars; necessity, exceptions.

Sec. 1. It shall hereafter be unlawful for any common carrier owning or operating any portion of a railroad wholly or partly in this state to haul or permit to be hauled or used on its line within this state any car used in moving traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars: Provided, That nothing in this act contained shall apply to trains composed of 4 wheeled cars or to trains composed of 8 wheeled standard logging cars where the height of such car from top of rail to center of coupling does not exceed 25 inches, or to locomotives used in hauling such trains when such cars or locomotives are exclusively used for the transportation of logs.

HISTORY: CL 1915, 8353;—CL 1929, 11468;—CL 1948, 469.181.

INTERURBAN RAILROADS: Similar provisions, see Compilers' §§ 469.191 and 469.192.

469.182 Penalty.

Sec. 2. Any such common carrier hauling or permitting to be hauled or used on its line any car in violation of the provisions of this act shall be liable to a penalty of not more than 100 dollars for each and every such violation, to be recovered in an action of assumpsit brought in the name of the people of this state, and it shall be the duty of the prosecuting attorney of the proper county to bring any such action at the request of the commissioner of railroads.

HISTORY: CL 1915, 8354;—CL 1929, 11469;—CL 1948, 469.182.

COMMISSIONER OF RAILROADS: Abolished; powers and duties transferred to the railroad commission, which in turn has been superseded by the public service commission, see Compilers' §§ 462.49, 460.4 and 460.53 respectively.

PENALTY: Suit for, see (Jud. Act) Compilers' § 600.4905 et seq.

Sec. 3. (This was a repeal section.)

HISTORY: CL 1915, 8355;—CL 1929, 11470;—Rep. 1945, p. 404, Act 267, Imd. Eff. May 25.

ACT REPEALED: Act 147, 1885, CL 1897, 5511-5512.

Act 401, 1919, p. 719; Eff. Aug. 14.

AN ACT to promote the safety of employes and travelers upon interurban railroads by compelling said railroads to equip their cars with couplers of uniform height, and to provide a penalty for violating the provisions of this act.

The People of the State of Michigan enact:

469.191 Couplers on interurban cars.

Sec. 1. The Michigan railroad commission shall have the power to make rules and regulations requiring all couplers on cars used or hauled on interurban railroads, operated wholly or partially in this state, to be of uniform height from the top of the rail to the center of said coupler, and all cars hereafter purchased by any of such railroads shall be in conformity with said rules so established by said commission.

HISTORY: CL 1929, 11471;—CL 1948, 469.191.

RAILROAD COMMISSION: Abolished; powers and duties transferred to the public service commission, see Compilers' §§ 460.4 and 460.53.

RAILROADS: Similar provisions, see Compilers' § 469.181.

469.192 Penalty.

Sec. 2. Any interurban railroad hauling or permitting to be hauled or used on its line, any car in violation of the provisions of this act, shall be liable to a penalty of not more than 100 dollars for each and every violation to be recovered in an action of assumpsit brought in the name of the people, and it shall be the duty of the prosecuting attorney of the proper county to bring any such action at the request of the railroad commission.

HISTORY: CL 1929, 11472;—CL 1948, 469.192.

Act 52, 1909, p. 88; Eff. Sep. 1.

AN ACT requiring railroad companies to equip cabooses or waycars with end platforms and platform steps; providing a penalty for the violation of this act; making railroad companies liable for damages caused or resulting from a violation of this act; and making it the duty of the Michigan railroad commission to enforce its provisions.

The People of the State of Michigan enact:

469.201 Caboose or waycar; platforms and steps.

Sec. 1. From and after January 1, 1910, it shall be unlawful for any railroad company, operating railroad lines within the state of Michigan, to use or operate, or cause to be used or operated, over any part of its lines within the state of Michigan, any caboose or waycar which is not fully equipped with end platforms and platform steps, said platform and platform steps to be of substantial construction to be approved by the Michigan railroad commission.

HISTORY: CL 1915, 8381;—CL 1929, 11473;—CL 1948, 469.201.

RAILROAD COMMISSION: Abolished; powers and duties transferred to the public service commission, see Compilers' §§ 460.4 and 460.53.

469.202 Penalty.

Sec. 2. If any railroad company operating any railroad line within the state of Michigan which shall use or operate, or cause to be used or operated, over any part of its lines within this state any caboose or waycar not equipped with end platforms and platform steps it shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than 100 dollars nor more than 500 dollars in the discretion of the court.

HISTORY: CL 1915, 8382;—CL 1929, 11474;—CL 1948, 469.202.

469.203 Civil liability.

Sec. 3. In addition to the liability prescribed in section 2 hereof, any railroad company violating any of the provisions of this act shall be liable in civil damages for all damages caused or resulting from a violation of any of its provisions.

HISTORY: CL 1915, 8383;—CL 1929, 11475;—CL 1948, 469.203.

469.204 Enforcement.

Sec. 4. It shall be the duty of the Michigan railroad commission to enforce the provisions of sections 1 and 2 of this act.

HISTORY: CL 1915, 8384;—CL 1929, 11476;—CL 1948, 469.204.

RAILROAD COMMISSION: Abolished; powers and duties transferred to the public service commission, see Compilers' §§ 460.4 and 460.53.

Act 123, 1923, p. 182; Eff. Aug. 30.

AN ACT to provide for the construction and equipment of railroad cabooses or way cars and to fix a penalty for the violation thereof; and making it the duty of the Michigan public utilities commission to enforce its provisions.

The People of the State of Michigan enact:

469.211 Caboose or waycar; equipment, exceptions.

Sec. 1. It shall be unlawful for any common carrier railroad operating more than 100 miles of line, and using steam locomotives for power, in this state to run or operate over its railroad, or any part of its railroad, or permit to be run or operated over its road, any caboose or way car used for like purposes, unless such caboose or way car shall be equipped with two 4 wheel trucks, and said caboose or way car shall have steel underframe, or steel center sill and be of constructive strength equal to that of a 60,000 pound capacity freight car and shall be equipped with grab irons and other devices as required by the interstate commerce safety appliance acts and with suitable steps provided for entering upon said car by the employees having use of same: Provided, That this law shall not apply to caboose or way cars in transfer or switch runs: And provided further, That this law shall not apply to caboose or way cars now in service in this state until after January first, 1925, except when same go through the shops for general repairs.

HISTORY: CL 1929, 11477;—CL 1948, 469.211.

469.212 Penalty.

Sec. 2. Any railroad company violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction in any court of competent jurisdiction, shall be punished by a fine of not less than 100 dollars nor more than 500 dollars for each offense. Any superintendent, trainmaster or any officer or agent of the railroad company, officer of any court, receiver or any person or persons who shall order or permit a caboose or way car to be in use which is not equipped and constructed as herein provided and in violation of the provisions of this act, shall be guilty of a misdemeanor and upon conviction in any court of competent jurisdiction shall be punished

by a fine of not less than 100 dollars nor more than 500 dollars or by imprisonment in any county jail, workhouse or other prison authorized to receive prisoners for a term of not less than 30 days and not more than 90 days, or both such fine and imprisonment in the discretion of the court, for each offense. Each caboose or way car so illegally operated or run shall constitute a separate offense.

HISTORY: CL 1929, 11478;—CL 1948, 469.212.

469.213 Enforcement.

Sec. 3. It shall be the duty of the Michigan public utilities commission to enforce the provisions of this act, and said commission shall be empowered to extend such further time for compliance with this act as in its judgment may be necessary.

HISTORY: CL 1929, 11479;—CL 1948, 469.213.

Act 275, 1887, p. 373; Imd. Eff. Jun. 27.

AN ACT to prohibit railroad companies from taking up their tracks, abandoning their stations, and failing to operate their roads in certain cases.

The People of the State of Michigan enact:

469.221 Subsidized railroads; abandonment, return of subsidy.

Sec. 1. It shall be unlawful for any railroad company, organized under any law of this state, and whose road has been constructed wholly or in part by public aid or local subscription, given as a bonus for such construction, having once constructed and put in operation the whole or any portion of said road, and located and opened for business, stations and houses thereon, to thereafter take up, abandon, or cease the operation of its said track, or any portion thereof, or to close up and abandon its said stations and station houses, or to withdraw the agents therefrom, except upon the decree or order of the circuit court of the county, or counties through which said road may run, and in which it is desired to take up and abandon such track, or to close up such station or stations, and withdraw the agents therefrom, upon petition of the railroad company, desiring to make such abandonment, to be made to said court, and after citation to the commissioner of railroads, and at least 4 weeks' publication of the pendency of the petition aforesaid, in some newspaper published in the county or counties in which the track proposed to be abandoned runs, and, if there be no such paper published in such county or counties, then in some newspaper published in the city of Lansing, in said [this] state, and after making such citation and publication as herein provided, a hearing upon said petition shall be had in like manner as is provided by law for other chancery proceedings in this state, and at such hearing, the said commissioner of railroads, either by the attorney general or the prosecuting attorney of the county in which said proceedings shall be had, or any citizen interested, either in person or by attorney, shall be entitled to appear and be heard in opposition to the granting of said petition: Provided, That no order or decree granting the prayer of any such petition shall be made by any circuit court except upon condition that such railroad company first pay back to each individual, private, or public corporation, or to the heirs, executors, administrators, successors, or assigns of such individual or corporation, all moneys received by such railroad company from such individual or corporation as a bonus, and interest thereon at the rate of 6 per cent per annum, from and after the time such bonus was granted, not to exceed 5 years: And provided further, That such railroad

company first deed back to the person, persons, or corporation from whom it was received, or to his or its heirs, assigns, executors, administrators, or successors, each and every tract, part or parcel of land, or right of way obtained from such person, persons, or corporation.

HISTORY: How. 3457a;—Am. 1891, p. 147, Act 125, Imd. Eff. June 12;—CL 1897, 6347;—CL 1915, 8363;—CL 1929, 11353;—CL 1948, 469.221.

COMMISSIONER OF RAILROADS: Superseded by railroad commission, see Compilers' § 462.49, which, in turn, was superseded by public service commission, see Compilers' §§ 460.4 and 460.53.

DISCONTINUANCE OF SERVICE: See Compilers' §§ 469.241 to 469.246.

469.222 Civil liability; exceptions.

Sec. 2. Any company violating any of the provisions of section 1 of this act shall be liable in damages to any individual, company, or corporation having contributed as a bonus, either as public aid or private subscription, to the construction of said railroad, whether such bonus was in the form of land, money, labor, buildings or material, in such sum or sums as they may be able to prove they will sustain, or have sustained on account of such abandonment, and they may bring their action in any court of competent jurisdiction in this state. And no decree or order for a proposed abandonment shall take effect, or be of any force, until all awards of such contributors be first legally and fully settled and paid: Provided, That the provisions of this act shall not apply to any forest or ore roads constructed exclusively for the purpose of logging or mining: And provided further, That this act shall not apply to the abandonment by any railroad company of its tracks between 2 stations, only where provision is made for the reasonable accommodation of the traffic originating at, or destined to, such stations by another line of road operated by the same company.

HISTORY: How. 3457b;—Am. 1891, p. 148, Act 125, Imd. Eff. June 12;—CL 1897, 6348;—CL 1915, 8364;—CL 1929, 11354;—CL 1948, 469.222.

Act 55, 1919, p. 90; Imd. Eff. Apr. 10.

AN ACT to regulate the sale or disposal, or contracting for the sale or disposal, of railroad tracks and facilities in certain cases.

The People of the State of Michigan enact:

469.231 Main line track or terminal, permission to sell; necessity.

Sec. 1. No person, firm or corporation owning or operating a railroad or interurban railroad which is or has been a common carrier of freight or passengers, or both, within this state, shall sell or dispose of or contract for the sale of any of its main line track or tracks or terminals to any other railroad company or common carrier, or to any person or persons in any case without securing the permission of the Michigan railroad commission as hereafter provided.

HISTORY: CL 1929, 11355;—CL 1948, 469.231.

RAILROAD COMMISSION: Abolished; powers and duties transferred to the public service commission, see Compilers' §§ 460.4 and 460.53.

469.232 Main line track or terminal, permission to sell; procedure to obtain.

Sec. 2. No person, firm or corporation owning a railroad or interurban railroad in this state, which road is or has been a common carrier of passengers or freight, or both, shall sell a part, or portion of the main line of such road or any terminal thereof or contract for the sale thereof to any other common carrier of freight or passengers, or to other persons or corporations, without first making application to the Michigan railroad commission for permission to make such sale. On filing with said Michigan railroad commission an application for such permission the said Michigan railroad commission shall promptly fix a time and place of hearing thereon, and shall require and

direct the corporation, firm or person filing such application to give notice thereof, and of the time and place thereof, by advertisement, to be published in a form to be approved by the said Michigan railroad commission once in each of 3 successive weeks prior to the date fixed for the hearing thereof, in at least 1 newspaper published or circulating in each county in which any part of such railroad or interurban railroad proposed to be sold, is situated. Said hearing shall be conducted subject to the same rules and regulations as are hearings on complaints presented to the Michigan railroad commission under Act 300 of the Public Acts of 1909, as amended. Any person, firm or corporation interested in the operation of the said carrier shall be entitled to be heard.

HISTORY: CL 1929, 11356;—CL 1948, 469.232.

NOTE: Act 300 of 1909, above referred to, is Compilers' § 462.2.

As to hearings, see in particular Compilers' s. 462.22 et seq.

469.233 Main line track or terminal, permission to sell; order of commission; appeal; scope, limitation.

Sec. 3. The commission may, in its discretion, grant such permission if deemed compatible with the public interest or may withhold the same if the making of such sale is found to be incompatible with the public interest. Orders made under the provisions of this act shall be subject to the same right of appeal and review as is granted in the case of orders made under Act 300 of the Public Acts of 1909, as amended: Provided, however, That nothing in this act contained shall be deemed to modify or repeal any law of the state providing for the consolidation of railroad companies, nor as permitting a sale by a railroad company to a competing company or to a company having the same terminal points. Nothing in this act contained shall be construed to repeal or supersede any provisions of Act 300 of the Public Acts of 1909, as amended; nor shall this act be deemed to apply to any street railway or interurban electric [electric] railway.

HISTORY: CL 1929, 11357;—CL 1948, 469.233.

NOTE: Act 300 of 1909, above referred to, is Compilers' § 462.2 et seq.

As to appeal, see in particular Compilers' §§ 462.26 and 462.27.

469.234 Penalty.

Sec. 4. Any person, firm or corporation making or attempting to make a sale or contract within the purview of this act without complying with the provisions hereof shall be liable to a penalty of not less than 500 dollars nor more than 10,000 dollars. Any owner or any officer, agent, employe or representative of a railroad company aiding and assisting in any sale or causing the same to be made in violation of the provisions hereof shall be deemed to be guilty of a misdemeanor and on conviction shall be subject to a penalty of not less than 100 dollars nor more than 500 dollars, or to imprisonment in the county jail for not less than 30 days nor more than 1 year, or to both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1929, 11358;—CL 1948, 469.234.

SUITS FOR PENALTY: See (Jud. Act) Compilers' § 800.4805 et seq.

469.235 Declaration of necessity.

Sec. 5. This act is declared to be immediately necessary for the preservation of the public health, peace and safety.

HISTORY: CL 1929, 11359;—CL 1948, 469.235.

Act 56, 1919, p. 92; Imd. Eff. Apr. 10.

AN ACT to regulate the discontinuance of service by certain common carriers, the abandonment of facilities thereof and the dismantling of railroad tracks and stations, and to provide a penalty for the violation hereof.

The People of the State of Michigan enact:

469.241 Main line track, permission to abandon; necessity.

Sec. 1. No person, firm or corporation owning or operating any railroad or interurban railroad within this state which is or has been a common carrier of freight or passengers, or both, shall abandon its main line of track, or tracks, or any portion thereof, or remove or close any of its main line track, or tracks, except for the purpose of repairing the same or altering the line of the track except by permission of the Michigan railroad commission in accordance with the provisions hereof.

HISTORY: CL 1929, 11360;—CL 1948, 469.241.

RAILROAD COMMISSION: Abolished; powers and duties transferred to the public service commission, see Compilers' §§ 460.4 and 460.53.

DISCONTINUANCE OF SERVICE: Where railroad is constructed with public aid, see Compilers' §§ 469.221 and 469.222.

469.242 Main line track, permission to abandon; procedure to obtain.

Sec. 2. No person, firm or corporation owning or operating any track, or tracks, within this state as aforesaid shall except for the purposes hereinbefore specified abandon its main line track, or tracks or any part or portion thereof, or discontinue the furnishing of service to the public, or remove any of its main line track, or tracks, or dismantle the same without first making application to the Michigan railroad commission in writing setting forth specifically the reason or reasons for the desired abandonment or discontinuance of service. On filing with said Michigan railroad commission an application for such permission the said Michigan railroad commission shall promptly fix a time and place of hearing thereon, and shall require and direct the corporation, firm or person filing such application to give notice thereof, and of the time and place of hearing thereon, by advertisement to be published in a form to be approved by the said Michigan railroad commission once in each of 3 successive weeks prior to the date fixed for the hearing thereof, in at least 1 newspaper published or circulating in each county in which any part of such railroad or interurban railroad proposed to be abandoned, is situated. Said hearing shall be conducted subject to the same rules and regulations as are hearings on complaints presented to the Michigan railroad commission under Act 300 of the Public Acts of 1909, as amended. Any person, firm or corporation interested in the operation of the said carrier shall be entitled to be heard.

HISTORY: CL 1929, 11361;—CL 1948, 469.242.

NOTE: Act 300 of 1909, above referred to, is Compilers' § 462.2 et seq.

As to hearings, see in particular Compilers' § 462.22 et seq.

469.243 Main line track, permission to abandon; order of commission; appeal.

Sec. 3. Upon the hearing of any such application the railroad commission shall hear the proofs of the parties and shall then determine whether the proposed abandonment or discontinuance of service, or dismantling of such facilities, or other particular relief sought, not incompatible with the public interest and shall then make such order as the facts may justify. Any order made under the provisions of this act shall be subject to the same right of appeal and review as is, or may be, granted by law with respect to orders made under the provisions of Act 300 of the Public Acts of 1909, as amended.

HISTORY: CL 1929, 11362;—CL 1948, 469.243.

NOTE: Act 300 of 1909, above referred to, is Compilers' § 462.2 et seq.

As to appeal, see in particular Compilers' §§ 462.26 and 462.27.

469.244 Penalty.

Sec. 4. Any person, firm or corporation owning or operating any railroad or interurban railroad, abandoning or dismantling the same, or any portion thereof, or discontinuing service on said main line track or tracks in violation of the terms of this act, shall be deemed guilty of an unlawful act and shall be liable to a penalty of not less than 100 dollars, nor more than 20,000 dollars. Any owner, officer, agent, representative, servant or employe of any railroad, or interurban railroad, or of any railroad company

or interurban railway company, who causes, aids or assists in any such illegal act shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be liable to a fine of not less than 100 dollars nor more than 1,000 dollars, or to imprisonment in the county jail not less than 30 days, nor more than 2 years, or to both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1929, 11363;—CL 1948, 469.244.

469.245 Scope; limitation.

Sec. 5. The provisions of this act shall be deemed to extend to and include any railroad company or interurban railway company doing business in this state, now in existence or hereafter incorporated: Provided, That nothing contained herein shall be construed to repeal or supersede Act 300 of 1909, as amended, or any provision thereof; nor shall this act be deemed to apply to any street railway or interurban electric railway.

HISTORY: CL 1929, 11364;—CL 1948, 469.245.

NOTE: Act 300 of 1909, above referred to, is Compilers' § 462.2.

469.246 Declaration of necessity.

Sec. 6. This act is declared immediately necessary for the preservation of the public peace, health and safety.

HISTORY: CL 1929, 11365;—CL 1948, 469.246.

Act 190, 1873, p. 478; Eff. Jul. 31.

AN ACT to authorize railroad companies to convey their franchises and property under certain circumstances.

The People of the State of Michigan enact:

469.261 Sale of property and franchises to another company; procedure; purchaser, obligations and rights.

Sec. 1. That it shall be lawful for any railroad company in this state which shall have entered in good faith upon the work of constructing its road, and shall have become unable to complete the construction of the same or of any part thereof, to sell, and convey the whole or any part of its road so partially completed, together with the rights and franchises connected therewith, to any other railroad company or corporation of this state, not having the same terminal points and not being a competing line. Provided, That at any general or special meeting duly called for that purpose the stockholders carrying [owning] 2/3 of the stock of said company shall consent thereto. And provided further, That the company or corporation so purchasing shall hold such property and franchises, subject to all the obligations and duties, and with all the rights and privileges prescribed by the general railroad law of this state.

HISTORY: How. 3403;—CL 1897, 6328;—CL 1915, 8424;—CL 1929, 11366;—CL 1948, 469.261.

SALE OF PROPERTY AND FRANCHISES: See Act 112 of 1899, being Compilers' §§ 450.631 and 450.632.

469.262 Conveyance; recording, filing.

Sec. 2. Such conveyance shall be executed by the secretary of the company, under its corporate seal, and there shall be attached thereto a copy of the resolution passed at the stockholders' meeting authorizing the same, which shall be certified to by the secretary of said company. Such conveyance, with said resolution, shall be recorded in the office of the register of deeds in every county in which the property so conveyed may be situated, and a copy thereof shall be filed in the office of the secretary of state.

HISTORY: How. 3404;—CL 1897, 6329;—CL 1915, 8425;—CL 1929, 11367;—CL 1948, 469.262.

469.263 Conveyance; rights of creditors; completion.

Sec. 3. Nothing in this act contained shall be construed as rendering valid any conveyance which shall in any manner interfere with the rights of creditors. Provided, That the company so buying such railroad shall complete the same within 5 years from the date of purchase or said sale shall be void.

HISTORY: How. 3405;—CL 1897, 6330;—CL 1915, 8426;—CL 1929, 11368;—CL 1948, 469.263.

Act 35, 1887, p. 32; Imd. Eff. Mar. 18.

AN ACT to provide for the conveyance of railroad franchises and property in certain cases.

The People of the State of Michigan enact:

469.281 Resale by purchaser of railroad property at foreclosure; authority.

Sec. 1. That upon the foreclosure of any mortgage of the property and franchise of any railroad corporation, if the railway or railroad tracks and its appurtenances are or have been sold at the sale thereunder, the purchaser or purchasers are hereby authorized to sell and convey the property so purchased, together with all the rights and franchises acquired under said sale to any other railroad company or corporation authorized by the laws, of this state, not having the same terminal points and not being a competing line, and upon such sale and the confirmation thereof as herein provided, the company receiving such conveyance shall have the same rights, powers and privileges and franchises as are or may be secured to the original company whose property may have been sold under such decree: Provided, That to entitle such companies to the privileges of this act the purchase shall be within 6 months of the date of deed given under said foreclosure sale, and on or before the first day of July, in the year of our Lord, 1887.

HISTORY: How. 3408a;—CL 1897, 6331;—CL 1915, 8427;—CL 1929, 11369;—CL 1948, 469.281.

SALE OF PROPERTY AND FRANCHISES: See Act 112 of 1889, being Compilers' §§ 450.631 and 450.632.

469.282 Resale by purchaser of railroad property at foreclosure; approval; filing of papers.

Sec. 2. Before the sale by the purchaser or purchasers, provided for in section 1 of this act, shall have any force or effect, it shall be approved by the stockholders owning 2/3 of the stock of said purchasing company, and before filing evidence of such sale in the office of secretary of state, the same shall be submitted to a board consisting of the attorney general, commissioner of railroads, and secretary of state, to be examined by such board to ascertain whether the proposed sale and transfer will be in accordance with the constitution and laws of this state, and if found in accordance therewith, said board shall approve the same. Upon such approval by said board, a duplicate of said sale and transfer and approval of said shareholders shall be filed in the office of the secretary of state; the purchasing company shall thereby become possessed of all the rights, title and franchises of every name and nature secured by section 1 of this act.

HISTORY: How. 3408b;—CL 1897, 6332;—CL 1915, 8428;—CL 1929, 11370;—CL 1948, 469.282.

COMMISSIONER OF RAILROADS: Abolished; powers and duties transferred to the railroad commission, which in turn has been superseded by the public service commission, see Compilers' §§ 462.49, 460.4 and 460.53 respectively.

469.291-469.293 Repealed. 1962, p. 317, Act 174, Eff. Jan. 1, 1964.

Sections related to conditional sale or lease of railroad equipment.

Act 30, 1901, p. 50; Imd. Eff. Mar. 28.

AN ACT to authorize any railroad company now organized or that may hereafter be organized under the laws of this state, to sell, lease and convey its property and fran-

chises to any other railroad company, whether organized within or without this state; and to acquire by lease or purchase from the owner of any other railroad such road or any part or portion thereof, whether located within or without this state, together with the rights and franchises connected therewith; and to provide for securing payment therefor; and to repeal Act No. 102 of the Session Laws of 1893.

The People of the State of Michigan enact:

469.301 Sale, lease or purchase of railroad; consent of stockholders; rights and obligations.

Sec. 1. It shall be lawful for any railroad company organized, or that may be organized, under the laws of this state, to sell, lease and convey its road, together with the rights and franchises connected therewith, or any part or portion thereof, to any other railroad company, whether organized within or without this state; and to acquire by lease or purchase from the owner of any other railroad such road, together with the rights and franchises connected therewith, or any part or portion thereof, whether located within or without this state; and for the railroad company so purchasing or leasing to acquire and use such road, rights and franchises by purchase of the stock, or otherwise, as may be agreed between the parties interested, said railroads not having the same terminal points, and not being competing lines: Provided, That the stockholders owning a majority of the stock of said companies shall consent thereto: And provided further, That the company so purchasing or leasing shall hold and operate such road and said property and franchises subject to all the duties and obligations, and with all the rights and privileges prescribed by the general railroad laws of this state.

HISTORY: CL 1915, 8435;—CL 1929, 11374;—CL 1948, 469.301.

SALE OF PROPERTY AND FRANCHISES: See Act 112 of 1889, being Compilers' §§ 450.631 and 450.632.

469.302 Sale, lease or purchase of railroad; bonds; pre-existing creditors.

Sec. 2. The railroad company purchasing or leasing by virtue of this act may issue its bonds, secured by trust deed or mortgage, upon its property, rights and franchises, including the property and rights thus acquired, to make payment therefor; and such trust deed or mortgage shall have the effect of a purchase-money security: Provided, That nothing herein contained shall prejudice the rights of pre-existing creditors of the corporation from which such property and rights are purchased or leased.

HISTORY: CL 1915, 8436;—CL 1929, 11375;—CL 1948, 469.302.

Sec. 3. (This was a repeal section.)

HISTORY: CL 1915, 8437;—CL 1929, 11376;—Rep. 1945, p. 403, Act 267, Imd. Eff. May 25.

ACT REPEALED: Act 102, 1893, CL 1897, 6339 and 6340, amended by Act 23, 1895.

Act 303, 1921, p. 563; Eff. Aug. 18.

AN ACT to regulate charges of common carriers for leases of railroad property or property under control of railroad companies to be used for sites for elevators, warehouses, ice houses, buying stations, flour mills, coal sheds or other buildings used for receiving, storing or manufacturing any article of commerce to be transported over the rails of common carriers.

The People of the State of Michigan enact:

469.351 Leasehold rights for elevators and buildings; charges.

Sec. 1. The charge of any common carrier for lease-hold rights to operate elevators, warehouses, ice houses, buying stations, flour mills, coal sheds or other buildings used

for receiving, storing or manufacturing any article of commerce to be transported or which has been transported over the rails of common carriers, shall be just, reasonable and nondiscriminatory.

HISTORY: CL 1929, 11377;—CL 1948, 469.351.

469.352 Leasehold rights for elevators and buildings; disagreement, application to commission.

Sec. 2. Whenever any common carrier and any person, firm or corporation engaged in the business of operating an elevator, warehouse, ice house, buying station, flour mill, coal shed or other building used for receiving, storing or manufacturing any article of commerce to be transported or which has been transported over the rails of common carriers, cannot agree upon the terms and conditions whereby the person may continue in the operation of the business aforesaid, either party may apply by complaint in writing to the Michigan public utilities commission for a decision as to the proper terms and conditions for the continuance of the business above mentioned, operated by the person. Said complaint in writing shall set up all of the relevant facts concerning the operation of said business.

HISTORY: CL 1929, 11378;—CL 1948, 469.352.

NOTE: The public utilities commission has been abolished and superseded by the public service commission, see Compilers' § 460.4.

469.353 Leasehold rights for elevators and buildings; investigation by commission, hearing, determination.

Sec. 3. The Michigan public utilities commission upon the receipt of such a complaint in writing shall give the opposite party a notice similar to that prescribed in section 22, Act No. 300 of the Public Acts of 1909, as amended, and shall give the opposite party a copy of the complaint, and shall proceed to an investigation of the matters set forth in said complaint, and in any answer thereto which may be filed by the opposite party. Said complaint shall be heard and hearings shall be conducted in the same manner as is now provided by law for complaints and hearings before the Michigan public utilities commission, and the said commission is hereby given authority to determine and fix by its order the terms and conditions for the continuance of the business of the person operating an elevator, warehouse, ice house, buying station, flour mill, coal shed or other building used for receiving, storing or manufacturing any article of commerce to be transported or which has been transported over the rails of common carriers.

HISTORY: CL 1929, 11379;—CL 1948, 469.353.

NOTE: Sec. 22 of Act 300 of 1909, above referred to, is Compilers' § 462.22.

469.354 Leasehold rights for elevators and buildings; re-hearing; removal of case to court.

Sec. 4. Either party may apply for a re-hearing on the order of the commission at any time after 1 year from the date of said order. Either party conceiving himself aggrieved by any order of the Michigan public utilities commission made in such case may remove the matter to the Ingham circuit court in the same manner as is now provided in section 26 of Act No. 300 of the Public Acts of 1909, and amendments thereto, and thereupon the same proceedings may be had in the matters provided in this act as are indicated in section 26, heretofore referred to.

HISTORY: CL 1929, 11380;—CL 1948, 469.354.

NOTE: Sec. 26 of Act 300 of 1909, above referred to, is Compilers' § 462.26.

REHEARING: See Compilers' §§ 460.351 and 460.352.

469.355 Penalties.

Sec. 5. All common carriers and any director or officer thereof, or any trustee, receiver, lessee, agent or person employed by said common carrier, shall be subject to the penalties prescribed in section 38 and section 43 of Act No. 300 of the Public Acts of 1909, for violations of this act, or orders issued pursuant hereto.

HISTORY: CL 1929, 11381;—CL 1948, 469.355.

NOTE: Secs. 38 and 43 of Act 300 of 1909, above referred to, are Compilers' §§ 462.38 and 462.43.

Act 4, 1900 (Ex. Ses.), p. 9; Imd. Eff. Oct. 15.

AN ACT to provide for the institution of actions against the state by railroad companies created, and which have heretofore existed under special charters, to recover damages sustained by reason of, and resulting from, the repeal of the special charter under which such companies were created, organized, and existed prior to such repeal.

The People of the State of Michigan enact:

469.381 Actions for damages for repeal of special charters; procedure.

Sec. 1. Whenever the charter of any railroad company organized, created, or existing under and by virtue of the provisions of any special act enacted prior to 1850, which provides that the state shall make compensation for damages sustained in case of repeal, shall be withdrawn or revoked by the repeal of such special act, such railroad company may, within 1 year from and after the date that such repeal shall go into effect and not thereafter, institute an action of trespass on the case against the state of Michigan, in the circuit court for the county of Ingham, Kent or Wayne, for the recovery of any damages which it has sustained, and to which it is entitled by reason of such repeal of such special charter, if any damages be sustained. Process shall be served upon the governor, and the case shall proceed in accordance with, and be governed in all respects by, the law and practice governing similar actions between individuals in this state.

HISTORY: CL 1915, 8449;—CL 1929, 11382;—CL 1948, 469.381.

ACTS REPEALING SPECIAL CHARTERS:

Mich. Central Railroad Co.: 1900 (Ex. Ses.), p. 7, Act 2, Imd. Eff. Oct. 15;

Erie & Kalamazoo Railroad Co.: 1900 (Ex. Ses.), p. 8, Act 3, Eff. Jan. 14, 1901;

Detroit & Pontiac Railroad Co.: 1900 (Ex. Ses.), p. 10, Act 5, Eff. Jan. 14, 1901;

Michigan Southern Railroad Co.: 1900 (Ex. Ses.), p. 10, Act 6, Imd. Eff. Oct. 15.

469.382 Actions for damages for repeal of special charters; payment of judgment; tax clause.

Sec. 2. Upon final judgment being rendered, the same may, upon application by such railroad company, be certified by the clerk, and under the seal of the court in which the same is entered or to which the same has been appealed or removed, to the auditor general; and he shall thereupon issue his warrant for 1/3 of said judgment with accrued interest; and during the next following year he shall issue his warrant for another 1/3 of said judgment with accrued interest; and during the next following year he shall issue his warrant for the balance of said judgment with accrued interest; unless provision for earlier payments, or an immediate satisfaction of said judgment shall be made by the legislature. Said warrants shall be paid by the state treasurer to the railroad company entitled thereto or to its assigns, out of the general fund. The auditor general shall add to and incorporate the amount paid each year on account of said judgment, in the next succeeding state tax, and the money collected therefrom shall be placed to the credit of the general fund to reimburse it for the moneys thus paid.

HISTORY: CL 1915, 8450;—CL 1929, 11383;—CL 1948, 469.382.

Sec. 3. (This was a repeal section.)

HISTORY: CL 1915, 8451;—CL 1929, 11384;—Rep. 1945, p. 403, Act 267, Imd. Eff. May 25.

Act 184, 1897, p. 240; Imd. Eff. May 29.

AN ACT to permit foreign railroad companies to hold and own certain land in this state, to confirm conveyances of such land to other foreign railroad companies in certain conditions, and to authorize the recording of a copy of agreements by which such conveyances have been or may be hereafter made.

The People of the State of Michigan enact:

469.401 Land of foreign railway company; holding, limitations.

Sec. 1. That it shall be permissible for any foreign railway company which shall have heretofore purchased land in this state, or which may hereafter purchase land necessary and actually used for station and yard purposes, to be used to facilitate and accommodate its business of receiving and delivering passengers and freight that it may transport from and to this state, to hold and own such land and all buildings and other structures that it may place thereon, in like manner and effect as if such company were duly incorporated under the laws of this state: Provided, That said company shall hold such land and use the same subject to all the limitations, obligations and duties to the public and to individuals which are or at any time hereafter may be imposed upon railway companies by the laws of this state.

HISTORY: CL 1897, 6325;—CL 1915, 8421;—CL 1929, 11587;—CL 1948, 469.401.

469.402 Land of foreign railway company; conveyance according to foreign law, recording.

Sec. 2. When any foreign railway company which has heretofore purchased land for the use specified in the preceding section of this act, or may hereafter purchase land for such use, and its railroad and other property in the state or country of its organization, have subsequently become merged or vested in any other foreign railway company, by virtue of a sale and conveyance thereof made in pursuance of judicial decree; or its railroad and other property situated in such foreign state or country has or shall have become vested in another foreign company by virtue of a formal written agreement made and executed in pursuance of the law of such foreign state or country, the deed of conveyance and said agreement shall be deemed effective to transfer title to said land in this state pursuant to the terms thereof in that behalf; and when such transfer has been or shall be effected by written agreement a copy thereof duly certified as a correct and perfect copy by the secretary of the company acquiring the same, under the seal of the company, shall be entitled to record in the county where said land is situated, notwithstanding that the execution of the agreement may not have been in conformity with the general statutory requirement for conveyance of land in this state.

HISTORY: CL 1897, 6326;—CL 1915, 8422;—CL 1929, 11588;—CL 1948, 469.402.

Act 245, 1917, p. 520; Eff. Aug. 10.

AN ACT to prevent trespassing on the rights of way and tracks of railroad companies within this state.

The People of the State of Michigan enact:

469.421 Trespass on fenced or enclosed railroad tracks or right of way.

Sec. 1. No person shall have authority to walk, ride, drive or be upon or along the tracks within the fenced or enclosed right of way of any railroad company operating its lines within this state, or to go upon or cross such tracks or right of way at any place other than a public or private crossing. The provisions of this act shall not apply to passengers on trains or employees of a railroad company while engaged in the performance of the duties of their employment, any authorized representative of the railroad employees, any person going upon such right of way or tracks to save human life or to protect property, any person going or being upon or in the station grounds or depot of any such railroad company as a passenger or for the purpose of transacting business therewith, any person, members of his family, or his employees going upon such right of way or tracks for the purpose of crossing from one part to another of a farm he may own or lease, where such farm lies on both sides of the right of way, or to any person having written permission to go upon the right of way or tracks granted by the railroad company, the Michigan public service commission or by the interstate commerce commission.

HISTORY: CL 1929, 11589;—CL 1948, 469.421;—Am. 1959, p. 400, Act 258, Eff. Mar. 19, 1960.

Act 142, 1895, p. 274; Eff. Aug. 30.

AN ACT to provide for the bulletining of the arrival of passenger trains.

The People of the State of Michigan enact:

469.451 Bulletins of train arrivals.

Sec. 1. That every corporation, company or person operating a railroad within this state shall, immediately after the taking effect of this act, cause to be placed in a conspicuous place in each passenger depot of such company, located at any station in this state, at which there is a telegraph office, a blackboard of suitable size, upon which such company or person shall cause to be written, at least 20 minutes before the schedule time for the arrival of each passenger train stopping upon such route at such station, the fact whether such train is on schedule time or not, and if late, how much, and the station at which such train was when report was received: Provided also, That any passenger train not more than 5 minutes late shall be deemed to be on time as to the operation of this act.

HISTORY: CL 1897, 5256;—CL 1915, 8351;—CL 1929, 11506;—CL 1948, 469.451.

469.452 Forfeiture; costs; disposition.

Sec. 2. That for each violation of the provisions of this act in failing to report or in making a false report, such corporation, company, or person so neglecting or so refusing to comply with the provisions of this act, shall forfeit and pay the sum of 25 dollars, together with all taxable costs, to be recovered in a civil action to be prosecuted by the prosecuting attorney of the county in which the neglect or refusal occurs, in the name of the state of Michigan, which shall be paid over to the county in which such proceedings are had, and shall be part of the common school fund.

HISTORY: CL 1897, 5257;—CL 1915, 8352;—CL 1929, 11507;—CL 1948, 469.452.

FORFEITURE: Suit for, see (Jud. Act) Compilers' § 600.4805 et seq.

Act 177, 1881, p. 213; Eff. Sep. 10.

AN ACT relative to the delivery of grain by railway companies.

The People of the State of Michigan enact:

469.461 Grain; delivery by railways; evidence of amount shipped.

Sec. 1. That all railway companies receiving or transporting grain in bulk, or otherwise, shall deliver the same to any consignee thereof or to any elevator or public warehouse to which it may be consigned for a reasonable compensation. And any bill of lading, receipt or contract releasing such railway company from the responsibility or liability to deliver the same amount by weight as they received from the consignor shall be void: Provided, Such consignee, or the elevator, or the public warehouse can be reached by any track owned, leased, or used, or which can be used by such railway company; and all railway companies shall permit connections to be made with their track so that any consignee, and any elevator, and any public warehouse may be reached by the cars on said railway: And provided further, If any such corporation shall, upon the receipt by it of any grain for transportation, neglect or refuse to weigh and receipt for the same, the sworn statement of the shipper, or his agent having personal knowledge of the amount of grain so shipped, shall be taken as prima facie evidence of the amount shipped.

HISTORY: How. 3422;—Am. 1887, p. 131, Act 115, Eff. Sept. 28;—CL 1897, 5249;—CL 1915, 8345;—CL 1929, 11508;—CL 1948, 469.461.

Act 153, 1883, p. 166; Eff. Sep. 8.

AN ACT for the regulation of freights on railroads in the state of Michigan.

The People of the State of Michigan enact:

469.471 Freight charges; restrictions.

Sec. 1. That it shall be unlawful for any railroad company doing business in this state, operating the shortest competing line of railroad, to charge a greater amount of toll or compensation for the transportation of freight from any non-competing point on its line of railroad than it shall charge at the nearest railroad competing point on its line of road in opposite direction to that from which such freight is to be moved, when of the same class, in like quantity, and for the same destination in this state. It is also hereby further provided, that whenever freight is taken from any point on the longer competing line, or lines, that where the distance from such shipping point to the place of destination does not exceed the entire length of the shortest competing line, then the same rule shall apply as is provided in this section, for the shortest competing line, as to rates of freight.

HISTORY: How. 3422a;—CL 1897, 5247;—CL 1915, 8343;—CL 1929, 11509;—CL 1948, 469.471.

RATES: See Compilers' §§ 460.4, 460.54, 460.57 and 460.58.

469.472 Violation; forfeiture; liability for overcharge.

Sec. 2. Any railroad company doing business in this state violating any of the provisions of this act shall forfeit to the state for each offense, a sum not less than 50 dollars nor more than 150 dollars, and shall be liable to the party so overcharged in the amount of such excessive charge and costs of suit.

HISTORY: How. 3422b;—CL 1897, 5248;—CL 1915, 8344;—CL 1929, 11510;—CL 1948, 469.472.

FORFEITURE: Suit for, see (Jud. Act) Compilers' § 600.4805 et seq.

Act 21, 1867, p. 23; Eff. Jun. 27.

AN ACT to regulate drayage to and from railroads.

The People of the State of Michigan enact:

469.481 Freight; delivery by railroad; notice of arrival.

Sec. 1. That all freight carried by any railroad company, now or hereafter existing under the laws, or doing business in this state, shall be deliverable to the consignee thereof at the depot or station of such company, in the place where the same shall be directed, unless the consignee or consignees thereof shall consent to the delivery of the same at his or their place or places of business, or elsewhere, by the drays or trucks owned or employed by said railroad company: Provided, That immediately or within a reasonable time after the arrival of any such freight at its place of destination, the railroad company carrying the same, shall give notice of such arrival to the consignee or consignees of such freight.

HISTORY: CL 1871, 2384;—How. 3420;—CL 1897, 5250;—CL 1915, 8346;—CL 1929, 11511;—CL 1948, 469.481.

469.482 Freight; delivery at station; drayage charges; penalty.

Sec. 2. All shippers of freight, by any of the railroad companies of this state, shall be, and are hereby authorized to deliver any goods or freight they may wish to have transported on said railroads, to any of said companies' depots or stations at the usual places of deposit therefor; and it shall not be lawful for any such railroad company to charge, collect or receive any cartage or drayage on goods received for transportation, unless said goods shall have been actually carted or drayed by said railroad company, at the request of the shipper or shippers thereof, and any person or persons violating the provisions of this act, shall be deemed guilty of a misdemeanor and punishable by fine not exceeding 10 dollars.

HISTORY: CL 1871, 2385;—How. 3421;—CL 1897, 5251;—CL 1915, 8347;—CL 1929, 11512;—CL 1948, 469.482.

Act 383, 1913, p. 729; Eff. Aug. 14.

AN ACT to require railroad companies to provide telephone connection with their offices, buildings and grounds, and to empower the Michigan railroad commission to regulate the same.

The People of the State of Michigan enact:

469.491 Telephone connections.

Sec. 1. Every railroad company shall furnish reasonably adequate telephonic connection with its offices, buildings and grounds.

HISTORY: CL 1915, 8415;—CL 1929, 11513;—CL 1948, 469.491.

469.492 Telephone connections; complaint as to service, investigation and regulation.

Sec. 2. Upon complaint to the Michigan railroad commission that any telephonic service with any railroad is inadequate or in any respect unreasonable or unjustly discriminatory, or that such service cannot be had, it shall be the duty of said commission to investigate the same, and if upon investigation the commission shall find that any telephonic service is inadequate or unreasonable or unjustly discriminatory, and that such service cannot be had, it shall determine and by order fix a reasonable regulation, practice or service to be installed, imposed, observed and followed in the future.

HISTORY: CL 1915, 8416;—CL 1929, 11514;—CL 1948, 469.492.

RAILROAD COMMISSION: Abolished; powers and duties transferred to the public service commission, see Compilers' §§ 460.4 and 460.53.

469.493 Orders; effect; action to vacate.

Sec. 3. All orders made by the commission under the provisions of this act shall have the same force and effect, and an action may be commenced to vacate and set aside

the same as, provided in Act No. 300 of the Public Acts of 1909, for the review of the decisions of the said commission.

HISTORY: CL 1915, 8417;—CL 1929, 11515;—CL 1948, 469.493.

NOTE: For provisions in Act 300 of 1909, referred to, see Compilers' § 462.26 et seq.

Act 104, 1921, p. 230; Eff. Aug. 18.

AN ACT defining the liability of common carriers, railroad and transportation companies for damage to freight, in certain cases when the damage is caused by an agency beyond the control of the carrier.

The People of the State of Michigan enact:

469.501 Damage caused by agency beyond control of carrier, liability.

Sec. 1. Every common carrier, railroad or transportation company shall hereafter be liable for all loss, damage or injury to goods intrusted to it for transportation where the damage is caused by an agency beyond its control: Provided, The negligence of the carrier commingles with such agency and contributes to such loss or injury.

HISTORY: CL 1929, 11576;—CL 1948, 469.501.

469.502 Damage caused by agency beyond control of carrier, liability; limitation contract prohibited.

Sec. 2. It shall be unlawful for any common carrier to enter into any contract with a shipper limiting its liability in the cases mentioned in section 1 of this act.

HISTORY: CL 1929, 11577;—CL 1948, 469.502.

Act 37, 1949, p. 30; Eff. Sep. 23.

AN ACT to provide for the installation of head and rear lights on track motor cars operated by common carriers by railroad.

The People of the State of Michigan enact:

469.521 Track motor cars; head and rear lights; installation.

Sec. 1. Every person, firm or corporation operating or controlling any railroad running through or within the state shall on or before July 1, 1950, equip each of its track motor cars used during the period from 30 minutes before sunset to 30 minutes after sunrise, with an electric headlight of such construction and with sufficient candlepower to render plainly visible at a distance of not less than 300 feet in advance of such track motor car any track obstruction, landmark, warning sign or grade crossing, and further shall equip such track motor car with a red rear electric light of such construction and with sufficient candlepower as to be plainly visible at a distance of 300 feet. It shall be unlawful after July 1, 1950 for any person, firm or corporation operating or controlling any railroad running through or within this state to operate or use any track motor car from 30 minutes before sunset to 30 minutes after sunrise, which is not equipped with lights of the candlepower, construction and utility described in this section.

HISTORY: New 1949, p. 30, Act 37, Eff. Sep. 23.

469.522 Track motor cars; penalty for violation; enforcement.

Sec. 2. Any person, firm or corporation operating or controlling any railroad running through or within this state using or permitting to be used on its line in this state a track motor car in violation of the provisions of this act shall be liable to a penalty of \$100.00 for each violation to be recovered in a suit or suits to be brought by the prose-

cutting attorney in the circuit court of the county having jurisdiction in the locality where such violation occurred. Upon duly verified information being given him of such violation, such prosecuting attorney shall bring such suits. It shall be the duty of the Michigan public service commission to enforce this act.

HISTORY: New 1949, p. 31, Act 37, Eff. Sep. 23.

Act 106, 1951, p. 136; Eff. Sep. 28.

AN ACT to provide for the installation of windshields, windshield wipers and tops on track motor cars operated by common carriers by railroad.

The People of the State of Michigan enact:

469.541 Track motor cars; windshields, windshield wipers and tops; equipment.

Sec. 1. Every person, firm or corporation operating or controlling any railroad running through or within the state shall, on or before January 1, 1952, equip each of its track motor cars with a windshield, windshield wiper and canopy or top. It shall be unlawful after July 1, 1952, for any person, firm or corporation operating or controlling any railroad running through or within this state to operate or use any track motor car without a windshield wiper and canopy or top.

HISTORY: New 1951, p. 136, Act 106, Eff. Sep. 28.

469.542 Violations; penalty; enforcement.

Sec. 2. Any person, firm or corporation operating or controlling any railroad running through or within this state not using windshields, windshield wipers and canopy or tops on track motor cars shall be violating the provisions of this act and shall be liable to a penalty of \$100.00 for each violation to be recovered in a suit or suits to be brought by the prosecuting attorney in the circuit court of the county having jurisdiction in the locality where such violation occurred. Upon duly verified information being given him of such violation, such prosecuting attorney shall bring such suits. It shall be the duty of the Michigan public service commission to enforce this act.

HISTORY: New 1951, p. 136, Act 106, Eff. Sep. 28.

Act 180, 1956, p. 336; Eff. Aug. 11.

AN ACT providing for railroad track safety inspections; to require enforcement by the Michigan public service commission; to authorize rules and regulations; and to provide penalties for violations.

The People of the State of Michigan enact:

469.601 Railroad tracks; inspection, rules, violation.

Sec. 1. All main line and branch line railroad tracks owned and operated by a railroad company in this state, upon which passenger trains carrying paying passengers are operated, shall be inspected according to rules and regulations promulgated by the Michigan public service commission, pursuant to Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.82, inclusive, of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110, inclusive, of the Compiled Laws of 1948. Any violation of this act shall be a misdemeanor.

HISTORY: New 1956, p. 336, Act 180, Eff. Aug. 11.

CHAPTER 470. RAILROAD EMPLOYEES

QUALIFICATIONS OF EMPLOYEES

Act 187 of 1911

- 470.1 Prior experience of employees; filing of affidavit.
- 470.2 Prior experience of employees; engineer.
- 470.3 Prior experience of employees; conductor.
- 470.4 Prior experience of employees; telegraph operator, age.
- 470.5 Prior experience of employees; train flagman; requirements.
- 470.6 Prohibited employment.
- 470.7 Scope; limitations.
- 470.8 Scope; limitations; negligence; substantial compliance.
- 470.9 Penalty.
- 470.10 Enforcement.

RAILROAD POLICEMEN

Act 114 of 1941

- 470.51 Railroad policemen, appointment; application, eligibility.
- 470.52 Railroad policemen, appointment; fee, identification information; record.
- 470.53 Railroad policemen, appointment; commission, issuance, notice.
- 470.54 Railroad policemen, appointment; oath of office; list of persons qualifying, fee.
- 470.55 Railroad policemen, appointment; police powers; duty to enforce laws.
- 470.56 Jails; duty of keepers to receive persons arrested.
- 470.57 Badge; duty to wear and exhibit.
- 470.58 Bond; duty to furnish; filing and approval.
- 470.59 Commission; delivery to appointee upon qualifying.
- 470.60 Compensation of policemen to be paid by company.
- 470.61 Termination of commission upon discontinuance of employment; authority of governor to revoke.

CLEARANCE SPACE

Act 156 of 1941

- 470.101 Railroad brakeman; act providing for safety; scope.
- 470.102 Railroad tracks; clear space; exceptions.
- 470.103 Railroad tracks; application to construct within prohibited area; refusal.
- 470.104 Telltales and bridge guards; construction requirements.
- 470.105 Warning signs; obstructions within prohibited area.
- 470.106 Parallel railroad tracks, permission for construction; distance between; construction for person other than railroad company.
- 470.107 Parallel railroad tracks, permission for construction; application to Michigan public service commission; grounds for refusal; exception.
- 470.108 Exemptions from application of act.
- 470.109 Violation of act; penalty; failure to correct as ordered.

SAFE SPACE

Act 26 of 1968

- 470.121 Railroad safe space; definitions.
- 470.122 Railroad safe space; prohibited conditions.
- 470.123 Public service commission; inspections.
- 470.124 Inspection upon written complaint; report.
- 470.125 Hearing; request; notice; holding.
- 470.126 Court order; enforcement.

FLAGMEN

Act 75 of 1945

- 470.151 Flagmen on light engines; permission to operate without.
- 470.152 Penalty for violation.
- 470.153 Enforcement by public service commission.

Act 187, 1911, p. 322; Eff. Aug. 1.

AN ACT to prescribe the qualifications of telegraph operators, railroad conductors, engineers and flagmen employed on the railroads of this state, and to provide penalties for the violation hereof.

The People of the State of Michigan enact:

470.1 Prior experience of employees; filing of affidavit.

Sec. 1. Every person hereafter employed upon any steam railroad in this state in the capacity of locomotive engineer, conductor or flagman shall file in the office of the Michigan railroad commission an affidavit, in such form as the commission may prescribe, setting forth the length of railroad experience of the person making the same, and for what company or companies and in what capacity performed.

HISTORY: CL 1915, 8403;—CL 1929, 11595;—CL 1948, 470.1.

RAILROAD COMMISSION: Abolished; powers and duties transferred to the public service commission, see Compilers' §§ 480.4 and 480.53.

470.2 Prior experience of employees; engineer.

Sec. 2. No person shall run or operate any locomotive or other motor power upon any railroad in the state of Michigan without first having served 3 years as fireman prior to qualifying for freight service and 2 years as a freight engineer before qualifying for passenger service.

HISTORY: CL 1915, 8404;—CL 1929, 11596;—CL 1948, 470.2.

470.3 Prior experience of employees; conductor.

Sec. 3. No person shall act or engage to act as a conductor on a railroad freight train in this state without having for 2 years prior thereto served or worked in the capacity of a brakeman or conductor on a freight or passenger train on a line of road; nor shall any person act or engage to act as a conductor on a passenger train in this state without having for 1 year prior thereto served or worked in the capacity of a conductor of a freight or passenger train on a line of road.

HISTORY: CL 1915, 8405;—CL 1929, 11597;—CL 1948, 470.3.

470.4 Prior experience of employees; telegraph operator, age.

Sec. 4. It shall be unlawful for any common carrier by railroad, carrying freight or passengers between points in this state, to employ any telegraph operator who has not had at least 30 days' experience in the handling of train orders under the tutorship of an experienced telegraph operator and shall have attained the age of 18 years.

HISTORY: CL 1915, 8406;—CL 1929, 11598;—CL 1948, 470.4;—Am. 1966, p. 64, Act 41, Imd. Eff. May 26.

470.5 Prior experience of employees; train flagman; requirements.

Sec. 5. No person shall act or engage to act as a flagman on a railroad train in this state without having for 3 months prior thereto served or worked as a yard or road brakeman on a yard, freight or passenger train on a line of road.

HISTORY: CL 1915, 8407;—CL 1929, 11599;—CL 1948, 470.5;—Am. 1964, p. 87, Act 87, Eff. Aug. 28.

470.6 Prohibited employment.

Sec. 6. No railroad company by its officers, agents or employees shall knowingly engage or employ any person to act in the capacity of locomotive engineer, conductor or flagman in violation of the provisions of this act.

HISTORY: CL 1915, 8408;—CL 1929, 11600;—CL 1948, 470.6.

470.7 Scope; limitations.

Sec. 7. Nothing in this act shall be construed as applying to the running or operating of engines in taking said engines to or from trains at division terminals by engine hostlers, or of the shifting of cars or making up trains or doing any work appurtenant thereto, or engine houses, trams or freight yards by switchmen or yardmen, or in the case of the disability of an engineer or a conductor or a flagman while out on the road between division terminals, or in case of relief or wrecking trains, in case of accident or wreck.

HISTORY: CL 1915, 8409;—CL 1929, 11601;—CL 1948, 470.7.

470.8 Scope; limitations; negligence; substantial compliance.

Sec. 8. The provisions of this act shall not apply to any railroad company within this state nor the receiver or lessee thereof, whose line of railway is less than 30 miles in length, nor shall anything herein contained relieve any railroad company from the negligence of any of its employees. In case any railroad company is unable to hire a sufficient number of men having the experience for the respective positions specified in this act, at the average rate of wages paid by said company during the next preceding year, it shall be deemed a substantial compliance with this act if such company shall

employ from among such men as are available those having the highest qualifications as to experience and efficiency.

HISTORY: CL 1915, 8410;—CL 1929, 11602;—CL 1948, 470.8.

470.9 Penalty.

Sec. 9. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than 100 dollars or confined in the county jail not exceeding 90 days, or by both such fine and imprisonment in the discretion of the court.

HISTORY: CL 1915, 8411;—CL 1929, 11603;—CL 1948, 470.9.

470.10 Enforcement.

Sec. 10. It shall be the duty of the Michigan Public Service Commission to enforce the provisions of this act.

HISTORY: Add. 1945, p. 75, Act 74, Eff. Sept. 6;—CL 1948, 470.10.

Act 114, 1941, p. 142; Imd. Eff. May 21.

AN ACT to provide for the appointment and commissioning of railroad policemen, to prescribe their qualifications, rights, powers and duties, and to define the duties of the keepers of jails, lockups and station houses in respect of persons arrested by such railroad policemen.

The People of the State of Michigan enact:

470.51 Railroad policemen, appointment; application, eligibility.

Sec. 1. Upon the application, in writing, of any company owning, leasing, using or operating any railroad, railway or railway express agency in this state, whether the same be operated by steam, electricity or other motive power, accompanied by the statements of 3 reputable citizens of the state of Michigan, testifying to the moral character of the person or persons mentioned in such application, the governor shall appoint and commission such person or persons as the company may designate, and as the governor may find to be suitable and qualified, to act as policeman or policemen for such company, upon the premises of such company, or elsewhere within the state of Michigan, when in the discharge of his or their duties as policeman or policemen for such company. No person shall be eligible to receive such appointment unless he shall be of the age of 21 years or more, shall be a person of good moral character, and shall be a citizen of this state. Every policeman so appointed shall be known and designated as a railroad policeman, and his commission shall be and remain in force until it shall become null and void or it shall be as hereinafter provided.

HISTORY: CL 1948, 470.51.

CITED IN OTHER SECTIONS: Sections 470.51 to 470.61 are cited in §§ 338.1052 and 750.227a.

470.52 Railroad policemen, appointment; fee, identification information; record.

Sec. 2. Every application for the appointment of a railroad policeman shall be accompanied by a fee of \$2.00, by a photograph of, and other identification information concerning, such person named in the application, including finger prints of such person, which said finger prints shall be classified by the bureau of identification of the Michigan state police, and shall remain with said bureau as a permanent record.

HISTORY: CL 1948, 470.52.

470.53 Railroad policemen, appointment; commission, issuance, notice.

Sec. 3. Whenever the governor shall appoint a railroad policeman, the secretary of state shall transmit his commission to the clerk of the county in which such policeman

resides, and the county clerk, on receipt of such commission, shall give notice thereof to the person so appointed and to the company which made application for his appointment.

HISTORY: CL 1948, 470.53.

470.54 Railroad policemen, appointment; oath of office; list of persons qualifying, fee.

Sec. 4. Every railroad policeman so appointed shall, before entering upon the duties of his office, and within 30 days after receiving notice from the county clerk of his appointment, take and file with the county clerk the oath prescribed by the constitution, and the said clerk shall file the oath thus taken in his office, and on the last day of December, March, June and September in each year, he shall transmit to the secretary of state a written list, containing the names of all persons to whom, during such preceding quarter, he has delivered commissions, the date of filing their oaths and bonds, and their respective post office addresses, with his certificate that such persons have fully complied with the provisions of law in regard to their qualifications for the discharge of the duties of the office of railroad policeman; and said clerk, for his services required by this act, shall be entitled to receive the sum of \$1.00 from each person so qualified.

HISTORY: Am. 1947, p. 468, Act 296, Eff. Oct. 11;—CL 1948, 470.54.

470.55 Railroad policemen, appointment; police powers; duty to enforce laws.

Sec. 5. Every railroad policeman, who is appointed and commissioned as provided in this act, shall have, exercise and possess, throughout the state, while in the discharge of his duties as such policeman, the powers of sheriffs, marshals, constables and municipal police officers, except in the service of civil process; and such policeman shall enforce and compel obedience to the laws of this state and to the ordinances of the cities, villages and towns thereof, when engaged in the discharge of his duties as policeman for such company.

HISTORY: CL 1948, 470.55.

470.56 Jails; duty of keepers to receive persons arrested.

Sec. 6. The keepers of jails, lockups and station houses in any county, city, village or town shall receive all persons arrested by such policeman for the commission of any offense against the laws of the United States, of this state, or the ordinances of any such city, village or town, to be dealt with according to law; and persons so arrested shall be received by such keepers of jails, lockups or station houses on the same basis, and such persons shall have the same status, as persons arrested by any other peace officer of the state of Michigan.

HISTORY: CL 1948, 470.56.

470.57 Badge; duty to wear and exhibit.

Sec. 7. Every railroad policeman so appointed and commissioned shall, when on duty as herein provided, wear a metallic badge with the word "Police" and the name of the railroad company for which he is appointed inscribed thereon, and he shall exhibit such badge, on demand, and before making an arrest.

HISTORY: CL 1948, 470.57.

470.58 Bond; duty to furnish; filing and approval.

Sec. 8. Every railroad policeman so appointed and commissioned shall, before entering upon the discharge of his duties, give a surety bond, in the sum of \$1,000.00, con-

ditioned upon the faithful performance of his duties. All such bonds shall be filed with, and approved by, the county clerk of the county where the oath of office was taken and the commission delivered to the policeman.

HISTORY: CL 1948, 470.58.

470.59 Commission; delivery to appointee upon qualifying.

Sec. 9. Upon the filing of the official oath and bond, and the payment of the clerk's fee, as required by this act, the county clerk shall deliver to the person so appointed the commission received by him for such person, which commission shall certify that the person named therein has been commissioned as a railroad policeman, shall give the name of the railroad company which such policeman represents, and shall designate the date on which such commission was issued. Such commission shall be of such form, size and description as the governor may, in his discretion, determine.

HISTORY: CL 1948, 470.59.

470.60 Compensation of policemen to be paid by company.

Sec. 10. The compensation for such railroad policemen shall be paid by the company for which they are respectively appointed.

HISTORY: CL 1948, 470.60.

470.61 Termination of commission upon discontinuance of employment; authority of governor to revoke.

Sec. 11. When a company no longer requires the services of a railroad policeman so appointed, it shall file a notice to that effect with the governor and with the county clerk for the county in which such policeman received his said commission, stating in said notice the date on which said services shall be discontinued, and, thereupon, the commission issued to such policeman shall become null and void on the date specified in said notice: Provided further, That the dismissal of said railroad policeman from the employment of the company on whose application such policeman was appointed shall ipso facto render null and void the commission issued to such policeman. Anything herein to the contrary notwithstanding, the governor on 5 days' notice to the company for whom any such policeman shall have been appointed, may revoke the commission issued to such policeman.

HISTORY: CL 1948, 470.61.

Act 156, 1941, p. 203; Eff. Jan. 10, 1942.

AN ACT to provide for the safety of brakemen and other employees on railroads by prescribing the minimum clearances at which bridges, structures or other obstructions, with certain exceptions, may be constructed or placed over or adjacent to the tracks of railroads; by requiring bridge guards or telltales or warning signs where clearances are less than those prescribed; by prescribing the minimum spacing between adjacent railroad tracks; to prohibit scrap iron, lumber, debris or other material in certain locations; and to authorize the Michigan public service commission to make exceptions in certain cases; and to prescribe penalties for the violation of the provisions of this act. Am. 1949, p. 64, Act 69, Imd. Eff. May 3.

The People of the State of Michigan enact:

470.101 Railroad brakeman; act providing for safety; scope.

Sec. 1. The provisions of this act shall apply to any individual, copartnership, association or corporation, and their respective lessees, and their respective trustees or receivers, appointed by any court whatsoever, while engaged in the operation of any railroad within this state, or owning, leasing, or otherwise having under his or their ju-

jurisdiction or control the land on which, or adjacent to which, there may be located and operated any railroad track or sidetrack which is a part of or is in anywise connected with any railroad, hereinafter referred to collectively as "person" or "persons."

HISTORY: CL 1948, 470.101.

470.102 Railroad tracks; clear space; exceptions.

Sec. 2. It shall be unlawful for any person or persons to construct, erect or place, and thereafter maintain, over or adjacent to any railroad track or sidetrack which is a part of or is in anywise connected with any railroad, any bridge, structure, pole or other movable or immovable obstruction which shall be within, or any loading or unloading device, the movable or immovable or fixed parts of which shall be within, the clear space of 8 feet 6 inches from either side of a perpendicular extending through the center line of said track, which has a radius of not less than 400 feet lateral curvature, or a track with less radius than 400 feet lateral curvature shall be provided with a clear space of 9 feet from either side of a perpendicular extending through the center line of said track, or which shall be within the clear space of 22 feet 6 inches above the plane of the top of the rails of such track, except by the written consent of the public service commission, as hereinafter provided. The provisions of this section shall not apply to highway or railroad bridges, nor to mail cranes or mail crane structures, nor to any derail, switch stand, signal or other railroad appurtenance, nor to materials used in the construction, maintenance or repair of railroad tracks when temporarily placed, nor to temporarily extended or connected car loading or unloading devices which when not in use are removed or secured so as to maintain the clearances prescribed in this section, nor to structures or materials below grade level. Nothing in this section shall be construed to require the removal of any structure heretofore constructed within the clearances herein specified.

HISTORY: CL 1948, 470.102;—Am. 1949, p. 64, Act 69, Imd. Eff. May 3;—Am. 1957, p. 132, Act 115, Eff. Sep. 27;—Am. 1968, p. 56, Act 30, Eff. Nov. 15.

470.103 Railroad tracks; application to construct within prohibited area; refusal.

Sec. 3. Any person who, at any time on and after the effective date of this act, desires to construct, erect or place, and thereafter maintain, over or adjacent to any railroad track or sidetrack which is a part of or is in anywise connected with any railroad, any bridge, structure, pole or other immovable obstruction which shall be within, or any loading or unloading device, the immovable or fixed parts of which shall be within, the clear spaces over or adjacent to any such track which are provided for in section 2 hereof, and not covered by the exceptions in said section 2, may make application to the Michigan public service commission for permission so to do, and the commission is hereby vested with power and authority, and it is hereby made its duty, upon the filing of any such application, to authorize the construction, erection or placement, and the subsequent maintenance, of such bridge, structure, pole or other obstruction or loading or unloading device, as the case may be, within such lesser spaces as may be described in such application: Provided, That in the judgement of the commission, a compliance with the clear spaces hereinbefore prescribed would be unreasonable, unnecessary or impracticable, and that the erection, construction or placement, and the subsequent maintenance, of such bridge, structure, pole or other immovable obstruction, or loading or unloading device, as the case may be, within such lesser spaces, will not create a condition unduly hazardous to the employees of the person engaged in the operation of such track.

HISTORY: CL 1948, 470.103.

470.104 Telltales and bridge guards; construction requirements.

Sec. 4. If there shall be over, above or across any railroad track or sidetrack which is a part of or is in anywise connected with any railroad which is subject to the regulative powers of this state, a bridge, crossing, viaduct or other obstruction within a clear space of less than 22 feet above the plane of the top of the rails of such track or sidetrack, it shall be the duty of the railroad company operating such track or sidetrack, if such track or sidetrack is located upon the lands or premises owned or controlled by it, and any other person, if such track or sidetrack is located on the lands or premises of such other person, to erect and keep in repair near such bridge, crossing, viaduct or other obstruction, so-called telltales or bridge guards, unless the railroad or railroads operating over the track or sidetrack by operating rule have prohibited employees from riding, standing, walking or being on the top of any moving car or locomotive. The telltales or bridge guards shall consist of a transverse rod, beam, timber or cable placed across such track or sidetrack at a height of not less than 22 feet above the plane of the top of the rails, and at such height in excess of 22 feet as it shall be necessary to place the same in order that the length of the ropes, cords or wires suspended therefrom, shall not be less than 3 feet; and, from such rod, beam, timber or cable, there shall be suspended ropes, cords or wires of such length as may be necessary so that the lower ends of such ropes, cords or wires shall be at an elevation that shall be not less than 1 foot below the lowest point of such bridge, crossing, viaduct or other obstruction; the ropes, cords or wires shall be attached to the transverse rod, beam, timber or cable at a distance of not greater than 9 inches from each other for the space of 8 feet directly over the track. The telltales or bridge guards shall be placed upon each side of such bridge, crossing, viaduct or other obstruction at a distance of not less than 100 feet, nor more than 300 feet, when erected over main tracks, and at a distance of not less than 25 feet, where such distance is available, otherwise the maximum distance which is available, when erected over sidetracks. If 2 such bridges, crossings, viaducts or other obstructions shall be at a distance apart of not more than 300 feet, then no bridge guard or telltale shall be required between them.

HISTORY: CL 1948, 470.104;—Am. 1968, p. 56, Act 27, Eff. Nov. 15.

470.105 Warning signs; obstructions within prohibited area.

Sec. 5. Within 90 days after the effective date of this act, where any structure or obstruction, except standpipes, mail cranes, or mail crane structures, switch stands, signals or other track appurtenances, and except bridges, crossings, viaducts or other obstructions protected by so-called telltales or bridge guards as in section 4 hereof provided, is at a less distance from any railroad track or side track which is a part of or is in anywise connected with any railroad than the clear space required to be maintained from such track or sidetrack by the provisions of section 2 hereof, it shall be the duty of the railroad company operating such track or sidetrack, if such track or sidetrack be located on the lands or premises owned or controlled by it, and it shall be the duty of any other person, if such track or sidetrack shall be located on the lands or premises of such other person, to erect, and thereafter maintain, or cause to be erected or maintained, a warning sign upon or near such structure or obstruction, as a caution to the employees of the railroad company which uses such track or sidetrack. Such warning sign shall have black letters upon a white background, and shall contain the words—"WARNING—CLOSE CLEARANCE," or words of a similar purport, with letters of not less than 3 inches in height.

HISTORY: CL 1948, 470.105.

470.106 Parallel railroad tracks, permission for construction; distance between; construction for person other than railroad company.

Sec. 6. On and after the effective date of this act, it shall be unlawful for any rail-

road company, except by the written consent of the Michigan public service commission, as hereinafter provided, to construct any railroad track or sidetrack where the center line of such track or sidetrack is at a distance of less than 14 feet from the center line of any other parallel railroad track or sidetrack which is adjacent thereto: Provided, That the distance between any such adjacent tracks may be diminished or closed up, as may be necessary, for the construction of crossings, crossovers, turnouts or switches: Provided further, That no parallel track constructed for any person other than a railroad company shall be less than 13 feet from the center line of any other parallel railroad track or sidetrack.

HISTORY: CL 1948, 470.106;—Am. 1954, p. 113, Act 95, Eff. Jan. 1, 1956.

470.107 Parallel railroad tracks, permission for construction; application to Michigan public service commission; grounds for refusal; exception.

Sec. 7. Any railroad company which, at any time on and after the effective date of this act, desires to construct any railroad track or sidetrack where the center line of such track or sidetrack is at a distance of less than 14 feet from the center line of any other parallel railroad track or sidetrack, which is adjacent thereto, may make application to the Michigan public service commission for permission so to do, and the commission is hereby vested with power and authority, and it is hereby made its duty, upon the filing of any such application, to authorize the construction of such railroad track or sidetrack within such lesser distance from an adjacent railroad track or sidetrack as may be described in such application: Provided, That in the judgment of the commission, a compliance with the distance of 14 feet hereinbefore prescribed would be unreasonable, unnecessary, or impracticable, and the construction of said track within such lesser distance from an adjacent track will not create a condition unduly hazardous to the employees of the person or persons engaged in the operation of such tracks: Provided further, That nothing in sections 6 and 7 of this act shall be construed to require the change of requirements between any existing railroad tracks or sidetracks heretofore constructed or replacements thereof within the clearances heretofore specified.

HISTORY: CL 1948, 470.107;—Am. 1954, p. 113, Act 95, Eff. Jan. 1, 1956.

470.108 Exemptions from application of act.

Sec. 8. The provisions of this act shall not be construed to apply to yards and terminals of depot companies or railroad companies used for passenger train service, nor to car shops, repair tracks, overhead clearance on mine shaft head frames, and temporary ore loading stock pile tracks, nor to manufacturing plants that do their own switching with a locomotive crane.

HISTORY: Am. 1945, p. 87, Act 92, Eff. Sept. 6;—CL 1948, 470.108.

Act 92, 1945 contained a section 2 as follows:

"Sec. 2. This act shall apply, and the jurisdiction of the Michigan public service commission shall extend, only to construction planned and undertaken after the effective date of this act."

470.109 Violation of act; penalty; failure to correct as ordered.

Sec. 9. Any person subject to the provisions of this act, who shall violate any of the provisions thereof, shall be liable to a penalty of not less than \$50.00, nor more than \$100.00, to be collected in the suit of the people of the state, by the prosecuting attorney of the county wherein such violation may occur; and, if any such person shall

thereafter fail to correct any violation of this act, when ordered by the Michigan public service commission to correct the same, such person shall be liable to the same fine, to be collected as above provided, for every 20 days' delay thereafter in his failure to correct such violation of this act.

HISTORY: CL 1948, 470.109.

Sec. 10. (This was a severing clause section.)

HISTORY: Rep. 1945, p. 415, Act 267, Imd. Eff. May 25.

Sec. 11. (This was a repeal section.)

HISTORY: Rep. 1945, p. 409, Act 267, Imd. Eff. May 25.

ACTS REPEALED: Act 167, 1877; Act 190, 1881.

Act 26, 1968, p. 54; Eff. Nov. 15.

AN ACT to regulate safe space in regard to railroad rights of way; to prescribe the powers and duties of the public service commission: and to provide for the enforcement hereof.

The People of the State of Michigan enact:

470.121 Railroad safe space; definitions.

Sec. 1. As used in this act:

(a) "Safe space" means that space whose height extends from the actual grade level to a distance 22 feet 6 inches above the top of the rails; and whose width, along any railroad track or sidetrack with a radius of not less than 400 feet lateral curvature, extends 8 feet 6 inches on both sides of a perpendicular from the center line of the track, or, along any railroad track or sidetrack with a radius of less than 400 feet lateral curvature, extends 9 feet on both sides of a perpendicular from the center line of the track.

(b) "Legal control" means legal control in whole or in part of any safe space.

(c) "Union" means any labor organization that has a contract with an employer who is a common carrier and has legal control of any safe space and any of those members who work in the safe space.

(d) "Person" or "persons" includes any individual, copartnership, association or corporation, and their respective trustees or receivers, appointed by any court whatsoever, while engaged in the operation of any railroad within this state, or owning, leasing or otherwise having under his or their jurisdiction or control the land on which, or adjacent to which, there may be located and operated any railroad track or sidetrack which is part of or is in anywise connected with any railroad.

HISTORY: New 1968, p. 54, Act 26, Eff. Nov. 15.

470.122 Railroad safe space; prohibited conditions.

Sec. 2. No person shall knowingly permit any scrap iron, lumber, debris, vegetation exceeding a height of 4 inches, marked unevenness of terrain, or any material or condition whatsoever, which unreasonably endangers any employee, to remain or continue in the safe space over which such person or persons has legal control.

HISTORY: New 1968, p. 55, Act 26, Eff. Nov. 15.

470.123 Public service commission; inspections.

Sec. 3. The public service commission, on its own motion, may inspect any safe space at any time to determine if this act is being violated.

HISTORY: New 1968, p. 55, Act 26, Eff. Nov. 15.

470.124 Inspection upon written complaint; report.

Sec. 4. The public service commission shall make an inspection upon written complaint by any employee or union whose members are affected by any violation of this act, or upon written complaint by any person, including a common carrier, affected by such violation. The inspection shall be made promptly upon receipt of any written complaint. The commission shall issue a report to all parties of interest after the complaint is inspected.

HISTORY: New 1968, p. 55, Act 26, Eff. Nov. 15.

470.125 Hearing; request; notice; holding.

Sec. 5. If after receipt of the report of such inspection any party is opposed to the report, they may file a written request for hearing and the public service commission, after notice, shall hold such hearing and shall issue its order.

HISTORY: New 1968, p. 55, Act 26, Eff. Nov. 15.

470.126 Court order; enforcement.

Sec. 6. If an order issued pursuant to section 5 is not complied with, the public service commission, or any person feeling aggrieved by the violation of any such order, including a common carrier or union any of whose members feel aggrieved by the violation of any such order, may apply to the circuit court for the county of Ingham or to the circuit court of any county in which the public service commission has found there is a violation of this act, for a court order to enforce the commission's order to require compliance with this act. A copy of the application for such court order shall be sent by registered or certified mail to the public service commission and to any party to whom such commission order applies. The circuit court, on its own motion, may join the public service commission as a party to any application made to such court for enforcement of such order.

HISTORY: New 1968, p. 55, Act 26, Eff. Nov. 15.

Act 75, 1945, p. 75; Eff. Sep. 6.

AN ACT requiring flagmen on light engines under certain conditions, and to prescribe the penalties for the violation of the provisions of this act.

The People of the State of Michigan enact:

470.151 Flagmen on light engines; permission to operate without.

Sec. 1. On and after the effective date of this act, it shall be unlawful for any railroad company doing business in this state to operate a light engine over any part of its main line outside of yard limits without a qualified flagman, when such flagman is available, except in cases of emergency: Provided, however, That any railroad company may make application to the Michigan public service commission for permission to operate a light engine without a flagman over all or any part of its main line outside of yard limits, and said commission is hereby authorized to permit such operation if it shall find that such flagman is unnecessary.

HISTORY: CL 1948, 470.151.

470.152 Penalty for violation.

Sec. 2. Any railroad violating the provisions of this act or neglecting or refusing to comply with the order, rule or regulation of the public service commission made in pursuance thereof, shall be punished by a fine of not less than \$100.00 nor more than \$500.00 for each offense. Any superintendent, trainmaster, or other officer or agent of the railroad company, officer of any court, receiver or any person or persons who shall violate any of the provisions of this act, or who shall order or permit any such viola-

tion, shall be guilty of a misdemeanor and, upon conviction in any court of competent jurisdiction, shall be punished by a fine of not less than \$100.00 and not more than \$500.00. Each instance of violation shall constitute a separate offense.

HISTORY: CL 1948, 470.152.

470.153 Enforcement by public service commission.

Sec. 3. It shall be the duty of the Michigan public service commission to enforce the provisions of this act.

HISTORY: CL 1948, 470.153.

CHAPTER 471. UNION DEPOT COMPANIES

UNION DEPOT COMPANIES Act 244 of 1881	
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Act 244, 1881, p. 320; Imd. Eff. Jun. 9.

AN ACT to authorize the incorporation of companies for the construction of union railroad stations and depots with the necessary connecting tracks, and the management of the same.

The People of the State of Michigan enact:

471.1 Union depot companies; incorporators, purposes.

Sec. 1. That any number of persons, not less than 7, may, as hereinafter provided, organize themselves into a corporation for the purpose of acquiring the necessary station grounds and constructing and maintaining railway freight and passenger depots in

cities and villages, with the necessary railroad tracks and other accommodations to make suitable and proper connections with all railroads terminating in or passing through such cities or villages that may desire access to such depots; and also all necessary buildings for the convenience and accommodation of all business usually pertaining to such depots.

HISTORY: How. 3458;—CL 1897, 6356;—CL 1915, 8453;—CL 1929, 11213;—CL 1948, 471.1.

This act appeared in Ch. 160 of CL 1915. Corporations organized under that chapter were specifically accepted from provisions of Act 84 of 1921, except as otherwise therein provided, see Sec. 8 of Ch. 1 of Pt. I, being CL 1929, 9650. See also Compilers' § 450.3, on exemption from corporation code.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' § 450.301.

ASSESSMENT: See Compilers' §§ 207.1 to 207.21. Collection, see Compilers' §§ 207.441 to 207.447.

REPORTS: See Compilers' § 450.82.

EXAMINATION BY ATTORNEY GENERAL: See Compilers' §§ 450.525 and 468.356.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.1 et seq.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

471.2 Articles; contents, filing; body corporate, powers.

Sec. 2. The persons desiring to organize such corporation may do so by subscribing articles of association in which shall be set forth: The name of the corporation; the number of years the same is to be continued; the amount of capital stock of the corporation, which shall not be less than the estimated and probable cost of the proposed station grounds, depot buildings, and railroad tracks proposed to be laid; the number of shares of which the stock shall consist, which shall be the amount of \$100.00 each; the number of directors, which shall not be less than 3; a description of the place where such depots will be located, and the points or place to which it is proposed to construct tracks over which to afford access thereto. Each subscriber to such articles of association shall set opposite his name, his place of residence, and the number of shares of stock by him subscribed. Whenever 50% of the capital stock of such corporation shall have been subscribed upon such articles of association, and 10% shall have been in good faith in cash paid in to the directors named in such articles, and an affidavit shall have been made and attached thereto by any 2 of said directors, that said amount has been subscribed and 10% paid in as aforesaid, such articles of association shall be filed in the office of the secretary of state; and thereupon the persons who have subscribed the same, and all other persons who shall from time to time thereafter subscribe thereto, or become the holders of capital stock of said corporation, in the manner to be provided in its by-laws, shall be a body corporate by the name specified in such articles, and shall be capable of suing and being sued, may have a common seal, may make and alter the same at pleasure, and shall be capable in law of purchasing, holding, and conveying any real estate and personal property whatever, necessary for the location, construction, maintenance, and operation of such depots and tracks, and for the erection and maintenance of all buildings and the necessary appurtenances for the successful use of the same.

HISTORY: How. 3459;—CL 1897, 6357;—CL 1915, 8454;—CL 1929, 11214;—CL 1948, 471.2;—Am. 1955, p. 81, Act 51, Eff. Oct. 14.

ISSUANCE OF STOCK: See Compilers' §§ 460.301 to 460.303.

471.3 Directors; election, term, powers.

Sec. 3. Such articles of association having been filed with the secretary of state, as in the last preceding section provided, the subscribers thereto shall elect the first board of directors, who shall hold their office for the term of 1 year, or until their successors are elected as shall be provided by the by-laws of the company; and all the corporate powers of any such corporation shall be and are hereby vested in the board of directors, except as shall be in this act otherwise provided.

HISTORY: How. 3460;—CL 1897, 6358;—CL 1915, 8455;—CL 1929, 11215;—CL 1948, 471.3.

471.4 Powers; liabilities; restrictions.

Sec. 4. Every such corporation shall possess the general powers and be subject to the liabilities and restrictions following, that is to say:

Examination and survey.

First, To cause such examinations and surveys for the proposed site of its depots, and for the most advantageous route or routes for its proposed tracks to be made as may be necessary, and for such purpose, by its officers, agents, and servants, to enter upon lands or waters of any person or company, subject only to liability for all damages which they shall do thereto;

Property.

Second, To take and hold such real estate and other property as may be necessary for the purposes of its organization, provided that no real estate or other property shall be taken or appropriated by such company, until the compensation to be made therefor has been agreed upon by the parties and paid to the owners, or ascertained and deposited as hereinafter prescribed, unless the consent of such owner be given therefor;

Tracks.

Third, To lay out and construct its tracks upon or across any stream of water, water-course, private road, street, lane, alley, or highway, and across any plank road, railroad, or canal, which may be necessary for the purpose of making the connections herein provided for; but the corporation shall restore the stream, water-course, private road, street, lane, alley, highway, plank road, railroad, or canal to its former state, as near as may be, and shall not materially obstruct the navigation of any stream, nor obstruct any public highway or street by cars or trains for more than 5 minutes at any 1 time, and shall construct suitable road and street crossings for the passage of teams by putting down planks between and on each side of the rails, the top of which shall be at least as high as the top of the rails. And in case of the construction of such tracks on any public street, lane, alley, or highway, the same shall be on such terms and conditions as shall be agreed upon between the company and the common council of any city, or the village board of any village, or the commissioner of highways in any township in which the same may be; provided that such tracks shall not be constructed on any public street, lane, alley, highway, or private way, until compensation be made by the company therefore to the owner or owners of property adjoining such street, lane, alley, highway or private way, and opposite where such tracks is to be constructed, either by agreement between the company and each owner, or ascertained and paid as hereinafter prescribed for obtaining property or franchises for the purpose of its incorporation;

Same; connections.

Fourth, To join and unite its tracks with those of any railroad company desiring to use such depot with the necessary turnouts, sidings, switches, and conveniences in furtherance of such use of said depot, and to make all necessary business arrangements with any such company for the use of said depot, and also to make any agreement with any other railroad company in reference to any crossing of tracks or station grounds;

Station facilities.

Fifth, To erect and maintain all necessary and convenient buildings, stations, depots, and fixtures for the accommodation and use of passengers, and of freight and other business within the purpose of its organization.

HISTORY: How. 3461;—CL 1897, 6359;—CL 1915, 8456;—CL 1929, 11216;—CL 1948, 471.4.

CONSTITUTION: Limitation on holding of real estate, see Const. XII, 5.

471.5 Realty of minor or incompetent; acquisition.

Sec. 5. In case any real estate required by said company for the purposes of its incorporation is owned by a person insane, a minor, or otherwise incompetent and under guardianship, and such company and the guardian of such person shall agree upon a price for the same, and enter into a contract in writing therefor, the said guardian may, upon the approval of the same by the probate court of the county in which the

said real estate is situated, convey said real estate in accordance with the terms of such contract to said railroad company, and the deed thereof shall be valid in law to convey the title of such person under guardianship to said company in accordance with the terms of said contract.

HISTORY: How. 3462;—CL 1897, 6360;—CL 1915, 8457;—CL 1929, 11217;—CL 1948, 471.5.
SALE BY GUARDIAN: See Compilers' § 709.3.

471.6 Condemnation proceedings; disagreement.

Sec. 6. In case any such company is unable to agree for the purchase of any real estate, property or franchises required for the purpose of its incorporation, it shall have the right to acquire the title to the same in the manner and by the special proceeding prescribed in this act; but there shall be no power, except for crossing, to take the track or rights of way of any other railroad company without the consent of said railroad company.

HISTORY: How. 3463;—CL 1897, 6361;—CL 1915, 8458;—CL 1929, 11218;—CL 1948, 471.6.

471.7 Condemnation proceedings; petition, contents, service.

Sec. 7. For the purpose of acquiring such title, such company may present a petition to any court of record for such county, praying for the appointment of 3 commissioners. Said petition shall be in the name of the company, and shall be signed by 1 of the directors, or the engineer, or the attorney of said company, on its behalf, and shall be verified by the oath of the person so signing the same, and shall contain the description of all the real estate, property or franchises, or so much thereof as the company seeks to acquire under such petition in said county; and that said company is duly incorporated; that the capital stock of the company has been, in good faith, subscribed, as required by this act, to organize such company; that the company has surveyed its depot grounds and the route of its proposed tracks in said county, and made a map and survey thereof, by which said depot ground and route is designated; and that it has located the same according to such survey, and filed a certificate thereof, signed by a majority of the directors of said company, in the register's office of said county; that the property described in the petition is required for the purposes of its incorporation, and that the taking thereof is necessary for public use, and that the company has not been able to acquire title thereto, and the reason of such inability. The petition must also state the names and places of residence of the parties so far as the same can with reasonable diligence be ascertained, who own, or have, or claim to own, or have estates or interests in said lands or property; and if any such persons are infants, their ages, as near as may be, must be stated, and if any of them are idiots, or persons of unsound mind, or are unknown, it must be so stated, together with such other facts and allegations as to incumbrances or otherwise, as will be sufficient to show who have or claim to have interests in said lands, real estate or property, and such other matters as the company may see fit to make. A copy of such petition, with a notice of the time and place, when and where the same will be presented to such court, must be served on all persons whose interests will be affected by the proceeding, at least 10 days prior to the presentation of the same to the court, as follows, viz.:

First, If the person on whom service is to be made resides in this state, and is not an infant, under the age of 14 years, idiot, or person of unsound mind, service of a copy of said petition and notice must be made on him, or his agent, or attorney authorized to contract for the sale of real estate described in the petition, personally, or by leaving the same at the usual place of residence of such person or agent, with some person of suitable age; and if he resides out of this state, but has such agent as aforesaid residing in this state, then such service may be made on such agent in the manner aforesaid, or upon him personally out of or within this state; or it may be by publishing a notice stating briefly the object of the application, and giving a description of the land, inter-

est therein, or property to be taken, and in some paper published in the county in which said lands or property are situated, if there be 1, and if not, then in some weekly paper published in the city of Detroit, once in each week for 6 weeks next previous to the presentation of the petition; and if the residence of such person or persons residing out of this state be known, a copy of such petition and notice shall be deposited in the postoffice at least 30 days previous to presenting such petition, directed to such person at his place of residence, as near as may be, postage prepaid;

Second, If any person on whom such service is to be made is a minor under the age of 14 years, or an idiot, or person of unsound mind, and resides in this state, such service shall be made as aforesaid, on his guardian; or if none, then on the person who has the care of, or with whom such infant, idiot, or person of unsound mind resides;

Third, If the person on whom such service is to be made be unknown, or his residence unknown, then such service may be made by publication for 6 weeks in the same manner provided in the first subdivision of this section, and the court or judge shall appoint an attorney to appear for and protect the rights of any such person;

Fourth, In case any party to be affected by the proceeding is an infant, idiot, or person of unsound mind, and has no guardian, the said court, or the judge of said court, shall appoint a special guardian or committee to appear for and attend to the interests of such infant, idiot, or person of unsound mind, and all notices to be served in the progress of the proceeding may be served on such special guardian;

Fifth, In all cases not otherwise provided for, service of orders, notices and other papers in the proceedings authorized by this act, may be made as the said court or judge may direct.

HISTORY: How. 3464;—CL 1897, 6362;—CL 1915, 8459;—CL 1929, 11219;—CL 1948, 471.7.
GUARDIAN AD LITEM: See (Jud. Act) Compilers' § 600.2415 and GCR 201.

471.8 Condemnation proceedings; procedure, commissioners, jury.

Sec. 8. On presenting such petition to said court or the judge thereof at chambers, with proof of service of a copy thereof, and due notice as aforesaid, all persons whose estate or interest are to be affected by the proceedings may show cause against the prayer of the petition, and may disprove any of the facts alleged therein; and said court or judge shall hear the proofs and allegations of the parties; and if no sufficient cause is shown against granting the prayer of the petition, said court or judge shall make an order appointing 3 disinterested and competent freeholders as commissioners to ascertain and determine the necessity for taking such lands, franchises, or other property, and to appraise and determine damages or compensation to be allowed to the owners and persons interested in the real estate or property proposed to be taken in such county for the purposes of the company; and such court, or the judge thereof, shall fix the time and place for the first meeting of such commissioners: Provided, That any person or persons, or company, whose estate or interest is to be affected by the proceedings, may demand and have from such court, at the time of hearing of said petition, a jury of 12 freeholders of said county to ascertain and determine the necessity for taking such lands, franchises, or other property, and to appraise and determine the damages or compensation to be allowed therefor. Thereupon the court shall direct the sheriff or any constable of the county to make a list, in writing, of 24 inhabitants of the county, qualified to serve as jurors in the courts of record in this state. Such sheriff or officer shall, before he proceeds to make such list, be sworn by the court or judge to select such persons according to his best judgment, and without favor or partiality to either party. From such list the person or persons demanding such jury may alternately strike off 6 names, and the petitioning company 6 names, and in case of either of them refusing or neglecting to do so, the judge shall strike off from said list for the party so refusing or neglecting, so as to leave only 12 names thereon. Such court, or the judge thereof, shall issue a venire in the usual form, inserting therein the 12 names

so remaining on said list, and requiring such jury to meet at the time and place appointed therefor by the court, which said venire may be served by the sheriff, any constable, or other proper officer of the county, as in other cases; and if at the time and place appointed by said court or judge for said jury to meet, any of the persons named as jurors do not attend, or if any named in the venire, or chosen as talesmen, shall be rejected in a challenge for cause (which right of challenge is hereby granted), it shall be competent for said court, or the judge thereof, to order the said sheriff or other officer to summon immediately as many competent persons as may be necessary, with the persons in attendance as jurors, to furnish a panel of 12 jurors; and if no jury be demanded on the part of any person mentioned in said petition, his or her right to the same shall be deemed to have been waived. In case any parcel of land is owned or occupied by parties having different interests or estates therein, or in any part thereof, they may be united as respondents in respect to the same in the petition, and thereafter the proceeding [proceedings] touching the same shall be carried on as 1 suit. The demand of any 1 of the respondents for a jury shall be deemed to be a demand for all; and if they shall fail or neglect to unite in striking 6 names from the jury list, the judge shall strike off 6 names for them; and in such cases the jury shall not only determine the entire damages and compensation to be paid for the whole property taken, but shall, in their report, also justly and impartially apportion and award the amounts to be paid to the owner or owners of each estate in the land so taken.

HISTORY: How. 3465;—CL 1897, 8363;—CL 1915, 8460;—CL 1929, 11220;—CL 1948, 471.8.

471.9 Condemnation proceedings; commissioners; jury; discontinuance, costs.

Sec. 9. The commissioners shall take and subscribe the oath prescribed by article 18 of the constitution. Any of them may issue subpoenas, administer oaths to witnesses, and a majority of them may adjourn the proceedings before them from time to time in their discretion. Whenever they meet, except by appointment of the court or judge, or by previous adjournment, they shall cause reasonable notice of such meeting to be given to the parties who are to be affected by their proceedings, or the attorneys or agents of such parties. They may view the premises described in the petition, and shall hear the proof and allegations of the parties, and shall reduce the testimony, if any is taken by them, to writing, if requested to do so by either party, and after the testimony is closed in such case, and without any unreasonable delays, and before proceeding to the examination of any other claim, all being present and acting, shall ascertain and determine the necessity of taking and using any such real estate or property for the purposes described; and if they deem the same necessary to be taken, they shall ascertain and determine the damages or compensation which ought justly to be made by the company therefor to the party or parties owning or interested in the real estate or property appraised by them. They shall also determine and certify what sum ought to be paid to the general or special guardian of an infant, idiot, or person of unsound mind, or to said court, to be held for an unknown party in interest not personally served with notice of the proceedings, and who has not appeared, for damages and cost or expenses and counsel fees. They shall make a report to said court or judge, signed by them, of the proceedings before them, if any, which may be filed with the clerk of the court, either in vacation or term time, or the probate court as the case may be. Said commissioners shall be entitled to 2 dollars a day for each day they are engaged in the performance of their duties, to be paid in the first instance by the company. In case a jury shall have been demanded and ordered by the court, pursuant to section 8 of this act, the said jury shall proceed to ascertain and determine the necessity of taking and using any such real estate or property, and the damage or compensation to be paid by the company therefor, in the same manner and with like effect as is provided in this section in the case of commissioners, and as is further provided in said

section 8; but they shall all be present and act together during the proceedings, and before acting shall take and subscribe an oath that they will justly and impartially ascertain and determine the necessity of taking and using any such real estate or property for the purposes proposed; and if they deem the same necessary to be taken, will ascertain and determine the damages or compensation which ought justly to be made by said company to the owners of or persons interested in each particular description of real estate mentioned in said petition who have demanded said jury; and they shall be entitled to 2 dollars for each day they are engaged in the performance of their duties, to be paid in the first instance by the company. The said judge, or a circuit court commissioner to be designated by him, may attend said jury, to decide questions of law and administer oaths to witnesses, and he may appoint the sheriff or other proper officer to attend and take charge of said jury while engaged in said proceedings. And the jury shall proceed to determine the amount of damages to be awarded, and shall have all the powers hereby conferred upon commissioners; and a report signed by the jury, whether the judge is or is not in attendance, shall be valid and legal. At any time before the report of the jury or commissioners shall be made to the court, it shall be competent for the company, after sufficient cause has been shown and with leave of the court, to discontinue all pending proceedings in any case and to institute new proceedings at any time thereafter; but the company in all such cases shall pay all the costs of all proceedings so discontinued, with an attorney fee to be taxed as in cases at law.

HISTORY: How. 3466;—CL 1897, 6364;—CL 1915, 8461;—CL 1929, 11221;—CL 1948, 471.9.

OATH OF COMMISSIONERS: The provisions of article 18 of the constitution of 1850 relating to oaths have been superseded by Const. XI, 1.

471.10 Condemnation proceedings; confirmation of report; court order, contents.

Sec. 10. On such report being made by the commissioners or jury, the court, on motion, shall confirm the same on the next or any subsequent day when in session, unless for good cause shown by either party; and when said report is confirmed, said court shall make an order containing a recital of the substance of the proceedings in the matter of the appraisal, and a description of the real estate or property appraised, for which compensation is to be made, and shall also direct to whom the money is to be paid, or when and where it shall be deposited by the company. Said court, as to the confirmation of such report, shall have the powers usual in other cases.

HISTORY: How. 3467;—CL 1897, 6365;—CL 1915, 8462;—CL 1929, 11222;—CL 1948, 471.10.

471.11 Condemnation proceedings; recording of order; payment of compensation, rights of company; appeal.

Sec. 11. A certified copy of the order so to be made shall be recorded in the office of the register of deeds for said county, in the book of deeds; and thereupon, on the payment or deposit by the said company of the sum to be paid as compensation for such land, franchise, or other property, and for costs, expenses, and council fees as aforesaid, and as directed by said order, the company shall be entitled to enter upon and take possession of and use the said land, franchise, and other property for the purpose of its incorporation; and all persons who have been made parties to the proceedings, either by publication or otherwise, shall be divested and barred of all right, estate, and interest in such real estate, franchise, or other property, until such right or title shall be again legally vested in such owner; and all real estate or property whatsoever acquired by any company under and in pursuance of this act, for the purpose of its incorporation, shall be deemed to be acquired for public use: Provided, The said sum to be paid as damages and compensation, and costs, expenses, and counsel fees as aforesaid, shall be paid by the company, or deposited as provided in this act, within 60 days after the confirmation of said report by the said court; and in case said company fail or ne-

glect so to do, such failure or neglect shall be deemed as a waiver and abandonment of the proceedings to acquire any rights in said land or property. Within 20 days after the confirmation of the report of the commissioners or jury, as above provided for, either party may appeal, by notice in writing to the other, to the supreme court, from the appraisal or report of the commissioners or jury; such notice shall specify the objections to the proceedings had in the premises, and the supreme court shall pass on such objections only, and all other objections, if any, shall be deemed to have been waived; such appeal shall be heard by the supreme court at any general or special term thereof, on notice thereof being given according to the rules and practice of the court. On the hearing of such appeal, the court may direct a new appraisal before the same or new commissioners or jury, in its discretion. The second report shall be final and conclusive upon all parties interested. If the amount of the compensation to be allowed is increased by the second report, the difference shall be a lien on the land appraised, and shall be paid by the company to the parties entitled to the same, or shall be deposited as the court shall direct; and in such case, all costs of the appeal shall be paid by the company; but if the amount is diminished, the difference shall be refunded to the company by the party to whom the same may have been paid, and judgments therefor and for all costs of the appeal shall be rendered against the party so appealing. On the filing of the report, such appeal, when made by any claimant of damages, shall not affect the said report as to the right and interests of any party, except the party appealing; nor shall it affect any part of said report in any case, except the part appealed from; nor shall it affect the possession of such company of the land appraised; and when the same is made by others than the company, it shall not be heard except on a stipulation of the party appealing not to disturb such possession during the pendency of such proceedings.

HISTORY: How. 3468;—CL 1897, 6366;—CL 1915, 8463;—CL 1929, 11223;—CL 1948, 471.11.

471.12 Condemnation proceedings; title in doubt, payment of compensation.

Sec. 12. If there are doubts about the title, or to whom the money, or any part of it, to be paid as compensation for the real estate or property taken belongs, the court may direct the money to be paid into the said court by the company, and may determine who is entitled to the same, and direct to whom the same shall be paid, and may in its discretion order a reference to ascertain the facts on which such determination and order are to be made.

HISTORY: How. 3469;—CL 1897, 6367;—CL 1915, 8464;—CL 1929, 11224;—CL 1948, 471.12.

471.13 Condemnation proceedings; defects in proceedings; new parties; notices; commissioner, vacancy.

Sec. 13. The court shall have power at any time to amend any defect or informality in any of the special proceedings authorized by this act, as may be necessary, or to cause new parties to be added, and to direct such further notices to be given to any party in interest as it deems proper; also to appoint other commissioners in the place of any who shall die, or refuse, or neglect, or are unable to serve, or who may leave or be absent from the state.

HISTORY: How. 3470;—CL 1897, 6368;—CL 1915, 8465;—CL 1929, 11225;—CL 1948, 471.13.

471.14 Perfection of title; procedure; rights pending determination.

Sec. 14. At any time after an attempt to acquire title by any such company by an appraisal of damages or otherwise, if it shall be found that the title thereby attempted to be acquired is defective, the company may proceed anew to acquire or perfect the same in the same manner as if no appraisal had been made, and at any stage of such new proceedings, the court may authorize the corporation, if in possession, to continue in possession, and if not in possession, to take possession of and use such real estate or

other property during the pendency and until the final conclusion of such new proceedings; and may stay all actions or proceedings against any company, or any officer or workman of such company, on account thereof, on such company paying into court a sufficient sum, or giving security, as the court may direct, to pay the compensation therefor when finally ascertained; and in every such case [cause] the party interested in such real estate or other property may conduct the proceedings to a conclusion if the company delays or omits to prosecute the same.

HISTORY: How. 3471;—CL 1891, 6369;—CL 1915, 8466;—CL 1929, 11226;—CL 1948, 471.14.

471.15 Deed of trust or mortgage; issuance; powers of sale in trustees.

Sec. 15. It shall be competent and lawful for the trustees, in any deed of trust or mortgage of and upon the property of such company, in case of the inability of such company, or its default in the payment of the principal or interest money secured thereby, in pursuance of any power of sale contained therein, to offer the same for sale according to the power, and in pursuance of its terms, and on such sale to execute a deed of the premises sold, which said deed duly executed shall convey the title to the purchaser or purchasers, and authorize them to enter into possession and enjoyment thereof, as fully as may be provided in said mortgage or deed of trust; and it shall be competent and lawful for all companies organized under this act, for the purpose of securing their bonds, authorized to be issued in accordance with its provisions, to execute such mortgage, or deed, with such power contained therein for the sale of the property mortgaged, or deeded, as shall, in its judgment, or the judgment of the board, be found expedient and such power of sale in accordance therewith shall be lawful and valid.

HISTORY: How. 3472;—CL 1897, 6370;—CL 1915, 8467;—CL 1929, 11227;—CL 1948, 471.15.

471.16 Borrowing power; obligations, issuance, conversion; increase in stock.

Sec. 16. All companies organized under this act shall have power from time to time to borrow such sums of money as may be necessary for completing, finishing, equipping, or operating their tracks, depot, and other property, or for paying any indebtedness necessarily incurred for completing, finishing, or operating the same, or any part thereof; and to issue and dispose of their bonds or obligations for any amount necessarily borrowed for such purpose, for such sums and for such rate of interest, not exceeding 10 per cent, as they may deem advisable, and to mortgage their corporate property and franchises and the income thereof to secure the payment of any debt contracted, or to defray any expenditure by the company for the purpose aforesaid. And the directors of any such company may confer on any holder of any such bond or obligation the right to convert the same into the stock of said company at any time not exceeding 10 years from the date of said bonds, on such terms and under such regulations as the company may see fit to adopt; and said company may sell their bonds or obligations, either within or without this state, and at such rates and prices as they may deem proper. Any such company may at any time, with the concurrence of the stockholders representing a majority of the stock at any annual meeting, or at any special meeting of the stockholders called for that purpose, increase its capital stock, or provide for the issue of preferred or secured stock, for the purpose aforesaid, upon such terms and conditions as to them may seem meet. In case the capital stock of any such company or corporation organized under this act shall be found insufficient for acquiring and maintaining the necessary property to meet the purposes of its organization, such corporation may, with the concurrence of 2/3 in value of all its stock, increase its capital stock from time to time to any amount required for the purpose aforesaid; such increase shall be by a vote in person or by proxy of 2/3 in amount of all of the stock of such corporation, at a meeting of the stockholders called by the directors of the corpo-

ration for such purpose, by giving notice in writing to each stockholder, to be served personally, or by depositing the same in a postoffice, directed to the postoffice address of each of said stockholders severally, with necessary postage for the transmittal of the same prepaid, at least 60 days prior to the day appointed for such meeting, and by advertising the same in some newspaper published in the county in which the said depot shall be located, or if a newspaper shall not be published therein, then such meeting shall be advertised in 2 newspapers published in the city of Detroit at least 60 days prior to the day appointed for such meeting; and such notice shall state the time and place of the meeting, the object thereof, and the amount to which it is proposed to increase such capital stock, and at such meeting the corporate stock of such corporation may be so increased by a vote of 2/3 in amount of the corporate stock of such corporation, to an amount not exceeding that mentioned in the notice so given.

HISTORY: How. 3473;—CL 1897, 6371;—CL 1915, 8468;—CL 1929, 11228;—CL 1948, 471.16.

ISSUANCE OF SECURITIES: See Compilers' §§ 460.61 and 460.301 to 460.303.

471.17 Annual statement; contents, blanks.

Sec. 17. Every corporation incorporated under this act shall, on or before the first day of May, in the year of our Lord 1882, and on or before the same day in each and every year thereafter, make and transmit to the commissioner of railroads, at his office in Lansing, a full and true statement, under oath, of the proper officers of said corporation, of the affairs of said corporation on the thirty-first day of December preceding, specifying:

First, The amount of capital stock subscribed and by whom;

Second, The names of the owners of its stock, the amounts owned by them respectively, and the residence of each stockholder so far as known;

Third, The amount of stock paid in, and by whom;

Fourth, The amount of its assets and liabilities;

Fifth, The names and place of residence of its officers;

Sixth, The amount of cash paid to the corporation on account of the original capital stock;

Seventh, The amount of funded debt;

Eighth, The amount of floating debt;

Ninth, The cost of its real estate, including rights-of-way for tracks;

Tenth, The cost of its depots, buildings, and fixtures;

Eleventh, The cost of all other property;

Twelfth, The length of single main track;

Thirteenth, The length of double main track;

Fourteenth, The aggregate length of sidings and other tracks not above enumerated.

Fifteenth, Its monthly earnings from all sources respectively during the year;

Sixteenth, The amount of expense incurred in operating its business and maintaining its property during the year;

Seventeenth, All other expenses incurred by it, including the salaries of officers which shall be reported separately;

Eighteenth, The amount expended for repairs and extension of tracks, including repairs and renewal of bridges and renewal of iron during the year;

Nineteenth, The amount expended for improvements during the year;

Twentieth, The amount expended for depot, station houses, buildings and fixtures during the year;

Twenty-first, All other expenses during the year;

Twenty-second, What arrangements it has with other railroad corporations for use of its depot and other property. Setting forth the contract for the same. And the said

commissioner shall cause to be made suitable blanks at the expense of the state, and forward the same to such railroad corporations, upon which to make the reports required by this act.

HISTORY: How. 3474;—CL 1897, 6372;—CL 1915, 8469;—CL 1929, 11229;—CL 1948, 471.17.

COMMISSIONER OF RAILROADS: Superseded by railroad commission, see Compilers' § 462.49, which, in turn, was superseded by public service commission, see Compilers' §§ 460.4 and 460.53.

471.18 Additional information.

Sec. 18. The said commissioner may make and propound to such corporations such other or additional interrogatories as in his judgment may be necessary, in order to gain full information in regard to the business of said corporations and the management thereof; and the provisions of an act entitled "An act to provide for the appointment of a commissioner of railroads, and to define his powers, duties, and fix his compensation" approved April 3, 1873, and the amendments thereto, shall apply to all corporations organized under this act, as far as applicable thereto.

HISTORY: How. 3475;—CL 1897, 6373;—CL 1915, 8470;—CL 1929, 11230;—CL 1948, 471.18.

NOTE: Act 79 of 1873, above referred to, was repealed by the Railroad Commission Act. The Michigan railroad commission was abolished and its powers and duties transferred to the public service commission, see Compilers' §§ 460.4 and 460.53.

471.19 Computation of tax; filing; failure of company to report.

Sec. 19. The commissioner of railroads shall, on or before the fifteenth day of May in each year, make and file with the auditor general a computation of the amount of tax which will become due on the first of July from each company liable to pay taxes under the provisions of section 21 of this act, which computation shall be based upon the report of such company for the preceding year required to be made to the commissioner of railroads; and in case any of said companies shall fail to make such report to the commissioner of railroads, as provided by law, then the provisions of section 20 of this act shall apply as fully as though such report was required to be made direct to the auditor general.

HISTORY: How. 3476;—CL 1897, 6374;—CL 1915, 8471;—CL 1929, 11231;—CL 1948, 471.19.

COMMISSIONER OF RAILROADS: Superseded by railroad commission, see Compilers' § 462.49, which, in turn, was superseded by public service commission, see Compilers' §§ 460.4 and 460.53.

TAXATION: See Compilers' § 211.1 et seq.; in particular, Compilers' §§ 207.4 to 207.21.

Collection, see Compilers' § 207.441 to 207.477.

471.20 Report; neglect to make, falsification; penalty, forfeiture of franchise.

Sec. 20. Any such company which shall neglect to make such report, or which shall willfully make a false report, or refuse to answer fully and fairly such additional interrogatories of the commissioner as he may propound pursuant to the said preceding section, shall be liable to a penalty of 1,000 dollars; and it shall be the duty of the auditor general, and he is hereby required in case any such corporation incurs the penalty aforesaid, to forthwith issue his warrant for the collection of the same in the same manner, and to levy and collect the same in all respects as is herein provided for the collection of taxes against such corporation; and the collection of such penalty shall not absolve the corporation from the obligation to make such report, but it shall still be its duty to make the same, and a willful neglect or refusal to do so may be cause for a forfeiture of the corporate franchises.

HISTORY: How. 3477;—CL 1897, 6375;—CL 1915, 8472;—CL 1929, 11232;—CL 1948, 471.20.

471.21 Specific tax; rate, payment in lieu of other taxes, exception.

Sec. 21. Every company formed under the provisions of this act shall, on or before the first day of July in each year, pay to the state treasurer, on the statement of the auditor general, an annual tax of 2 ½ per cent upon the gross earnings of said company, which amount or tax shall be in lieu of all other taxes upon the property of such companies, except such real estate as is owned and can be conveyed by such corporation under the laws of this state and not actually occupied in the exercise of its franchises,

and not necessary for the proper use thereof; but such real estate so excepted shall be liable to taxation in the same manner, for the same purposes, and to the same extent, and subject to the same conditions and limitations as to assessment for taxation, to taxation, and to the collection and return of taxes thereon, as other real estate in the several townships, villages, and cities within which the same may be situated.

HISTORY: How. 3478;—CL 1897, 6376;—CL 1915, 8473;—CL 1929, 11233;—CL 1948, 471.21.

AD VALOREM BASIS: Change from specific to ad valorem in 1901 by Act 173, which was repealed by Act 240 of 1915, being CL 1929, 120.

Present ad valorem law, see Compilers' §§ 207.4 to 207.21.

471.22 Lien of state and citizen.

Sec. 22. This state shall have a lien upon the depot, tracks, and other property of the companies organized under this act, and their appurtenances and stock therein, for all penalties, taxes, and dues which may accrue to the state from the companies, which lien of the state shall take precedence of all demands, judgments, or decrees against said companies; and each citizen of the state shall have a lien upon all the personal property of said company, for all penalties, dues, and demands against any such company to the amount of 100 dollars, originally incurred or contracted within this state, which, after said lien of the state, shall take precedence of all other debts, demands, judgments, or decrees, liens, or mortgages against said company.

HISTORY: How. 3479;—CL 1897, 6377;—CL 1915, 8474;—CL 1929, 11234;—CL 1948, 471.22.

TAXES: When taxes become a lien, see Compilers' § 207.14.

471.23 Fences, cattle-guards and ditches; penalties; civil liability.

Sec. 23. Every company formed under this act shall erect and maintain fences on the sides of their respective tracks, of the height and strength of a division fence required by law, with fences and cattle-guards at all highway and street crossings, sufficient to prevent cattle or other animals from getting on such tracks; also gates or bars convenient for farm crossings. Until such fences and cattle-guards or ditches shall be duly made, such company or corporation owning or operating such track shall be liable for all damages done to cattle or other animals thereon, which may result from the neglect of such company or corporation maintaining or operating the same to construct and maintain such fences, cattle-guards, or ditches as aforesaid; and after such fences, cattle-guards, or ditches shall be duly made and maintained, such company or corporation shall not be liable for any such damages unless negligently or willfully done. Any violation of the provisions of this section shall be punished by a penalty of 200 dollars per week for each and every week that said company shall fail to comply with the provisions of this section; and if any person shall ride, lead, or drive, or intentionally permit any horse or other animal upon such tracks and within such fences and cattle-guards or ditches, other than farm crossings, or shall injure or destroy, or make openings or passage [passages] through or over such fences, cattle-guards, or ditches, or neglect to close any gates or bars immediately after passing through the same, without the consent of such company or corporation, he shall for every such offense be liable to a fine not exceeding 100 dollars, and shall also pay all damages which shall be sustained thereby to the party aggrieved.

HISTORY: How. 3490;—CL 1897, 6378;—CL 1915, 8475;—CL 1929, 11235;—CL 1948, 471.23.

FENCES, CATTLE-GUARDS OR DITCHES: See Compilers' §§ 221.27, 462.39, 466.15 and 466.17.

PENALTY: Suit for, see Compilers' § 471.36

471.24 Loss by fire; liability, exceptions.

Sec. 24. Any such company shall be liable for all loss or damage to property by fire originating either from engines passing over its tracks, fires set by company employees by order of its officers, or otherwise through the neglect of such company: Provided, That such company shall not be held so liable if it prove to the satisfaction of the court or jury that such fire originated from fire by engines whose machinery, smoke-stack, or fire-boxes were in good order and properly managed, or fires originating in building.

operating, or repairing the same, and that all reasonable precautions had been taken to prevent their origin, and that proper efforts had been made to extinguish the same in case of their extending beyond the limits of such road, when the existence of such fire is communicated to any of the officers of such company.

HISTORY: How. 3481;—CL 1897, 6379;—CL 1915, 8476;—CL 1929, 11236;—CL 1948, 471.24.

471.25 Dividends, payment when company insolvent; penalty on directors.

Sec. 25. If the directors of any corporation organized under this act shall declare and pay any dividend when the company is insolvent, or the payment of which would render it insolvent, they shall be severally liable to a penalty of 500 dollars.

HISTORY: How. 3482;—CL 1897, 6380;—CL 1915, 8477;—CL 1929, 11237;—CL 1948, 471.25.

SUIT FOR PENALTY: See Compilers' § 471.36.

471.26 False statement; penalty.

Sec. 26. If any certificate or report made of public notice given by the officers of any such company in pursuance of the provisions of this act, shall be willfully false in any material representations, all the officers who shall have signed the same, knowing it to be false, shall be severally liable to a penalty of 500 dollars each.

HISTORY: How. 3483;—CL 1897, 6381;—CL 1915, 8478;—CL 1929, 11238;—CL 1948, 471.26.

SUIT FOR PENALTY: See Compilers' § 471.36.

471.27 Void incorporation.

Sec. 27. If any such company shall not, within 1 year after its organization, begin the construction of its depots or tracks, and expend thereon 40 per cent on the amount of the capital stock subscribed, and so far complete as to put the same in active operation with the necessary machinery and buildings for the most economical and rapid handling and transaction of all the business of all the companies using its tracks and station grounds, in 3 years from the time of its organization, its act of incorporation shall become void.

HISTORY: How. 3484;—Am. 1891, p. 39, Act 39, Imd. Eff. April 21;—CL 1897, 6382;—CL 1915, 8479;—CL 1929, 11239;—CL 1948, 471.27.

471.28 Depots and tracks for connecting railroads; disagreement, rate fixed by commissioner.

Sec. 28. All companies formed under this act shall, for a reasonable compensation, provide suitable depot accommodations for the passengers and freight of the railroads terminating or connecting with it, or desiring access thereto; and shall provide suitable tracks therefor without discrimination in favor of or against any of such roads. If the corporations cannot agree upon the terms and conditions upon which such accommodations shall be furnished and the business transacted, the commissioner of railroads shall determine the rate of compensation to be paid for the accommodations required, which shall be uniform to all such railroad companies; but no such rate shall be fixed as will reduce the net annual income of the business of said company to less than 7 per cent on the cost of the property so used.

HISTORY: How. 3485;—CL 1897, 6383;—CL 1915, 8480;—CL 1929, 11240;—CL 1948, 471.28.

COMMISSIONER OF RAILROADS: Superseded by railroad commission, see Compilers' § 462.49, which, in turn, was superseded by public service commission, see Compilers' § 460.4 and 460.53.

471.29 Warehouse or elevator service charges.

Sec. 29. Companies formed under this act shall not at any time charge or receive for warehouse or elevator service or use more than the average rates then prevailing at the cities of Toledo in Ohio, and Port Huron in Michigan, for like service or use. Every violation of the provisions of this section shall render the company so offending liable to a penalty of 500 dollars.

HISTORY: How. 3486;—CL 1897, 6384;—CL 1915, 8481;—CL 1929, 11241;—CL 1948, 471.29.

LEASES: Regulation of leases of railroad property for elevators, etc., see Act 303 of 1921, being Compilers' §§ 469.351 to 469.355.

SUIT FOR PENALTY: See Compilers' § 471.36.

471.30 Local and suburban passenger business; fares; power of commissioner.

Sec. 30. Any union railroad station and depot company may, and whenever it is expedient and such trains will pay the expenses thereof, shall put on local passenger trains to do a local and suburban passenger business, and for such local business upon or to the end of its tracks shall be entitled to charge for each passenger not exceeding 4 cents per mile; and upon the application of any 10 suburban citizens for the establishment of such trains, unless the said company comply with the requests it shall be upon the same request to the commissioner of railroads competent for him to investigate and determine whether such trains shall be established, and if in favor thereof it shall be the duty of such company to establish and maintain them so long as he shall require it to be done.

HISTORY: How. 3487;—CL 1897, 6385;—CL 1915, 8482;—CL 1929, 11242;—CL 1948, 471.30.

COMMISSIONER OF RAILROADS: Superseded by railroad commission, see Compilers' § 462.2 et seq., which, in turn, was superseded by public service commission, see Compilers' §§ 460.4 and 460.53.

FARES: See Compilers' §§ 460.54, 460.57 and 460.58.

471.31 Consolidation of station grounds; erection of depots; agreements; stock in other depot companies.

Sec. 31. It shall be competent and lawful for any corporation formed under this act to negotiate and enter into agreements with any other railroad company existing under the laws of this state and already owning station grounds, to unite and consolidate the station grounds of the 2 companies, to be worked together for mutual convenience, or to erect and maintain passenger stations and depots upon the lands of either for the common use of all the railroad companies using or desiring to use the grounds and terminal facilities and property of either company, upon such terms as may be mutually agreed upon; and may enter into and make such other agreements and arrangements as may be found proper and expedient for mutual convenience and the most economical use of the grounds and terminal accommodations of either or both of such contracting companies, and all such arrangements and agreements shall be valid and binding upon both parties. And any company entering into any such consolidation or agreement may take and hold stock in any depot company formed under this act, anything in this act to the contrary notwithstanding.

HISTORY: How. 3488;—CL 1897, 6386;—CL 1915, 8483;—CL 1929, 11243;—CL 1948, 471.31.

471.32 Side tracks; construction, rates.

Sec. 32. Any corporation organized under this act, at any village or city, requiring tracks of considerable length to connect other railroads with its station grounds, and where there may exist or spring up business establishments, manufacturing or otherwise, needing or which may be fostered and promoted by easy access to railroads, shall have the right and authority to build sidetracks to accommodate the business of all such establishments, and shall provide the necessary power and rolling stock for such purpose, charging only reasonable rates for the transaction of all such business.

HISTORY: How. 3489;—CL 1897, 6387;—CL 1915, 8484;—CL 1929, 11244;—CL 1948, 471.32.

471.33 Consolidation for suburban business; powers and obligations; aid in construction; agreement to operate or lease; evidence.

Sec. 33. It shall be competent for any railroad company organized under the laws of this state in the vicinity of any city or village for suburban business to consolidate its stock, property, and effects with any company organized under this act upon such terms as may be mutually agreed upon by the unanimous consent of all stockholders of both companies, and such consolidated companies shall be liable for all the obligations and entitled to all the privileges of either company. And it shall be competent and lawful for any company organized under this act to aid such suburban railroad company to construct its railroad either by taking stock therein or guaranteeing its bonds.

or in any other form which the 2 companies may agree upon and to secure such loans of credit or money or other advance of means and may enter into agreement to work and operate such suburban railroads or take a lease of the same upon such terms as may be mutually agreed upon, and any such contract for consolidation lease or other form of security made between the said companies, when filed with the secretary of state for record, shall be prima facie evidence of such consolidation lease or contract and of all the statements therein contained.

HISTORY: Am. 1882, p. 45, Act 14, Imd. Eff. March 14;—How. 3490;—CL 1897, 6388;—CL 1915, 8485;—CL 1929, 11245;—CL 1948, 471.33.

SALE OF PROPERTY AND FRANCHISES: See Act 112 of 1889, being Compilers' §§ 450.631 and 450.632.

471.34 Death; liability of company causing.

Sec. 34. Whenever the death of a person shall be caused by wrongful act, neglect, or default of any such company, or its agents, and the act, neglect, or default is such as would (if death had not ensued) entitle the party injured to maintain an action and recover damages in respect thereof, then and in every such case the corporation which would have been liable if death had not ensued shall be liable to an action on the case for the damages, notwithstanding the death of the person so injured, and although the death shall have been caused under such circumstances as amount in law to felony.

HISTORY: How. 3491;—CL 1897, 6389;—CL 1915, 8486;—CL 1929, 11246;—CL 1948, 471.34.

LIABILITY FOR DEATH: See Compilers' § 467.7.

471.35 Death; liability of company causing; parties to action; damages, distribution.

Sec. 35. Every such action shall be brought by and in the names of the personal representatives of such deceased person, and the amount recovered in any such action shall be distributed to the persons, and in the proportion provided by law in relation to the distribution of personal property left by persons dying intestate; and in every such action the jury may give such amount of damages as they shall deem fair and just, to the persons who may be entitled to such damages when recovered.

HISTORY: How. 3492;—CL 1897, 6390;—CL 1915, 8487;—CL 1929, 11247;—CL 1948, 471.35.

471.36 Suits for penalties.

Sec. 36. All penalties incurred under this act, when not otherwise provided for, may be sued for in the name of the people of the state of Michigan, and if such penalty be for a sum not exceeding 100 dollars, then such suit may be brought before a justice of the peace.

HISTORY: How. 3493;—CL 1897, 6391;—CL 1915, 8488;—CL 1929, 11248;—CL 1948, 471.36.

SUIT FOR PENALTY: See (Jud. Act) Compilers' § 600.4905 et seq.

471.37 Effect of amendment or repeal of act or dissolution.

Sec. 37. This act may at any time be altered, amended or repealed, but such alteration, amendment, or repeal, shall not effect the rights of property of companies organized under it; nor shall the dissolution of any such company take away or impair any remedy given for or against such corporation, its stockholders or officers, for any liability which shall have been previously incurred.

HISTORY: How. 3494;—CL 1897, 6392;—CL 1915, 8489;—CL 1929, 11249;—CL 1948, 471.37.

471.38 Closing of streets; damages.

Sec. 38. Any corporation organized under this act, shall have power, with the consent of the common council of any city or the village board of any village in which the station and depot grounds of such company are located, to occupy and close any highway, street or alley within the limits of its station and depot grounds, but such company shall pay to the parties entitled to the same, any and all damages that may accrue to them, in consequence of the closing of any such highway, street or alley; and such damages may be recovered in an action on the case in any court of competent jurisdiction.

tion, and his right of action shall obtain from and after the granting of consent of the common council or board of trustees aforesaid.

HISTORY: Add. 1891, p. 110, Act 94, Imd. Eff. May 26;—CL 1897, 6383;—CL 1915, 8490;—CL 1929, 11250;—CL 1948, 471.38.

DAMAGES: Limited by Act 89 of 1905 to pecuniary injury to those entitled to recover. Act 89 of 1905 was repealed by Act 217 of 1907.

DISTRIBUTION OF PERSONALTY: See Compilers' § 702.93.

471.39 Dissolution.

Sec. 39. Any union depot company formed under this act or any former act may be wound up or dissolved either voluntarily or involuntarily. If the proceedings are voluntary, they may be conducted either out of court or subject to the supervision of the court. If the proceedings are involuntary, they must be subject to the supervision of the court. If the corporation shall be wound up or dissolved subject to the supervision of the court, the proceedings shall be under Act No. 314 of the Public Acts of 1915, being sections 600.1 to 681.3, inclusive, of the Compiled Laws of 1948, except that any corporation, whose assets had been wholly disposed of under court order in receivership or bankruptcy proceedings may be summarily dissolved by order of the court having jurisdiction of such proceedings. A copy of such order shall be filed by the clerk of such court with the secretary of state.

HISTORY: Add. 1955, p. 82, Act 51, Eff. Oct. 14.

471.40 Dissolution before beginning business; refund of contributions.

Sec. 40. Before beginning the business for which any corporation was created, the incorporators may surrender all their corporate rights and franchises, by filing in the manner provided for original articles a certificate, verified by the oath of a majority of the incorporators, that such part of the capital as had been paid in, less any proper disbursements actually made in connection with such organization, if any, has been refunded to the subscribers contributing the same and that such business has not been begun, and surrendering all rights and franchises, and thereupon such corporation shall be dissolved.

HISTORY: Add. 1955, p. 82, Act 51, Eff. Oct. 14.

471.41 Cessation of business; audit, inventory, appraisal.

Sec. 41. Any solvent corporation which shall desire to cease doing business, surrender its franchise and wind up its corporate affairs may do so by the following procedure with the consent of the holders of at least 2/3 of each class of the outstanding capital stock of the corporation given at a meeting duly called and held. The shareholders may then appoint 3 or more of the directors or trustees to make an audit of the books, accounts and papers, and to make an inventory and appraisal of the property of such corporation, which audit and inventory shall be filed with the board. Upon receiving such audit and inventory, the directors shall proceed to liquidate all of the debts and obligations of the corporation, and to sell the property, rights and franchises, to collect all claims due the corporation, and reduce all of such assets to possession.

HISTORY: Add. 1955, p. 82, Act 51, Eff. Oct. 14.

471.42 Dissolution; notice to creditors.

Sec. 42. It shall be the duty of the directors to cause a public notice of such approaching dissolution to be inserted once each week for 3 successive weeks next preceding the date fixed in such notice in some newspaper published in the city or village where such corporation has its registered office, calling the attention of all creditors to the same, and requesting such creditors to present their claims at the office of such corporation on or before a date to be fixed in such notice. It shall also be the duty of the directors to notify each known creditor by registered mail of such intention to dissolve.

HISTORY: Add. 1955, p. 82, Act 51, Eff. Oct. 14.

471.43 Settlement of claims, conveyances.

Sec. 43. The directors shall have full power and authority to settle, compromise and pay all claims against the corporation, and to receive, receipt and give acquittance for all debts due the corporation, and to authorize the officers thereof to execute and deliver such deeds or instruments as may be necessary in the sale or conveyance of any of the real or personal property of such corporation.

HISTORY: Add. 1955, p. 82, Act 51, Eff. Oct. 14.

471.44 Final meeting of shareholders; financial statement; distribution of surplus.

Sec. 44. As soon as may be convenient after the property has been sold, all assets reduced to cash and all debts paid, the directors shall call a final meeting of the shareholders and shall present at such meeting a detailed financial statement showing the exact surplus to be distributed among the shareholders. Such statement shall be subject to such audit as the holders of a majority of the outstanding capital stock of the corporation may direct, and the directors may then proceed to order the distribution of such surplus in such manner as they shall determine as the respective interests may appear.

HISTORY: Add. 1955, p. 83, Act 51, Eff. Oct. 14.

471.45 Certificate of dissolution filed.

Sec. 45. It shall be the duty of the president and secretary of such corporation to execute and file with the secretary of state a certificate reciting the resolution to dissolve, a copy of the final statement, and the affidavit of the treasurer or an assistant treasurer of such corporation that all of the debts of such corporation have been paid and the surplus distributed to the shareholders and giving the name and address of the custodian of the records of such corporation.

HISTORY: Add. 1955, p. 83, Act 51, Eff. Oct. 14.

471.46 Dissolution; rights of creditors.

Sec. 46. Upon filing such final certificate, the said corporation shall be deemed to be dissolved, its franchise surrendered, and all of its powers, rights and privileges extinguished: Provided, That nothing in this act contained shall be construed as taking away or prejudicing any right of creditors to pursue any remedy at law or in chancery given by any law of this state with respect to such corporation or its shareholders within such period as may be prescribed in the statutes of limitations.

HISTORY: Add. 1955, p. 83, Act 51, Eff. Oct. 14.

471.47 Dissolution by sale of part or all of assets; distribution.

Sec. 47. Any solvent union depot company may also be dissolved by the vote or written consent of the holders of at least 3/4 of each class of its outstanding stock in the following manner: By the sale of a part or the whole of its assets, the payment of all its debts and liabilities, or making provision for the payment thereof, and the distribution of the residue pro rata among its shareholders, or, after payment of all its debts and liabilities or making provision for the payment thereof, the remaining assets may be distributed in kind pro rata among its shareholders. If there is more than 1 class of shares, any such distribution shall be in accordance with the preferences thereof, if any. Within 30 days after such dissolution, a certificate signed by the holders of at least 3/4 of each class of its outstanding stock shall be filed with the secretary of state, showing that all the debts and liabilities have been paid or provision for the payment thereof made and the assets have been distributed pro rata among the shareholders or provision for such distribution made.

HISTORY: Add. 1955, p. 83, Act 51, Eff. Oct. 14.

CHAPTER 472. STREET RAILWAYS

STREET RAILWAY COMPANIES			
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Act 35, 1867, p. 46; Imd. Eff. Mar. 5.

AN ACT to provide for the formation of street railway companies, defining their powers and duties and authorizing the construction, use, maintenance and ownership of street railways for the transportation of passengers, and for accumulating, storing, manufacturing, conducting, using, selling, furnishing and supplying electricity and electric power, by such companies. Am. 1919, p. 321, Act 179, Eff. Aug. 14.

The People of the State of Michigan enact:

472.1 Street railway companies; organization.

Sec. 1. That street railway companies may be organized under the provisions of this act.

HISTORY: CL 1871, 2502;—How. 3536;—CL 1897, 6434;—CL 1915, 8532;—CL 1929, 11292;—CL 1948, 472.1.

CONSOLIDATION: Of street railway and electric light companies, see Compilers' §§ 473.1 and 473.2, and 473.81 to 473.83. Of street railway, electric light and gas light companies, see Compilers' §§ 473.41 to 473.65.

Of street and electric railways organized under laws of Michigan with like companies in adjoining states, see Compilers' § 473.31.

FRANCHISE FOR USE OF HIGHWAYS: See Compilers' §§ 460.601 to 460.605.

Fourth class cities, see Compilers' § 91.5.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

This act appeared in Ch. 162 of CL 1915. Corporations organized under that chapter were specifically excepted from the provisions of Act 84 of 1921, except as otherwise therein provided, see Sec. 8 of Ch. 1 of Pt. I, being CL 1929, 9950. See also Compilers' 450.3, on exemption from corporation code.

REPORTS: See Compilers' § 450.82.

EXAMINATION BY ATTORNEY GENERAL: See Compilers' §§ 450.525 and 468.351 to 468.356.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.1 et seq.

TAXATION: Fees, taxes and charges, see Act 85 of 1921, being Compilers' §§ 450.301 to 450.309. Taxation, see Compilers' § 207.1 et seq. and, as to collection, Compilers' § 207.441 et seq.

VESSELS: Authorizing street railway companies to own, maintain and operate, see Act 156 of 1905, being Compilers' §§ 467.201 to 467.202.

472.2 Street railway companies; incorporators, name.

Sec. 2. Any number of persons, not less than 3, desiring to form a corporation for the purpose of constructing, owning, maintaining, or using any street railway in any city, village or township in this state, may by articles of agreement in writing, associate for that purpose, under any name assumed by them in their articles of association; Provided, That, no 2 companies shall assume the same name.

HISTORY: CL 1871, 2503;—How. 3537;—CL 1897, 6435;—CL 1915, 8533;—CL 1929, 11293;—CL 1948, 472.2.

472.3 Articles; contents, signing, acknowledgement.

Sec. 3. Such articles of association shall be signed by the persons associating in the first instance, and acknowledged before some officer authorized by the laws of this state to take acknowledgment of deeds, and shall state.

First. The name by which the corporation shall be known in the law.

Second. Definitely and distinctly the purpose for which the corporation is formed.

Third. The amount of their capital stock, and the number of the shares thereof.

Fourth. The names of the stockholders, their respective residences, and the number of shares held by each.

Fifth. The city or village in which the office for the transaction of their business shall be located and where their business is to be carried on.

Sixth. The term of the existence of the corporation, which shall not exceed 30 years.

Seventh. The number of the directors of the corporation, and the names of those who shall be directors for the first year.

HISTORY: CL 1871, 2504;—How. 3538;—CL 1897, 6436;—CL 1915, 8534;—CL 1929, 11294;—CL 1948, 472.3.

472.4 Articles; filing, prerequisites; body corporate, powers; certified copy as evidence.

Sec. 4. Said articles of association, may be filed in the office of the secretary of state, and thereupon all persons who have subscribed the same, and all persons who shall from time to time become stockholders in such company, shall be a body politic and corporate, by the name specified in such articles, and by such name shall be capable of suing and being sued in any court of this state, and may have a common seal, and may alter and change the same at pleasure. A copy of any articles of association, filed in pursuance of this act, and certified by the secretary of state to be a true copy thereof and of the whole of such articles of association, shall be in all courts and places, presumptive evidence of the incorporation of such company, and of the facts therein stated, Provided, That such articles shall not be filed in the office of the secretary of state, as aforesaid, until stock to the amount of 25,000 dollars has been subscribed thereto, nor until 25 per cent of the amount of the stock subscribed as aforesaid, shall have been actually paid in cash, to the directors named in such articles, nor until there is annexed thereto, an affidavit, made by at least 3 of the directors named in said articles that the amount of stock required by this section, to wit; 25,000 dollars has been subscribed and that 25 per cent, on the amount has been actually paid in.

HISTORY: Am. 1909, p. 253, Act 137, Eff. July 5;—CL 1871, 2505;—How. 3539;—CL 1897, 6437;—CL 1915, 8535;—CL 1929, 11295;—CL 1948, 472.4.

SERVICE OF PROCESS: See (Jud. Act) Compilers' § 600.6737.

472.5 Capital stock, common and preferred; directors, powers, election; insolvency, application of assets.

Sec. 5. The amount of the capital stock in every such corporation shall be fixed and limited by the stockholders in their articles of association, and shall in no case be less than 10,000 dollars, and shall be divided into shares of 100 dollars each; but the capital stock and the number of shares thereof may be increased at any lawful meeting of the stockholders; and whenever any such increase shall be made, a certificate showing the amount of such increase, signed by the president and secretary of the company, and sealed with its corporate seal, shall be filed in the office of the secretary of state. Any such company by its articles of association, or by amendment thereto, approved at any lawful meeting of the stockholders by vote of 3/4 in interest of its capital stock, shall have power to create and issue certificates for 2 kinds of stock, namely: General or common stock and preferred stock of 1 or more classes; which preferred stock shall at no time exceed 80 per centum of the actual capital paid in, and shall be subject to redemption at not less than par at a certain time to be fixed by the by-laws of said corporation, and to be expressed in the certificates therefor. And the holder of such preferred stock shall be entitled to a fixed dividend, payable quarterly, half yearly, or yearly, which said dividend shall be cumulative, payable at the time expressed in said certificate, not to exceed 8 per cent per annum, before any dividends shall be set apart or paid on the common stock. Said corporation shall be controlled by a board of directors elected by the preferred and common stockholders, excepting when otherwise provided in the articles of association or amendments thereto: Provided always, If at any time upon a fair valuation of the assets of the corporation the common stock shall be impaired in an amount equal to 20 per cent thereof, or any annual dividend or accrued dividends for 1 year due on the preferred stock shall remain unpaid for 60 days, then holders of the preferred stock shall have an equal right with the common stock, share and share alike, to participate in the election of directors and control of said corporation. If for any reason said corporation shall cease business or become insolvent, then after the payment of all liabilities and debts, the remainder of the assets of such corporation shall be applied first to the payment in full of all preferred stock and then unpaid dividends due thereon, and the balance divided pro rata, share and share alike, among the holders of the common stock. Every corporation organized or existing under the provisions of this act may, by its articles of association, or by an amendment thereto approved at any lawful meeting of stockholders by a vote of 3/4 in interest of its capital stock, provide for an issue of common stock of non-par value, in accordance with subdivision 2 (being sections 6 to 9 both inclusive) of part 2, chapter 2 of Act No. 84 of the Public Acts of 1921. Nothing in this section shall be construed as relieving or excepting any such corporation or any person or persons from complying with the provisions of Act No. 144 of the Public Acts of 1909, as amended by Act No. 177 of the Public Acts of 1911, Act No. 259 of the Public Acts of 1915, and Act No. 381 of the Public Acts of 1919.

HISTORY: CL 1871, 2506;—How. 3540;—CL 1897, 6438;—CL 1915, 8536;—Am. 1917, p. 776, Act 313, Imd. Eff. May 10;—Am. 1923, p. 336, Act 214, Eff. Aug. 30;—CL 1929, 11296;—CL 1948, 472.5.

NOTE: Sections of Act 84 of 1921, above referred to, are CL 1929, 10006 to 10009. Present corporation code is Compilers' § 450.1 et seq. Act 144 of 1909, above referred to, is Compilers' §§ 460.301 to 460.303.

472.6 Directors; number, election, vacancy, term, qualifications.

Sec. 6. The business and property of such company shall be managed and directed by a board of not less than 3 nor more than 13 directors, who, after the first year, shall be elected annually, or once in 2 years, as the by-laws of said company shall direct, and at such time and place as said by-laws may direct; and public notice shall be given of the time and place of holding such election, not less than 20 days previous thereto, in such manner as the by-laws of such company may direct; the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by

proxy. In all elections each stockholder shall be entitled to cast as many votes as he shall own shares of stock, and the persons having the greatest number of votes shall be directors. Whenever any vacancy shall happen in the board of directors such vacancy shall be filled for the remainder of their term by the remaining directors. The directors shall hold their offices for 1 or 2 years, as said by-laws may direct, and until others are elected in their places; and no person shall be a director unless he is a stockholder in said company; and no stockholder shall vote at any election who has not paid all assessments then due on the stock held by him.

HISTORY: CL 1871, 2507;—How. 3541;—CL 1897, 6439;—Am. 1901, p. 113, Act 79, Imd. Eff. April 22;—CL 1915, 8537;—CL 1929, 11297;—CL 1948, 472.6.

ELECTIONS FOR DIRECTORS: See Act 112 of 1885, being Compilers' § 450.651.

472.7 Directors; calling of election.

Sec. 7. In case it shall happen that an election for directors shall not be held as provided the said corporation shall not be, for that reason, dissolved, but such election shall be held on some future day, to be fixed by the directors holding over, upon giving the notice thereof, as in this act provided, and all acts of the directors shall be binding upon such corporation.

HISTORY: CL 1871, 2508;—How. 3542;—CL 1897, 6440;—CL 1915, 8538;—CL 1929, 11298;—CL 1948, 472.7.

472.8 Directors; quorum.

Sec. 8. A majority of the directors shall be a board for the transaction of business, and the acts of a majority of the board shall bind the corporation.

HISTORY: CL 1871, 2509;—How. 3543;—CL 1897, 6441;—CL 1915, 8539;—CL 1929, 11299;—CL 1948, 472.8.

472.9 Directors; officers; selection, term, vacancy.

Sec. 9. The directors shall choose, by ballot, a president who shall be 1 of the directors, and they shall also choose a secretary and treasurer, who shall hold their offices during such time as the by-laws of the company shall prescribe, and until others are chosen in their stead; and the directors shall supply any vacancy in the office of president, secretary or treasurer, whenever the same shall occur.

HISTORY: CL 1871, 2510;—How. 3544;—CL 1897, 6442;—CL 1915, 8540;—CL 1929, 11300;—CL 1948, 472.9.

472.10 President and directors; powers.

Sec. 10. The president and directors shall have power to make and prescribe such by-laws, rules and regulations, respecting the transfer of stocks, and the management and control of the property and affairs of such corporation, the time and manner of calling and holding the meetings of the stockholders and directors, the time for the election of directors and officers, and the terms for which they shall hold their respective offices, as they may deem best, not inconsistent with the laws of the United States or of this state, and shall have power to appoint and employ officers, clerks, agents and servants, for conducting and carrying on the business of such corporation, and determine their duties and salaries, and wages to be paid to them.

HISTORY: CL 1871, 2511;—How. 3545;—CL 1897, 6443;—CL 1915, 8541;—CL 1929, 11301;—CL 1948, 472.10.

472.11 Shares of stock; payment of subscription, forfeiture.

Sec. 11. The directors may require the subscribers, to the capital stock of the company to pay the amount by them respectively subscribed, in such manner, and in such installments as they may deem proper. If any stockholder shall neglect to pay any installment as required by a resolution of the board of directors, the said board, shall be authorized to sue for the same, or declare his stock and all previous payments thereon forfeited for the use of the company; but they shall not declare it so forfeited until they shall have caused a notice, in writing, to be served on him personally, or by depositing the same in the postoffice properly directed to him at the postoffice nearest his usual place of residence, stating that he is required to make such payment at the time and place specified in said notice, and that if he fails to make the same, his stock

and all previous payments thereon will be forfeited for the use of the company, which notice shall be served as aforesaid, at least 60 days previous to the day on which such payment is required to be made.

HISTORY: CL 1871, 2512;—How. 3546;—CL 1897, 6444;—CL 1915, 8542;—CL 1929, 11302;—CL 1948, 472.11.

472.12 Shares of stock; status as personalty; transfer; subscriptions; issuance for part payment.

Sec. 12. The shares in the capital stock of any corporation formed under this act shall be deemed personal property, and may be transferred as shall be prescribed by the by-laws of said company. The directors of any such company may from time to time receive subscriptions to stock in said company, until the whole amount of the stock of the association shall be subscribed; but no certificates of shares in any such company shall be issued until the whole amount of the shares mentioned in such certificate shall have been paid in full to the company.

HISTORY: CL 1871, 2513;—How. 3547;—CL 1897, 6445;—CL 1915, 8543;—CL 1929, 11303;—CL 1948, 472.12.

INVESTMENT SECURITIES: See Compilers' § 440.8301 et seq.

472.13 Street railway, consent to construction and maintenance; condemnation, procedure, minerals; generation and sale of electric power.

Sec. 13. Any street railway corporation organized under the provisions of this act, may, with the consent of the corporate authorities of any city or village, given in and by an ordinance or ordinances duly enacted for that purpose, and under such rules, regulations and conditions as in and by such ordinance or ordinances shall be prescribed, construct, use, maintain and own a street railway for the transportation of passengers in and upon the lines of such streets and ways, in said city or village, as shall be designated and granted from time to time for that purpose, in the ordinance or ordinances granting such consent; but no such railway company shall construct any railway in the streets of any city or village until the company shall have accepted in writing the terms and conditions upon which they are permitted to use said streets; and any such company may extend, construct, use and maintain their road in and along streets or highways of any township adjacent to said city or village, upon such terms and conditions as may be agreed upon by the company and the township board of the township, which agreement, and the acceptance by the company of the terms thereof, shall be recorded by the township clerk in the records of his township. Any company organized under the provisions of this act may construct, use, maintain and own a street railway for the transportation of passengers in and along the streets and highways of any township upon such terms and conditions as may be agreed upon by the company and the township board of the township, which agreement, and the acceptance by the company of the terms thereof, shall be recorded by the township clerk in the records of the township; and any such company may construct, use, maintain and own a street railway upon private rights of way and all such companies shall, when necessary to enter upon and use private property in such construction and operation, have the same power and right of eminent domain as is now possessed by railroad companies. All proceedings at law or in equity necessary to give this section effect shall be the same as proceedings for the condemnation of property for companies organized under the general railroad law and all statutes relative to the exercise of the right of eminent domain for railroad purposes are hereby made applicable to proceedings under this act: Provided, That any such company may construct, use, maintain and own a street railway as is herein provided along any highway heretofore laid out or constructed or hereafter to be laid out or constructed by the board of county road commissioners or any highway adopted as a county road by the board of county road commissioners and under their control, upon such terms and conditions as may be agreed upon by the company and the said board of county road commissioners, with the approval of a majority of the board of supervisors, which agreement, and

the acceptance by the company of the terms thereof, shall be recorded by the county clerk in the records of said board. Excepting, however, that whenever the right of way for such railways is acquired by the exercise of the power and right of eminent domain, the person, association or corporation acquiring the same under and by virtue of such power and right, shall not thereby acquire any right, title or interest in and to any ores or minerals either upon or beneath the surface of such part of the right of way, but the same shall remain the property of the owners of the land or ores and minerals at the time the right of way is so acquired. And said owners may, without let or hindrance, mine, take and carry away all such ores and minerals, and in doing so the said owners shall not be required to protect the surface of such right of way from being damaged or endangered by the removal of such ores and minerals. Any corporation organized under this act shall have the following additional powers, that is to say: To generate, and transmit for itself and furnish and sell electricity and electric power, and storing it, and dispensing and dividing it subject to the regulations of cities, villages and townships where sold among those who wish to purchase or lease it: Provided, That any corporation organized under this act which shall engage in the business of generating, transmitting, selling or distributing electricity shall be subject to the relevant provisions of all laws of this state relative to the regulation of the business of generating, transmitting, selling or distributing electricity for any of the purposes mentioned in this act.

HISTORY: CL 1871, 2514;—How. 3548;—Am. 1893, p. 11, Act 12, Imd. Eff. March 4;—CL 1897, 6446;—Am. 1901, p. 364, Act 234 Eff. Sept. 5;—Am. 1905, p. 148, Act 101, Imd. Eff. May 10;—Am. 1905, p. 182, Act 133, Imd. Eff. May 18;—CL 1915, 8544;—Am. 1919, p. 121, Act 179, Eff. Aug. 14;—CL 1929, 11304;—CL 1948, 472.13.

POWER COMPANIES: See Compilers' §§ 486.201 et seq. and 486.251 et seq.

472.14 Street railway, consent to construction and maintenance; acceptance by company; revocation.

Sec. 14. After any city, village or township shall have consented, as in this act provided, to the construction and maintenance of any street railways therein, or granted any rights and privileges to any such company, and such consent and grant have been accepted by the company, such township, city or village shall not revoke such consent, nor deprive the company of the rights and privileges so conferred.

HISTORY: CL 1871, 2515;—How. 3549;—CL 1897, 6447;—CL 1915, 8545;—CL 1929, 11305;—CL 1948, 472.14.

472.15 Property and franchises; power to purchase, sell, lease and convey; motor vehicles, operation, restrictions; acquisition of capital stock.

Sec. 15. Any street railway company may also purchase or acquire, either at public or private sale, whether judicial or otherwise; or may hire any street railway in any city, village or township owned by any other corporation or company, together with all the real and personal estate belonging thereto, and the rights, privileges and franchises thereof, and may use, maintain, and complete such road, and may use and enjoy the rights, privileges and franchises of such company in the same manner and upon the same terms as the company whose road and franchise, so acquired, might have done, or may lease, sell and convey its railway, together with the rights, privileges and franchises thereof to any other street railway company subject to such terms and limitations as may be expressed in this act. Every street railway company may also purchase, hold, own or take upon lease such real estate, barns, stables, buildings, fixtures and property as may be necessary for the use and business of their road; and the whole or any part thereof, together with their railway fixtures, property and appurtenances, rights, privileges and franchises may sell, lease, dispose of, pledge or mortgage whenever the corporation shall deem it expedient so to do: Provided, however, That no company shall, under the provisions hereof, lease, purchase, or acquire a competing road. Any street railway may also, as an incident to its business and for the better service for the public, acquire, own, lease or hire motor vehicles and may, upon compli-

ance with all laws, state and municipal, authorizing the operation and regulating the use of motor vehicles on the highway, operate the same on and over the public highways of this state for the transportation of such persons and property as it may lawfully transport on its railway: Provided, No such motor vehicle equipment shall be used to do a local business in any municipality in this state without the permission of the municipality in which such local business is wholly carried on. Any street railway may also acquire and own the capital stock of any corporation owning or operating motor vehicles for the purpose and in the manner hereinbefore stated: Provided further, Nothing herein contained shall be understood as obviating the necessity for obtaining any franchise now required by law and a certificate of public convenience and necessity from the Michigan public utilities commission as provided in Act No. 209 of the Public Acts of 1923 and any amendments thereto.

HISTORY: CL 1871, 2518;—How. 3550;—CL 1897, 6448;—Am. 1905, p. 137, Act 97, Imd. Eff. May 4;—CL 1915, 8548;—Am. 1929, p. 697, Act 284, Imd. Eff. May 22;—CL 1929, 11306;—CL 1948, 472.15.

NOTE: Act 209 of 1923, above referred to, is CL 1929, 11342 to 11352. For present law, see Compilers' § 475.1 et seq.

NOTE: The public utilities commission has been abolished and superseded by the public service commission, see Compilers' § 480.4.

SALE OF PROPERTY AND FRANCHISES: See Act 112 of 1889, being Compilers' §§ 450.631 and 450.632.

MOTOR VEHICLES: For power of railroads to own and operate, see Act 193 of 1929, being Compilers' § 467.251.

VESSELS: Power of street railway to own and operate, see Compilers' §§ 467.201 and 467.202.

472.16 Borrowing power; bonds and mortgages, issuance.

Sec. 16. Every street railway company may borrow money and issue their bonds therefor; and for any indebtedness incurred may mortgage their corporate property and franchises, and any property which they shall at any time acquire, to secure the payment of their bonds, money borrowed, and any and all debts and liabilities which they may at any time incur.

HISTORY: CL 1871, 2517;—How. 3551;—CL 1897, 6449;—CL 1915, 8547;—CL 1929, 11307;—CL 1948, 472.16.

ISSUANCE OF SECURITIES: See Compilers' § 460.301 et seq.

472.17 Street grades; conformance by company; change.

Sec. 17. In constructing their railways every such company shall conform to the grades established, or which may be established, by the common council or other corporate authorities of the city, village or township, for the street traversed by said railways, nor shall the company at any time alter or change the grade or line of any street, without the consent of the common council or other corporate authorities of the city, village or township, first had and obtained.

HISTORY: CL 1871, 2518;—How. 3552;—Am. 1893, p. 11, Act 12, Imd. Eff. March 4;—CL 1897, 6450;—CL 1915, 8548;—CL 1929, 11308;—CL 1948, 472.17.

472.18 Laying of track; roadbed repair.

Sec. 18. Every street railway company is hereby required to lay the track of their road or railway in such way or mode, and with such kind of rail, and to keep their railway and that part of the street and pavement within and adjacent to the track of such road or railway, in such condition and state of repair as shall be prescribed and provided in the consent, grant or agreement of the municipal authorities permitting the construction and location of such road or railway.

HISTORY: CL 1871, 2519;—How. 3553;—CL 1897, 6451;—CL 1915, 8549;—CL 1929, 11309;—CL 1948, 472.18.

472.19 Municipalities; authority to establish street rules.

Sec. 19. The common council or other corporate authorities of the city or village, in which any street railway shall be located, may from time to time, by ordinance or otherwise, establish and prescribe such rules and regulations in regard to said railway, as may be required for the grading, paving and repairing the street, and the construction of sewers, drains, reservoirs and crossings, and the laying of gas and water-pipes, upon, in and along the streets traversed by such road, and to prevent obstructions thereon.

HISTORY: CL 1871, 2520;—How. 3554;—CL 1897, 6452;—CL 1915, 8550;—CL 1929, 11310;—CL 1948, 472.19.

472.20 Fares; agreement with municipality, increase.

Sec. 20. The rates of toll or fare, which any street railway company may charge for the transportation of persons or passengers over their road shall be established by agreement between such company and the corporate authorities of the city or village where the road is located, and shall not be increased without consent of such authorities.

HISTORY: CL 1871, 2521;—How. 3555;—CL 1897, 6453;—CL 1915, 8551;—CL 1929, 11311;—CL 1948, 472.20.

Sec. 21.

HISTORY: CL 1871, 2522;—How. 3556;—CL 1897, 6454;—Rep. 1915, p. 480, Act 314, Eff. Jan. 1, 1916, being Compilers' § 681.1.
This section related to service of process.

472.22 Stockholder's liability.

Sec. 22. The stockholders of every company incorporated under this act, shall be jointly and severally liable, in their individual capacity, for all labor performed for such company; and shall also be liable for the debts of such company, for an amount equal to the amount of any unpaid stock in such company, held by them.

HISTORY: CL 1871, 2523;—How. 3557;—CL 1897, 6455;—CL 1915, 8552;—CL 1929, 11312;—CL 1948, 472.22.
CONTRIBUTION: See Compilers' § 450.519.

472.23 Director's or stockholder's liability for declaration or receipt of dividend when company is insolvent.

Sec. 23. If the directors of any company formed under this act shall declare or pay any dividend when the company is insolvent, or the payment of which would render it insolvent, or which would diminish the amount of its capital stock, they and all stockholders who shall knowingly accept or receive such dividend, shall be jointly and severally individually liable for all the debts of such company then existing and for all that shall be thereafter contracted, while they shall respectively continue stockholders or in office.

HISTORY: CL 1871, 2524;—How. 3558;—CL 1897, 6456;—CL 1915, 8553;—CL 1929, 11313;—CL 1948, 472.23.

472.24 Suit against stockholder; prerequisites; subrogation; contribution.

Sec. 24. But no suit shall be brought against any individual stockholder or stockholders, for any debt of such company, as provided in the last 2 preceding sections, until judgment on the demand shall have been obtained against the company, and execution thereon returned unsatisfied in whole or in part, or until the company shall have been dissolved; and any stockholder who may have paid any debt of such company, either voluntarily or by compulsion, shall have a right to sue and recover of such company the full amount thereof, with interests, costs and expenses; and any such stockholder who may have paid as aforesaid, shall have a right to bring an action against and recover of the rest of the stockholders, or any 1 or more of them, the due proportion thereof, which such stockholder or stockholders ought to pay; and if such action for contribution shall be brought against more than 1 stockholder, the judgment and the execution thereon shall specify the amount to be recovered and collected from each defendant.

HISTORY: CL 1871, 2525;—How. 3559;—CL 1897, 6457;—CL 1915, 8554;—CL 1929, 11314;—CL 1948, 472.24.

472.25 Annual report; contents.

Sec. 25. On or before the second Monday in January in each year, it shall be the duty of the directors of every company formed under this act, to report to the secretary of state, under the oath of a [at] least 2 of such directors—

- First. The amount of capital paid in;
- Second. The amount of the indebtedness of the company;
- Third. The length of road completed;
- Fourth. Cost of construction and equipment.

Fifth. Gross receipts and earnings of the company for the past year.

Sixth. Cost of operating the road for the past year.

Seventh. Amount of dividends for the past year.

Eighth. A list of stockholders, their name and residence.

HISTORY: CL 1871, 2528;—How. 3560;—CL 1897, 6458;—CL 1915, 8555;—CL 1929, 11315;—CL 1948, 472.25.

REPORTS: See Compilers' § 450.524.

Sec. 26.

HISTORY: CL 1871, 2527;—How. 3561;—Rep. 1882, p. 4, Act 5, Imd. Eff. March 13.

This section required the company to annually pay a specific tax of one-half of one per cent on its capital stock.

472.27 Ceasing to be body corporate.

Sec. 27. Every company incorporated under this act, for the purposes of constructing a railway, shall cease to be a body corporate, if within 1 year from the time of filing their articles of association with the secretary of state, they shall not have commenced the construction of their railway, and expended therein at least 10 per cent of their capital stock.

HISTORY: CL 1871, 2528;—How. 3562;—CL 1897, 6459;—CL 1915, 8556;—CL 1929, 11316;—CL 1948, 472.27.

472.28 Injury to railway property; penalty.

Sec. 28. If any person shall willfully obstruct, break, injure or destroy any railway constructed or operated under the provisions of this act, or any part thereof, or any work, cars, building or fixtures attached to or in use upon the same belonging to or in the possession of any street railway company, such person or persons so offending shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding 500 dollars, or by imprisonment in the county jail not more than 1 year.

HISTORY: CL 1871, 2529;—How. 3563;—CL 1897, 6460;—CL 1915, 8557;—CL 1929, 11317;—CL 1948, 472.28.

472.29 Existing companies; powers, rights and liabilities.

Sec. 29. All companies and corporations heretofore organized in this state for the purpose of building and operating street railways under the statutes then in force, shall have the same powers, rights, protection and privileges, and shall be subject to all the liabilities as are hereby provided for companies and corporations organized under the provisions of this act.

HISTORY: CL 1871, 2530;—How. 3564;—CL 1897, 6461;—CL 1915, 8558;—CL 1929, 11318;—CL 1948, 472.29.

472.30 Street railways to be organized under act; laws governing.

Sec. 30. All companies and corporations hereafter formed for the purpose of constructing, owning or using any street railway for the transportation of persons and passengers, in any city or village, shall be organized under the provisions of this act, and shall be subject to the provisions of chapter 73, of the Compiled Laws of this state, and to all other general laws of this state, relating to corporations, so far as the same may be applicable to corporations formed under this act, and the legislature may alter and amend, or repeal this act at any time.

HISTORY: CL 1871, 2531;—How. 3565;—CL 1897, 6462;—CL 1915, 8559;—CL 1929, 11319;—CL 1948, 472.30.

NOTE: Ch. 73 of CL 1857, above referred to, contained the following provisions which have not been repealed or re-enacted: Compilers' §§ 450.504 to 450.525.

472.31 Precedence at railway crossing.

Sec. 31. At all crossings of the tracks of 2 street railways, when a car on each road approaches such crossing at substantially the same time, the car on the track first laid shall have precedence and be entitled to the right of way: Provided, No car shall be stopped on such crossing.

HISTORY: Add. 1889, p. 152, Act 131, Imd. Eff. June 7;—How. 3565a;—Am. 1891, p. 22, Act 24, Eff. Oct. 2;—CL 1897, 6463;—CL 1915, 8560;—CL 1929, 11320;—CL 1948, 472.31.

472.31a Elevated railways.

Sec. 31. Elevated railway companies may be organized under the provisions of this act.

HISTORY: Add. 1889, p. 330, Act 222, Imd. Eff. June 29;—How. 3565-b;—CL 1897, 6463-n;—CL 1915, 8561;—CL 1929, 11321;—CL 1948, 472.31a.

This section was numbered 31 in disregard of the fact that a section 31 was previously added by Act 131 of 1889.

472.32 Cars to stop at railroad crossing; exception; penalty.

Sec. 32. Street railway companies shall require the drivers of street cars to bring such cars to a full stop before going upon a street railway crossing or the tracks of a steam railroad, and to make sure that no engine or cars are approaching such crossing before he proceeds to go upon the same. If the driver of any street car shall neglect to bring such car to a stop, as hereinbefore provided, he shall for every such neglect be liable to a fine of 25 dollars: Provided, That whenever there shall be adopted and used at any such crossing, an interlocking switch and signal system, or other device or regulation, which in the judgment of the Michigan railroad commission will render it safe to permit cars and trains to pass over such crossing without being brought to a stop, as above provided, said Michigan railroad commission may, by written order, a copy of which shall be filed and retained in its office, give permission for cars and trains to pass, under such regulation as to rate of speed and in other respects as it may deem proper, which order, however, said commission may at any time modify or revoke.

HISTORY: Add. 1889, p. 330, Act 222, Imd. Eff. June 29;—How. 3565c;—CL 1897, 6464;—Am. 1913, p. 728, Act 382, Eff. Aug. 14, —CL 1915, 8562;—CL 1929, 11322;—CL 1948, 472.32.

MICHIGAN RAILROAD COMMISSION: Abolished; powers and duties transferred to the public service commission, see Compilers' §§ 460.4 and 460.53.

472.34 Express and light freight; carriage, time of operation.

Sec. 34. Corporations organized under this act may do a suburban express business and may carry farm produce, garden truck, milk, merchandise and other light freight: Provided, That no cars for the conduct of any such business shall be operated on any street railway within the limits of any incorporated city or village in the day time, between 8 o'clock in the morning and 8 o'clock in the evening, without the consent of the municipal authorities, and under such rules and regulations as they may prescribe.

HISTORY: Add. 1897, p. 111, Act 102, Imd. Eff. April 28;—CL 1897, 6465;—CL 1915, 8563;—CL 1929, 11323;—CL 1948, 472.34

SECTION 33: This section was skipped in numbering.

472.35 Control by commissioner of railroads.

Sec. 35. All street railway corporations organized or doing business under this act shall be subject to the supervisory control of the commissioner of railroads as provided by Act No. 171 of the Public Acts of 1893, and the commissioner of railroads shall also have power to make from time to time reasonable rules and regulations for the operation of the street railways of such corporations in the conduct of the suburban express business they are authorized to carry on by this act as amended.

HISTORY: Add. 1897, p. 111, Act 102, Imd. Eff. April 28;—CL 1897, 6466;—CL 1915, 8564;—CL 1929, 11324;—CL 1948, 472.35

NOTE: Act 171 of 1893, above referred to, is Compilers' §§ 469.31 to 469.37.

COMMISSIONER OF RAILROADS: Superseded by the railroad commission, see Compilers' § 462.49, which, in turn, was superseded by the public service commission, see Compilers' §§ 460.4 and 460.53.

472.36 Obstruction of track; penalty.

Sec. 36. That every person who places upon any street railway any timber, stone, iron or any other obstruction or who shall loosen or displace any rail of the track of such railway or shall break down or displace, destroy or injure any bridge, culvert or embankment of any such street railway or do any other act with intent to endanger the safety of any person traveling or being upon such street railway or to throw from

such street railway any motor car, trailer car or car moving along the track of such street railway on which shall be any person injured thereby shall be punished by imprisonment in the state prison for life or for a term of years.

HISTORY: Add. 1897, p. 111, Act 102, Imd. Eff. April 28;—CL 1897, 6467;—CL 1915, 8565;—CL 1929, 11325;—CL 1948, 472.36.

SIMILAR REGULATION: See Compilers' § 750.511.

Act 67, 1891, p. 69; Eff. Oct. 2.

AN ACT to provide for the purchase or condemnation of the franchise of plank or toll road companies by electric or street railroad companies.

The People of the State of Michigan enact:

472.101 Street or electric railway; acquisition of franchise of toll road company; purchase.

Sec. 1. That any street or electric railway company of this state may purchase all or any portion of the rights and franchise of any toll road company, in any of the streets, avenues or highways of this state, at a valuation to be agreed upon between the directors of the said electric or street railway companies and the board of directors of said toll or plank road company.

HISTORY: CL 1897, 6470;—CL 1915, 8568;—CL 1929, 11326;—CL 1948, 472.101.

472.102 Street or electric railway; condemnation, procedure, limitations.

Sec. 2. In case no agreement can be reached for the purchase of the right of such toll road company, said electric or street railway company is authorized to condemn such rights and franchise of said toll or plank road company in which condemnation such street or electric railway company shall proceed as in the condemnation of lands or franchises for railroad purposes under chapter 91 of the third volume of Howell's annotated statutes, being chapter 75 of the Compiled Laws of 1871, and all acts amendatory thereto, so far as the same are applicable: Provided, however, That said street or electric railway company shall only condemn that part of the franchise of said toll or plank road company as may lie between its old established road bed and the side line of the street, except where it may be necessary to cross the street or go where a toll house may happen to be located: Provided, That the provisions of this act shall not be so construed as to [affect] effect the rights of abutting property owners or the rights of the public in such highways.

HISTORY: CL 1897, 6471;—CL 1915, 8569;—CL 1929, 11327;—CL 1948, 472.102.

NOTE: Ch. 91 of How., above referred to, is Compilers' §§ 463.1 to 467.25.

CHAPTER 473. CONSOLIDATED PUBLIC UTILITY COMPANIES

STREET RAILWAY AND ELECTRIC LIGHT COMPANIES Act 197 of 1891			and foreign companies; restriction.
473.1	Consolidation of street railway and electric light companies; procedure; powers and duties of new company; evidence.	473.62	Consolidation agreement; contents.
473.2	New company; rights, franchises and liabilities.	473.63	Consolidation agreement; ratification by stockholders.
		473.64	Completion of consolidation; evidence.
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STREET AND ELECTRIC RAILWAY COMPANIES Act 143 of 1901		CONSOLIDATED STREET RAILWAY AND ELECTRIC LIGHT COMPANY Act 61 of 1903	
473.31	Consolidation of street and electric railways; interstate line; procedure, restriction, evidence; new company, rights, powers and liabilities.	473.81	Consolidated company formed by street railway and electric light company; acquisition of rights of electric light companies.
STREET RAILWAY, ELECTRIC LIGHT AND GAS LIGHT COMPANIES Act 128 of 1899		473.82	Consolidated street railway and electric light company; procedure for acquisition of rights.
473.41	Consolidation of street railway, electric and gas light companies; procedure; new company, rights and duties; evidence.	473.83	Consolidated street railway and electric light company; copy of certificate as evidence.
473.42	New company; rights and liabilities; scope, limitation.	DIRECTORS OF CONSOLIDATED RAILROAD COMPANIES Act 160 of 1875	
GAS LIGHT, CONSOLIDATED AND FOREIGN COMPANIES Act 54 of 1903		473.91	Directors of consolidated railroads; validation of election.
473.61	Consolidation of gas light, consolidated		

Act 197, 1891, p. 277; Imd. Eff. Jul. 3.

AN ACT to authorize the consolidation of street railway and electric light companies.

The People of the State of Michigan enact:

473.1 Consolidation of street railway and electric light companies; procedure; powers and duties of new company; evidence.

Sec. 1. Any company organized under chapter 95 of Howell's annotated statutes of Michigan, entitled "Street railway companies", may consolidate with any company now organized or existing under and by virtue of the laws of this state, for the production and supplying of electricity for lighting, fuel or other purposes, including as 1 such company any such company that may have resulted from consolidation heretofore had where such companies are located and carry on business in the same or adjoining or adjacent towns, cities or villages, town, city or village, and may form a single corporation. And for this purpose the directors of said 2 corporations may enter into an agreement under the corporate seal of each, for the consolidation of the said 2 corporations, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number of directors thereof, and the names of those who shall be the first directors, which shall be deemed and taken to be the first election of the directors of the consolidated company, which number shall not be less than 3, nor more than 13, the time and place of holding the first election of directors after the consolidation, which time shall not exceed 6 months after such consolidation has been sanctioned by the stockholders of said 2 corporations, as hereinafter provided, the number of shares of the capital stock in the new corporation; the amount of each share, which shall not exceed 100 dollars per share; also, whether the shares of the consolidated company shall be all of 1 class or shall consist of preferred

and common stock, and if more than 1 class, the shares of each class of stock; also, whether the dividends upon such preferred stock, if any, shall be cumulative or non-cumulative, and whether or not such preferred stock shall be subject to redemption, and at what price not less than par, and in what other respects, if any, such preferred stock shall be entitled to priority over the common stock; the manner of converting the shares of capital stock in each of said 2 corporations into shares in such new corporation with such other details as they shall deem necessary to perfect such consolidation of said corporation; and such new corporation shall possess all the powers, rights and franchises conferred upon such 2 corporations, and shall be subject to all the restrictions, and perform all the duties imposed by the provisions of their respective charters, or laws of organization, not inconsistent with the provisions of this act. Such agreement of the directors shall not be deemed to be the agreement of the said 2 corporations until after the written consent of all the stockholders of each of said corporations has been obtained thereto: Provided, however, That where such companies are located and carry on business in the same or adjoining or adjacent towns, cities or villages in the northern peninsula of this state, such agreement shall be deemed to be the agreement of the said 2 corporations after the written consent of stockholders holding and owning 3/4 of the outstanding capital stock of each of said corporations, has been obtained thereto, or in lieu of such written consent, such agreement shall have been approved by a vote of not less than 3/4 of the outstanding capital stock of each of said corporations, at any annual or special meeting of the stockholders of said corporations. And when such agreement of the directors has been so sanctioned by the stockholders in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said 2 corporations. A copy of said contract or consolidation agreement filed in pursuance of this act with the secretary of state, and certified by him to be a copy, shall in all courts and places be presumptive evidence of the consolidation of said 2 companies, and of all the facts therein stated.

HISTORY: CL 1897, 6468;—Am. 1907, p. 403, Act 305, Imd. Eff. June 28;—CL 1915, 8506;—CL 1929, 11328;—CL 1948, 473.1.

NOTE: Ch. 95 of How., above referred to, is Compilers' §§ 472.1 to 472.30.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.3 et seq.

This act appeared in Ch. 162 of CL 1915. Corporations organized under that chapter were specifically excepted from the provisions of Act 84 of 1921, except as otherwise therein provided. See Sec. 8 of Ch. 1 of Pt. 1, being CL 1929, 9650. See also Compilers' § 450.3, on exemptions from corporation code.

TAXATION: See Compilers' § 207.1 et seq. and, as to collection, Compilers' § 207.441 et seq.

Fees, taxes and charges, see Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and 600.6737.

473.2 New company; rights, franchises and liabilities.

Sec. 2. Upon making the agreement mentioned in the preceding section, in the manner required therein and filing a duplicate thereof in the office of the secretary of state, the said 2 corporations mentioned or referred to in this section shall be merged into the new corporation provided for in such agreement, to be known by the corporate name therein mentioned and the details of such agreement shall be carried into effect as provided therein. And all and singular, the rights and franchises of each and all of said 2 corporations, parties to such agreement, and all and singular their rights and interests in and to every species of property and things in action, shall be deemed to be transferred to and vested in such new corporation, without any other deed or transfer, and such new corporation shall hold and enjoy the same together with all other rights of property, in the same manner and to the same intent, as if the said 2 corporations, parties to such agreement should have continued to retain the title and transact the business of such corporation; and the titles and the real estate acquired by either of said 2 corporations shall not be deemed to revert or be impaired by means of anything in this act contained; Provided: That all rights of creditors and all other liens

upon the property of either of said corporations parties to the said agreement, shall be and hereby are preserved unimpaired and the respective corporations shall continue to exist so far as may be necessary to enforce the same. And provided further, That all the debts, liabilities and duties of either company shall thenceforth attach to such new corporation and be enforced against the same, to the same extent, and in the same manner as if such debts, liabilities and duties had been originally incurred by it.

HISTORY: CL 1897, 6469,—CL 1915, 8567;—CL 1929, 11329;—CL 1948, 473.2.

Act 143, 1901, p. 193; Imd. Eff. May 21.

AN ACT to provide for the consolidation of street and electric railway companies organized under the laws of Michigan with like companies organized in adjoining states whose lines of road, constructed or in process of construction, form or will form a continuous or connecting line.

The People of the State of Michigan enact:

473.31 Consolidation of street and electric railways; interstate line; procedure, restriction, evidence; new company, rights, powers and liabilities.

Sec. 1. Any street or electric railway company in this state whose line of road, constructed or being constructed, forms or will form a continuous or connecting line with that of any other company or companies within, without or partly within and partly without this state, may consolidate with such other company or companies: Provided, That no such consolidation shall be made between companies owning competing lines. The directors of said 2 or more corporations may enter into an agreement for the consolidation of such corporations, prescribing the terms and conditions thereof; the mode of carrying same into effect; the name of the new corporation; the number of directors thereof, and the names of those who shall be the first directors, which number shall not be less than 3 nor more than 13, and who shall hold until the first election; the time and place of holding the first election of the consolidated company, which time shall not exceed 6 months after such consolidation; the number of shares of capital stock in such new company; the amount of each share; the manner of converting the shares of capital stock in each of said 2 or more corporations into shares in such new corporation; and such other details as may be deemed necessary to perfect such consolidation or authorize or limit its bounded indebtedness. Such agreement shall not be deemed to be the agreement of such 2 or more corporations until it shall have been ratified by a majority in interest of the stockholders in each of said companies, at separate stockholders' meetings of such companies, to be called, upon a notice published at least once each week for 2 successive weeks, in some newspaper published in each county in this state through which said road runs, the first publication to be at least 20 days before the time specified for said meeting, said notice to be signed by the secretaries of each of said companies proposing to consolidate, and shall state the object and purpose of such meeting: Provided however, That if all the stockholders of said company or companies organized under the laws of this state shall sign and acknowledge said agreement, no meeting and no advertising shall be necessary in this state. Upon such ratification of the agreement the same shall be deemed to be the agreement of the said 2 or more corporations, and the same, together with a copy of the vote of ratification by the non-resident company, as shown by its record of such vote, certified to be such copy by its president and secretary, shall be filed in the office of the secretary of state, and thereupon said consolidation shall be deemed complete. Any copy of such agreement and copy of proceedings so filed, certified by the secretary of state to be such copy, shall in all courts and places be presumptive evidence of

the consolidation of said companies and of all the facts therein stated. Such consolidated company shall have all the powers, rights and privileges possessed by said company or companies organized under the laws of this state, and shall be subject to all restrictions and perform all the duties imposed upon it by law.

HISTORY: CL 1915, 8570;—CL 1929, 11330;—CL 1948, 473.31.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

This act appeared in Ch. 162 of CL 1915. Corporations organized under that chapter were specifically excepted from the provisions of Act 84 of 1921, except as otherwise therein provided, see Sec. 8 of Ch. 1 of Pt. 1, being CL 1929, 9950. See also Compilers' § 450.3, on exemption from corporation code.

REPORTS: See Compilers' § 450.82.

TAXATION: See Compilers' 207.1 et seq. and, as to collection, Compilers' § 207.441 et seq.

Fees, taxes and charges, see Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and 600.6737.

Act 128, 1899, p. 178; Imd. Eff. Jun. 15.

AN ACT to authorize the consolidation of street railway, electric light and gas light companies, or any 2 thereof.

The People of the State of Michigan enact:

473.41 Consolidation of street railway, electric and gas light companies; procedure; new company, rights and duties; evidence.

Sec. 1. Any company organized under chapter 95 of Howell's annotated statutes of Michigan, entitled "street railway companies," and any company organized under chapter 127 of said statutes, entitled "electric light companies," and any company organized under chapter 126 of said statutes, entitled "gas light companies," or any 2 thereof, may consolidate, each with the others, where such companies are organized, in operation and located, and carry on business in the same towns, cities or villages, and may form a single corporation. And for this purpose the directors of said 3 corporations, or any 2 of said corporations, may enter into an agreement under the corporate seal of each, for the consolidation of the said 3 corporations, or any 2 thereof, prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number of directors thereof, and the names of those who shall be the first directors, which shall be deemed and taken to be the first election of the directors of the consolidated company, which number shall not be less than 3 nor more than 7, the time and place of holding the first election of directors after the consolidation, which time shall not exceed 6 months after such consolidation has been sanctioned by the stockholders of said 3 corporations, or any 2 thereof, so consolidating, as hereinafter provided, the number of shares of capital stock in the new corporation, the amount of each share, the manner of converting the shares of capital stock in each of said 3 corporations, or any 2 thereof, into shares in such new corporation, with such other details as they shall deem necessary to perfect such consolidation of said corporations, and such new corporation shall possess all the powers, rights and franchises conferred upon such 3 corporations, or any 2 thereof, so consolidated, and shall be subject to all the restrictions, and perform all of the duties imposed by the provisions of their respective charters or laws or organization not inconsistent with the provisions of this act. Such agreement of the directors shall not be deemed to be the agreement of the said 3 corporations, or any 2 thereof, so consolidating, until approved by a vote of 3/4 of the outstanding stock of each company passed at an annual meeting of stockholders or at a special meeting of stockholders called for the purpose of considering the same, and when such agreement of the directors has been so sanctioned by the stockholders, in the manner above mentioned, then such agreement of the directors shall be deemed to be the agreement of the said 3 corporations, or any 2 thereof, so consolidating. A copy of said contract or consolidation agreement filed in

pursuance of this act with the secretary of state, and certified by him to be a copy, shall in all courts and places be presumptive evidence of the consolidation of said 3 companies, or any 2 thereof, so consolidating, and of all the facts therein stated.

HISTORY: Am. 1901, p. 14, Act 10, Imd. Eff. Feb. 25;—Am. 1903, p. 84, Act 50, Imd. Eff. April 23;—CL 1915, 8571;—CL 1929, 11331;—CL 1948, 473.41.

This act appeared in Ch. 182 of CL 1915. Corporations organized under that chapter were specifically excepted from the provisions of Act 84 of 1921, except as otherwise therein provided, See Sec. 8 of Ch. 1 of Pt. I, being CL 1929, 9950. See also Compilers' § 450.3, on exemption from corporation code.

NOTE: Ch. 95 of How., above referred to, is Compilers' §§ 472.1 to 472.30.

Ch. 127 of How., above referred to, is Act 70 of 1881, and was repealed by Sec. 37 of Act 232 of 1903, as amended, being CL 1915, 9052, which, in turn, was repealed by Act 84 of 1921, see CL 1929, 10134.

Ch. 128 of How., above referred to, is Act 109 of 1855, and was repealed by Sec. 37 of Act 232 of 1903, as amended, being CL 1915, 9052, which, in turn, was repealed by Act 84 of 1921, see CL 1929, 10134.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

REPORTS: See Compilers' § 450.82.

473.42 New company; rights and liabilities; scope, limitation.

Sec. 2. Upon making the agreement mentioned in the preceding section, in the manner required therein, and filing a duplicate thereof in the office of the secretary of state, the said 3 corporations or any 2 thereof, mentioned or referred to in this section, shall be merged into the new corporation provided for in such agreement, to be known by the corporate name therein mentioned, and the details of such agreement shall be carried into effect as provided therein. And all and singular the rights and franchises of each and all of said 3 corporations, or any 2 thereof, so consolidating, parties to such agreement, and all and singular their rights and interest in and to every species of property and things in action, shall be deemed to be transferred to and vested in such new corporation, without any other deed or transfer, and such new corporation shall hold and enjoy the same, together with all other rights of property, in the same manner and to the same intent, as if the said 3 corporations, or any 2 thereof so consolidating, parties to such agreement, should have continued to retain the title and transact the business of such corporation; and the titles and the real estate acquired by any of the said 3 corporations, or any 2 thereof so consolidating, shall not be deemed to revert or be impaired by means of anything in this act contained: Provided, That all rights of creditors and all other liens upon the property of any of said corporation parties to the said agreement shall be and hereby are preserved unimpaired, and the respective corporations shall continue to exist so far as may be necessary to enforce the same: And provided further, That all the debts, liabilities and duties of any or all of said companies shall thenceforth attach to such new corporation, and be enforced against the same, to the same extent and in the same manner as if such debts, liabilities and duties had been originally incurred by it: And provided further, That the provisions of this act shall apply only to the counties of Marquette, Muskegon, Nawaygo, Allegan, Jackson, Kalamazoo and Calhoun; and to street railway, electric light and gas companies in the county of Manistee, whether organized under the acts herein specified or under Act No. 232 of the Public Acts of 1903.

HISTORY: Am. 1903, p. 65, Act 50, Imd. Eff. April 23;—Am. 1907, p. 35, Act 33, Imd. Eff. April 3;—CL 1915, 8572;—CL 1929, 11332;—CL 1948, 473.42.

NOTE: Act 232 of 1903, above referred to, is CL 1915, 9017-9052;—Rep. 1921, p. 185, Act 84, Imd. Eff. April 26, being CL 1929, 10134.

TAXATION: See Compilers' § 207.1 et seq. and, as to collection, Compilers' § 207.441 et seq.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and 600.6737.

Act 54, 1903, p. 69; Imd. Eff. Apr. 23.

AN ACT to authorize any gas light company and any consolidated company formed by the union of a street railway and electric light company, being corporations organized under the laws of this state, and having their principal place of business in the same town, village or city, to unite and consolidate with any corporation organized under the laws of an adjoining state, and which, under and by virtue of the rights, powers and franchises possessed and enjoyed by it under the laws of such adjoining state,

owns and operates a street railway therein and also manufactures, produces, generates, sells and furnishes gas and electricity for heating, lighting and power purposes, where the street railway lines of the 2 corporations last mentioned shall form a connecting and continuous line of railway between this state and such adjoining state.

The People of the State of Michigan enact:

473.61 Consolidation of gas light, consolidated and foreign companies; restriction.

Sec. 1. Any gas light company, and any consolidated company formed by the union of a street railway and electric light company, being corporations organized under the laws of this state, and having their principal place of business in the same town, village or city, may unite and consolidate with any corporation organized under the laws of an adjoining state, and which, under and by virtue of the rights, powers and franchises possessed and enjoyed by it under the laws of such adjoining state, owns and operates a street railway therein, and also manufactures, produces, generates, sells and furnishes gas and electricity for heating, lighting and power purposes: Provided, however, That the street railway lines of the 2 corporations last mentioned shall form a connecting and continuous line of railway between this state and such adjoining state.

HISTORY: CL 1915, 8573;—CL 1929, 11333;—CL 1948, 473.61.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

This act appeared in Ch. 162 of CL 1915. Corporations organized under that chapter were specifically excepted from the provisions of Act 84 of 1921, except as otherwise therein provided, see Sec. 8 of Ch. 1 of Pt. I, being CL 1929, 9950. See also Compilers' § 450.3, on exemption from corporation code.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

REPORTS: See Compilers' § 450.82.

473.62 Consolidation agreement; contents.

Sec. 2. The directors of such corporation so proposing to consolidate, may enter into an agreement for the consolidation of such corporations, prescribing the terms and conditions thereof; the mode of carrying the same into effect; the name of the new corporation; the location and principal place of business thereof; the number of directors thereof, which number shall not be less than 3, and the names of those who shall be the first directors, and who shall hold office as such until the first election of directors; the time and place of holding the first election of directors of the consolidated company, which time shall not be less than 3 nor more than 8 months after such consolidation; the general officers of such new company; the amount of the capital stock thereof; the number of shares into which the same shall be divided and the par value of each share; the manner of converting the shares of capital stock in each of the constituent companies, into shares in such new corporation, and such other details as may be deemed necessary to perfect such consolidation, or authorize or limit its bonded indebtedness.

HISTORY: CL 1915, 8574;—CL 1929, 11334;—CL 1948, 473.62.

473.63 Consolidation agreement; ratification by stockholders.

Sec. 3. Such agreement shall not be deemed to be the agreement of such consolidating corporations until it shall have been ratified either by the vote of at least 3/4 of the capital stock of each of such corporations at a separate meeting of the stockholders of such corporation, held pursuant to a notice of the secretary thereof, stating the objects and purposes of such meeting, and which shall have been published at least once in each week for 2 successive weeks prior to such meeting, in some newspaper printed in

the English language and published at the county seat of the county in this or in any other state in which such corporation has its principal place of business; or by the consent in writing to such agreement signed and acknowledged by all of the stockholders of any such corporation.

HISTORY: CL 1915, 8575;—CL 1929, 11335;—CL 1948, 473.63.

473.64 Completion of consolidation; evidence.

Sec. 4. Upon the ratification of such agreement, in either of the modes aforesaid, by the stockholders of all of the corporations, who are parties thereto, such agreement, together with every such consent annexed thereto, together also with and annexed thereto a copy of the record of the proceedings had or taken at the meeting of stockholders of any such corporation for the ratification of such agreement as aforesaid, exhibiting the vote taken thereat upon the question of such ratification, certified to be such copy of the secretary of such corporation under the seal thereof; and also having annexed thereto a statement of the secretary of each such corporation verified by his oath, setting forth the amount of the capital stock thereof, the number of shares into which the same is divided, the names of the stockholders and the number of shares held by each; and setting forth also in respect to any such consent of the stockholders of any such corporation that the same was signed and acknowledged by all of the stockholders thereof, and in respect to the meeting of stockholders of any such corporation called for the purpose of ratifying such agreement, and so ratifying the same as aforesaid, that the persons named as present or represented at such meeting are the identical persons so named in such statement as stockholders therein shall be filed in the office of the secretary of state; and a copy thereof, certified by such secretary to be such copy, shall be recorded in the office of the register of deeds in each county of this state, in which any such constituent corporation has its principal place of business, and in the county wherein the location and principal place of business of such new corporation may be fixed by or designated in such agreement, if that be a county in this state other than a county in which 1 of said constituent companies has its principal place of business; and then and thereupon such consolidation shall be deemed complete. A copy of such agreement, so filed, and of the documents, papers and proceedings annexed thereto, and filed therewith, as required by this act, certified by the secretary of state to be such copy under the great seal of the state, shall be received in all courts of this state as prima facie evidence of the formation, existence and capacity of such consolidated corporation, in any suit or proceeding brought by or against the same, and of all the facts therein stated.

HISTORY: CL 1915, 8576;—CL 1929, 11336;—CL 1948, 473.64.

473.65 Consolidated company; rights, powers and duties.

Sec. 5. Such consolidated company shall have and succeed to all the property, powers, rights, privileges, franchises and immunities possessed and enjoyed by the constituent corporations forming the same, which were organized under the laws of this state; and such new corporation shall be subject to all restrictions and perform all duties imposed upon it by the laws of this state, and shall be and constitute a body corporate, under and by virtue of the laws of the state of Michigan.

HISTORY: CL 1915, 8577;—CL 1929, 11337;—CL 1948, 473.65.

TAXATION: See Compilers' § 207.1 et seq. and, as to collection, Compilers' § 207.441 et seq.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and 600.6737.

Act 61, 1903, p. 81; Imd. Eff. Apr. 28.

AN ACT to enable any consolidated company formed prior to June first, 1899, by the union of a street railway company and an electric light company to acquire, possess and exercise all the rights, powers, privileges and franchises conferred upon elec-

tric light companies by section 10 of the act of the legislature of the state of Michigan, entitled "An act to authorize the formation of electric light companies," approved April first, 1881, as amended by Act No. 96 of the Public Acts of the legislature of the state of Michigan, passed at the regular session of 1899.

The People of the State of Michigan enact:

473.81 Consolidated company formed by street railway and electric light company; acquisition of rights of electric light companies.

Sec. 1. Any consolidated company formed prior to June first, 1899, by the union of a street railway company and an electric light company, under and pursuant to an act of the legislature of the state of Michigan, entitled "An act to authorize the consolidation of street railway and electric light companies," approved July third, 1891, may, upon compliance with the provisions of this act, acquire, possess and exercise all the rights, powers, privileges and franchises conferred upon electric light companies by section 10 of the act of the legislature of the state of Michigan, entitled "An act to authorize the formation of electric light companies," approved April first, 1881, as amended by Act No. 96 of the Public Acts of the legislature of the state of Michigan, passed at the regular session of 1899.

HISTORY: CL 1915, 8578;—CL 1929, 11338;—CL 1948, 473.81.

NOTE: Act 197 of 1891 is the act above referred to, being Compilers' §§ 473.1 and 473.2.

Act 70 of 1881, as amended by Act 96 of 1899, is the act above referred to, and was superseded by Act 232 of 1903, as amended, being CL 1915, 9017-9053, which, in turn, was repealed by Act 84 of 1921, see CL 1929, 10134. For corporation code, see Compilers' § 450.1 et seq.

473.82 Consolidated street railway and electric light company; procedure for acquisition of rights.

Sec. 2. In order to entitle any such consolidated company to the benefits of this act, the stockholders of said company, at any meeting of such stockholders duly called and held, by a vote of at least 3/4 of all the capital stock of said company then outstanding in favor thereof, may adopt a resolution that such company (naming it) desires, and avails itself of the provisions of this act, to acquire, possess and exercise all of the rights, powers, privileges and franchises mentioned and referred to in section 1 of this act; and stating and setting forth also the names of the towns, cities and villages and the county in which the operations of said company are to be carried on. When so adopted, a copy of such resolution with a certificate thereto affixed, signed by the president and secretary of such company and sealed with the corporate seal, stating the fact and date of the adoption of such resolution, and that such copy is a true copy of the original, and that the meeting at which such resolution was so adopted was duly called and held, shall be filed and recorded in the office of the secretary of state; and a copy of such resolution, certified and authenticated in like manner, shall be filed and recorded in the office of the county clerk of the county wherein the operations of said company are to be carried on. And upon the filing of a copy of such resolution, certified and authenticated, as aforesaid, in the office of the secretary of state and in the office of the county clerk of the proper county, as hereinbefore provided, such consolidated company shall be deemed and taken to have acquired and to possess and to be entitled to exercise all of the rights, powers, privileges and franchises mentioned and referred to in section 1 of this act in the towns, cities and villages and in the county in which the operations of said company are to be carried on, as stated in said resolution, with the same force and effect as if the electric light company of which such consolidated company is in part constituted had been organized after the first day of June, 1899, for all of the objects and purposes for which, since said day, an electric light company might be organized under the laws of Michigan to carry on its operations in the cities, towns and villages and in the county in said resolution mentioned, and such

consolidated company had thereafter and after said day been formed by the union of such electric light company with a street railway company.

HISTORY: CL 1915, 8579;—CL 1929, 11339;—CL 1948, 473.82.

473.83 Consolidated street railway and electric light company; copy of certificate as evidence.

Sec. 3. A copy of the certificate and of the resolution to which the same is affixed, filed in the office of the secretary of state, in pursuance of this act and certified by him to be such copy under the great seal of the state, shall, in all courts and places, be prima facie evidence of all the facts therein stated.

HISTORY: CL 1915, 8580;—CL 1929, 11340;—CL 1948, 473.83.

Act 160, 1875, p. 190; Imd. Eff. Apr. 29.

AN ACT to legalize the election of directors of consolidated railroad companies in certain cases.

The People of the State of Michigan enact:

473.91 Directors of consolidated railroads; validation of election.

Sec. 1. That all elections of directors for consolidated railroad companies held before the consolidation agreement shall have been filed with the secretary of state, shall in all suits and proceedings be of the same force and effect as if the said election had been held after the filing of said agreement: Provided, Said election was held after the consolidation agreement was sanctioned by the stockholders.

HISTORY: How. 3402;—CL 1897, 6254n;—CL 1915, 8452;—CL 1929, 11341;—CL 1948, 473.91.

CONSOLIDATION OF RAILROADS: See Compilers' §§ 464.29 and 464.30.

CHAPTERS 475-479. MOTOR CARRIERS

Motor Carrier Act
Act 254 of 1933

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ARTICLE VI	COMMERCIAL ZONE REGISTRATION	479.41-479.49

Act 254, 1933, p. 410; Eff. Oct. 17.

AN ACT to promote safety upon and conserve the use of public highways of the state; to provide for the supervision, regulation and control of the use of such highways by all motor vehicles operated by carriers of passengers and property for hire upon or over such highways; to preserve, foster and regulate transportation and permit the coordination of motor vehicle transportation facilities; to provide for the supervision, regulation and control of the use of such highways by all motor vehicles for hire for such purposes, to classify and regulate carriers of persons and property by motor vehicles for hire upon such public highways for such purposes; to give the Michigan Public Service Commission jurisdiction and authority to prevent evasion of this act through any device or arrangement; to insure adequate transportation service; to give the commission jurisdiction and authority to fix, alter, regulate and determine rates, fares, charges, classifications and practices of common motor carriers for such purposes; to require filing with the commission of rates, fares and charges of contract carriers and to authorize the commission to prescribe minimum rates, fares and charges, and to require the observance thereof; to prevent unjust discrimination; to prescribe the powers and duties of said commission with reference thereto; to provide for appeals from the orders of such commission; to confer jurisdiction upon the circuit court for the county of Ingham for such appeals; to provide for the levy and collection of certain privilege fees and taxes for such carriers for such purposes and the disposition of such fees and taxes; and to provide for the enforcement of this act and prescribing penalties for its violations. Am. 1956, p. 311, Act 164, Imd. Eff. Apr. 16;—Am. 1957, p. 205, Act 173, Eff. Sep. 27.

*The People of the State of Michigan enact:*ARTICLE I.
GENERAL DEFINITIONS AND PURPOSE.

475.1	Motor carriers act; definitions.	475.3	Common motor carriers of passengers; temporary authority for service urgently needed; temporary approval of consolidation or merger.
475.1a	Motor carriers act; short title.		
475.2	General purpose of act.		

475.1 Motor carriers act; definitions.

Sec. 1. The words and phrases used in this act shall be construed as follows, unless the context shall otherwise require:

(a) "Motor vehicle" means any automobile, truck, trailer, semitrailer, tractor; motor bus or any self-propelled or motor or mechanically driven vehicle, or any vehicle in anywise attached to, connected with, or drawn by any self-propelled or motor or me-

chanically driven vehicle, used upon any public highway of this state for the purpose of transporting persons or property.

(b) "Public highway" means any public highway, road, street, avenue, alley or thoroughfare of any kind, or any bridge, tunnel or subway used by the public.

(c) "Commission" means the Michigan public service commission.

(d) "Person" means any individual, copartnership, association or corporation, and their lessees, trustees or receivers appointed by any court whatsoever.

(e) "For hire" means for remuneration or reward of any kind, paid or promised, either directly or indirectly.

(f) "Common motor carrier of property" means any person who holds himself out to the public as being engaged in the business of a common carrier as at the common law, either directly or through any device or arrangement, including those who operate over fixed routes or between fixed termini, in the transportation by motor vehicle from place to place upon or over the highways of this state, the property, or any property, or any class thereof of others who may choose to employ him.

(g) "Common motor carrier of passengers" means any person who, either directly or through any device or arrangement, holds himself out to the public as willing to undertake for hire to transport by motor vehicle from place to place over the public highways of this state persons who may choose to employ him for such purpose or for the purpose of transporting package express, excess baggage, newspapers or United States mail in the same vehicle used to transport passengers.

(h) "The public" means that part or portion of the general public which the motor carrier is ready, able, willing and equipped to serve.

(i) "Contract motor carrier of property" means any person engaged in the transportation by motor vehicle of property for hire upon the public highways of this state other than as a common carrier of property, either directly or through any device or arrangement.

(j) "Contract motor carrier of passengers" means any person engaged in the transportation by motor vehicle of persons for hire upon the public highways of this state other than as a common motor carrier thereof, either directly or through any device or arrangement.

(k) "Motor carrier" means both common motor carriers and contract motor carriers.

(l) "Common carrier" means common carriers by railroad, electric line or motor vehicle.

(m) "Certificate" means a certificate of public convenience and necessity issued under the terms of this act.

(n) "Permit" means the permit issued to contract motor carriers under the terms of this act.

(o) "Through any device or arrangement" means any and all methods, means, agreements, circumstances, operations or subterfuges under which any person undertakes for hire to conduct, direct, control or otherwise perform the transportation by motor vehicle of property or passengers upon the public highways of this state.

HISTORY: Am. 1945, p. 382, Act 264, Eff. Sep. 6;—CL 1948, 475.1;—Am. 1957, p. 205, Act 173, Eff. Sep. 27;—Am. 1959, p. 336, Act 232, Imd. Eff. Aug. 12.

FORMER ACTS: Act 209, 1923, CL 1929, 11342-11352; Act 212, 1931; Act 312, 1931.

COMPILERS' NOTE: The catchlines following the act section numbers were incorporated as part of the act as enacted.

The public utilities commission has been abolished and superseded by the public service commission, see Compilers' § 460.4.

CITED IN OTHER SECTIONS: Sections 475.1 to 479.20; 475.1 to 479.49 are cited in §§ 3.178, 124.352, 247.660, 257.801, 257.972, 460.4, 600.8511, and 774.4.

475.1a Motor carriers act; short title.

Sec. 1a. This act shall be known and may be cited as "The motor carrier act".

HISTORY: Add. 1943, p. 421, Act 244, Imd. Eff. April 22;—CL 1948, 475.1a.

475.2 General purpose of act.

Sec. 2. It is hereby declared to be the purpose and policy of the legislature in enacting this law to confer upon the commission the power and authority and to make it its duty to supervise and regulate the transportation of persons and property by motor vehicle for hire upon and over the public highways of this state in all matters whether specifically mentioned herein or not, so as to: (1) Relieve all future undue burdens and congestion on the highways arising by reason of the use of the highways by motor vehicles operated by motor carriers; (1a) protect and conserve the highways and protect the safety and welfare of the traveling and shipping public in their use thereof; (2) carefully preserve, foster and regulate transportation and permit the coordination of motor vehicle transportation facilities; (3) restrict the use of the highways by motor vehicles operated by motor carriers to those required by the convenience of the general public; (4) prevent unjust discrimination and insure adequate motor transportation service; (5) prevent evasion of this act through any device or arrangement.

HISTORY: CL 1948, 475.2;—Am. 1957, p. 206, Act 173, Eff. Sep. 27.

475.3 Common motor carriers of passengers; temporary authority for service urgently needed; temporary approval of consolidation or merger.

Sec. 3. (a) To enable the provisions of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the commission may, upon a proper application, in its discretion and without hearings or other proceedings, grant temporary authority for such service by a common carrier or a contract carrier by motor vehicle, as the case may be. Such temporary authority, unless suspended or revoked for good cause, shall be valid for such time as the commission shall specify, but in no event for a period exceeding 30 days, except that if after hearing, permanent authority be granted, then corresponding temporary authority may be continued until the permanent authority becomes effective, and shall create no presumption that corresponding permanent authority will be granted thereafter.

(b) Pending the determination of an application filed with the commission for approval of a consolidation or merger of the properties of 2 or more motor carriers, the commission may, in its discretion and without hearing or other proceedings, grant temporary approval, for a period not exceeding 60 days, of the operation of the motor carrier properties sought to be acquired by the person proposing in such pending application to acquire such properties, if it shall appear that failure to grant such temporary approval may result in destruction of or injury to such motor carrier properties sought to be acquired, or to interfere substantially with their future usefulness in the performance of adequate and continuous service to the public.

(c) Transportation service rendered under such temporary authority shall be subject to all applicable provisions of this act and to the rules, regulations and requirements of the commission thereunder.

HISTORY: Add. 1943, p. 421, Act 244, Imd. Eff. April 22;—CL 1948, 475.3.

Section 3 of the act as originally enacted provided for exemptions. Its history is as follows: Am. 1939, p. 480, Act 261, Eff. Sept. 29;—Rep. 1941, p. 321, Act 211, Imd. Eff. June 16.

ARTICLE II. COMMON MOTOR CARRIERS.

476.1	Certificate of public convenience and necessity.	476.7	Reasonable rates.
476.2	Certificate of public convenience and necessity; determination of commission.	476.8	Rebates unlawful.
476.3	Certificate of public convenience and necessity; application.	476.9	Civil liability and penalty for violation of act.
476.4	Certificate of public convenience and necessity; hearing.	476.10	Power of commission as to rates, operation.
476.5	Certificate of public convenience and necessity; classification, issuance; character of highways, vehicles.	476.11	Interchange of equipment.
476.6	Schedule of rates.	476.12	Interstate commerce.
		476.13	Abandonment of service; revocation of certificate.
		476.14	Temporary additional service; fees.

476.1 Certificate of public convenience and necessity.

Sec. 1. Unlawful operation. No common motor carrier of passengers or property shall operate any motor vehicle for the transportation of either persons or property for hire on any public highway in this state except in accordance with the provisions of this act. It shall be unlawful for any common motor carrier of passengers or property to operate upon any public highway without first having obtained from the commission a certificate of public convenience and necessity.

HISTORY: CL 1948, 476.1.

476.2 Certificate of public convenience and necessity; determination of commission.

Sec. 2. Duty of the commission. The commission is hereby vested with power and authority and it is hereby made its duty upon the filing of an application for a certificate of public convenience and necessity to ascertain and determine under such reasonable rules and regulations as it may promulgate, after considering all existing motor vehicle transportation facilities and the demand for or need of additional service, whether there exists a public necessity for such service and whether public convenience will be promoted by granting said application and permitting the operating of motor vehicles on the highways pursuant to such application as a common motor carrier of persons or property.

HISTORY: CL 1948, 476.2.

476.3 Certificate of public convenience and necessity; application.

Sec. 3. Contents of application. Application for such certificate shall be in writing stating the experience of the applicant as a motor carrier, if any, the ownership and condition of the equipment and physical property of the applicant proposed to be used and shall contain such other information as the commission may require. Each application shall be accompanied by the required fees, proof of insurance and all other things required by law and the rules and regulations of the commission.

HISTORY: CL 1948, 476.3.

476.4 Certificate of public convenience and necessity; hearing.

Sec. 4. Hearing on public convenience and necessity. Upon the filing of an application for a certificate of public convenience and necessity to operate as a common motor carrier, the commission shall fix a time and place for hearing thereon and shall cause notice of the filing of such application and the hearing thereon to be given by mail not less than 10 days, exclusive of the date of mailing, before such hearing, addressed to an officer or owner of every common motor carrier that is operating in the territory proposed to be served by the applicant, or of any common motor carrier which has applied for a certificate to operate in that territory, and to such other inter-

ested parties as determined by the commission, and any such common motor carrier or interested party is hereby declared to be an interested party to said proceedings and may intervene in person or by counsel, cross-examine witnesses, and offer testimony for or against the granting of such certificate. Any other interested person may offer testimony and cross-examine witnesses at such hearing.

HISTORY: CL 1948, 476.4.

476.5 Certificate of public convenience and necessity; classification, issuance; character of highways, vehicles.

Sec. 5. Same. The commission shall ascertain and determine whether the character and condition of the vehicles proposed to be operated by the applicant is such that they may be operated upon the public highways without injury or damage to said highways; the commission shall upon complaint of any peace officer, constable, highway official or employee remove or cause to be removed any disabled or abandoned vehicle found upon the driven part of the highway, and the commission may in its discretion charge the owner of such disabled or abandoned vehicle the cost of such removal. The commission may enlist the assistance of any department of the state government in the removal of such vehicles from the highways. If a particular highway or highways designated in an application for a certificate of public convenience and necessity is or are of such type of construction or in such state of repair, or subject to such use, as to permit the use sought to be made by the applicant, without unreasonable interference with the use made of such highways by the general public for highway purposes; and, if the commission shall determine after hearing that the service rendered by existing motor vehicle transportation facilities or agencies is reasonably adequate, or that public convenience and necessity would not be promoted by the granting of said application and the operating of motor vehicles on the highways therein designated, or that the character and condition of the vehicles proposed to be operated by the applicant is such that they may not be operated upon the public highways without injury or damage to said highways, or that such highway or highways is or are not in such state of repair, or is or are already subject to such use, as would not permit of the use sought to be made by the applicant, without unreasonable interference with the use of such highways by the general public for highway purposes, then in either or any of such events said application shall be denied, and a certificate refused; otherwise, said application may be granted, in whole or in part, and a certificate issued upon such lawful terms and conditions as said commission may impose, and subject to such rules and regulations as it has or may hereafter lawfully prescribe, for the whole or for only the partial exercise of the privilege sought: Provided, Certificates of public convenience and necessity issued to common motor carriers of property under this act shall be of 2 classes: (a) certificates issued to such carriers as may be operating over fixed routes or between fixed termini; (b) certificates issued to all other common motor carriers of property as defined herein: Provided, further, The certificate granted to any common motor carrier of passengers shall be understood and construed to include the right to transport package express, excess baggage, newspapers and United States mail in the same vehicle used to transport passengers and the right to do a charter or special coach business in the transporting of persons for hire from place to place, provided such charter or special coach business shall originate at one of their termini or on, or adjacent to, the route regularly served by such common motor carrier of passengers to whom said certificate shall be granted or by whom it may be held at the time this act takes effect.

In determining whether or not a certificate should be issued to a common motor carrier, the commission shall also, among other things, give weight and due regard to:

- (a) The probable permanence and quality of service offered by the applicant;
- (b) The financial ability and responsibility of the applicant and its organization and personnel;
- (c) The experience of the applicant in the transportation of property or passengers, and the character of the bond and insurance proposed to be given to insure the protection of the public.

This enumeration shall in nowise limit, restrict or abridge the duty and power of the commission to consider any and all other matters affecting the safety of the public or of the public highways, or affecting the public convenience and necessity in the maintenance of an adequate motor vehicle transportation system for the use of the general public of the state.

HISTORY: CL 1948, 476.5.

CITED IN OTHER SECTIONS: The above section is cited in § 257.971.

476.6 Schedule of rates.

Sec. 6. Publication and filing of rates. All common motor carriers subject to the provisions of this act, shall before engaging in business, print and file with the commission and keep open to public inspection in each of its depots and offices, schedules showing all rates, fares and charges for transportation of passengers and property between different points on its route, and also between points on its own route and on the route of any other common motor carrier when a through route and joint rate have been established. If no joint rate over the through route has been established the several carriers shall file, print and keep open for public inspection as aforesaid the separately established rates, fares and charges applied to the through transportation, and shall likewise print, file and keep open to the public inspection all other charges, or privileges or facilities, rules or regulations which in anywise change, affect or determine any part of the rates, fares, charges or the value of the service, and such other information as may be required by the commission in its rules and regulations. No common motor carrier shall receive or accept any person or property for transportation upon the highways until the requirements of this section have been complied with: Provided, Nothing in this section or any other section of this act contained shall be construed or held to require the printing, publication or filing by any common motor carrier of passengers, of any tariffs, rates, fares or charges covering, controlling or affecting the charter or special coach business of such carrier.

HISTORY: CL 1948, 476.6.

476.7 Reasonable rates.

Sec. 7. Reasonable rates without unjust discrimination. All rates, fares and charges made by any common motor carrier shall be just and reasonable, and shall not be unjustly discriminatory, prejudicial nor preferential. No such common motor carrier shall charge, demand, collect or receive a greater or less or different remuneration for the transportation of passengers or property, or for any service in connection therewith, than the rates, fares and charges which have been legally established and filed with the commission; nor shall any such common motor carrier refund or remit in any manner or by any device any portion of the rates, fares and charges required to be collected by the tariffs on file with the Michigan public utilities commission or ordered by the commission.

HISTORY: CL 1948, 476.7.

476.8 Rebates unlawful.

Sec. 8. Any person, whether carrier, shipper or consignee, or any officer, employee, agent or representative thereof, who shall knowingly offer, grant or give, or solicit, accept or receive any rebate, concession or discrimination in violation of any provision of this act, or who, by means of any false statement or representation, or by the use of

any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, shall knowingly and wilfully assist, suffer or permit any person, natural or artificial, to obtain transportation of passengers or property subject to this article for less than the applicable rate, fare or charge, or who shall knowingly and wilfully, by any such means or otherwise, fraudulently seek to evade or defeat regulations as in this act provided for common motor carriers, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$500.00, or imprisonment for not more than 6 months, or both.

HISTORY: Am. 1945, p. 383, Act 264, Eff. Sep. 6;—CL 1948, 476.8;—Am. 1959, p. 118, Act 114, Eff. Mar. 19, 1960.

476.9 Civil liability and penalty for violation of act.

Sec. 9. Liability of common motor carrier. If any common motor carrier shall do or cause or permit to be done any act or thing in this act prohibited or declared to be unlawful, or shall omit to do any act or thing required to be done by it or by any lawful order made under the provisions of this act by the Michigan public utilities commission, such common motor carrier shall be liable to the person, firm, or corporation injured thereby the actual amount of damages sustained in consequence of such violation: Provided, That any recovery as in this section provided shall in no manner affect a recovery by the state of the penalty prescribed for such violation.

HISTORY: CL 1948, 476.9.

476.10 Power of commission as to rates, operation.

Sec. 10. Power of commission over common motor carrier. The commission is vested with power and authority, and it shall be its duty, to supervise and regulate all common motor carriers of passengers or property and to fix, alter, regulate and determine just, fair, reasonable and sufficient rates, fares, charges and classifications; to regulate the facilities, accounts, service and safety of operations of each such common motor carrier; to regulate operating and time schedules so as to meet the needs of any community, and so as to insure adequate transportation service to the territory traversed by such common motor carriers, and so as to prevent unnecessary duplication of service between these common motor carriers, and the commission may require the coordination of the service and schedules of competing common motor carriers; to require the filing of annual and other reports, tariffs, schedules and other data by such common motor carriers; to supervise and regulate such common motor carriers in all matters affecting the relation between such carriers, and the public and between such carriers and other motor carriers; to prescribe rules and regulations for the purpose of promoting safety upon the highways and the conservation of their use to the end that the provisions of this act may be fully and completely carried out. The commission shall have power and authority, by general order or otherwise, to prescribe rules and regulations in conformity with this act applicable to any and all such common motor carriers, and to do all things necessary to carry out and enforce the provisions of this act.

HISTORY: CL 1948, 476.10.

476.11 Interchange of equipment.

Sec. 11. Interchange of equipment. The commission shall have the power to and shall authorize common motor carriers of property to interchange equipment and furnish through service under general rules and regulations or special orders reasonably safeguarding equipment and the use thereof whenever the public interest will be served thereby.

HISTORY: CL 1948, 476.11.

476.12 Interstate commerce.

Sec. 12. Interstate commerce. This act shall apply to persons and motor vehicles engaged in interstate commerce, except only insofar as it may be inconsistent with, or shall contravene, the constitution or the laws of the United States.

HISTORY: CL 1948, 476.12.

476.13 Abandonment of service; revocation of certificate.

Sec. 13. No abandonment of service. No common motor carrier authorized by this act to operate shall abandon or discontinue any service established under the provisions of this act without an order of the commission. Any certificate under which service is discontinued for more than 10 days without the previous order of this commission authorizing the same shall be deemed to be revoked without any action upon the part of the commission.

HISTORY: CL 1948, 476.13.

476.14 Temporary additional service; fees.

Sec. 14. In case of emergency or unusual temporary demands for transportation, the fees for additional motor propelled or drawn vehicles for limited periods and the circumstances and regulations under which they may be permitted to be operated, used or employed by any common motor carrier shall be prescribed and fixed by general rule or temporary order of the commission, any provisions of this act to the contrary notwithstanding.

HISTORY: CL 1948, 476.14.

ARTICLE III.

CONTRACT MOTOR CARRIERS.

477.1	Contract motor carriers; permit.	477.8	Rebates unlawful.
477.2	Permit; determination of commission.	477.9	Civil liability and penalty for violation of act.
477.3	Permit; character of operation proposed.	477.10	Interstate commerce.
477.4	Permit; application.	477.11	Abandonment; notice to commission.
477.5	Permit; hearing, issuance.	477.12	Temporary additional service; fees.
477.6	Regulation as to rates and operation.		
477.7	Unfair competition prohibited.		

477.1 Contract motor carriers; permit.

Sec. 1. Unlawful operation. No contract motor carrier of passengers or property shall operate any motor vehicle for the transportation of either persons or property for hire on any public highway in this state, except in accordance with the provisions of this act. It shall be unlawful for any contract motor carrier of passengers or property to operate within this state without first having obtained from the commission a permit therefor.

HISTORY: CL 1948, 477.1.

477.2 Permit; determination of commission.

Sec. 2. Duty of commission. The commission is hereby vested with power and authority, and it is hereby made its duty, upon the filing of an application for a permit to operate as a contract motor carrier, to ascertain and determine, under such reasonable rules and regulations as it may promulgate, whether the character of business to be done by the applicant strictly conforms with the definition of a contract motor carrier.

HISTORY: CL 1948, 477.2.

477.3 Permit; character of operation proposed.

Sec. 3. Same. The commission shall ascertain and determine whether, in its opinion, the proposed operation of the applicant will impair the efficient public service of any authorized common or contract motor carrier or common or contract motor carriers then adequately serving the same territory, and whether the character and condition of the vehicles proposed to be operated by the applicant is such that they may be operated upon the public highways without injury or damage to said highways, and if a particular highway or highways designated in an application for a permit is or are of such type of construction, or in such state of repair, or subject to such use, as to permit the use sought to be made by the applicant, without unreasonable interference with the use of said highways by the general public for highway purposes; and, if the commission shall determine after hearing that the character of business to be done by the applicant does not strictly conform with the definition of a contract carrier, or that the proposed operation of the applicant will impair the efficient public service of any authorized common motor carrier or common motor carriers then adequately serving the same territory, or that the character and condition of the vehicles proposed to be operated by the applicant is such that they may not be operated upon the public highways without injury or damage to said highways, or that such highway or highways is or are not in such state of repair, or is or are already subject to such use, as would not permit of the use sought to be made by the applicant, without unreasonable interference with the use of said highways by the general public for highway purposes, then in either or any of such events, said application shall be denied and a permit refused; otherwise, said application may be granted, in whole or in part, and a permit issued upon such

lawful terms and conditions as said commission may impose, and subject to such rules and regulations as it has or may hereafter lawfully prescribe, for the whole or for only the partial exercise of the privilege sought.

HISTORY: CL 1948, 477.3.

477.4 Permit; application.

Sec. 4. Contents of application. Application for such permit shall be in writing stating the experience of the applicant as a motor carrier, if any, the ownership and condition of the equipment and physical property of the applicant proposed to be used, and shall contain such other information as the commission may require. Each application shall be accompanied by the required fees, proof of insurance and all other things required by law and the rules and regulations of the commission.

HISTORY: CL 1948, 477.4.

477.5 Permit; hearing, issuance.

Sec. 5. Hearing. Upon the filing of an application for a permit to operate as a contract motor carrier, the commission shall fix a time and place for hearing thereon and shall cause notice of the filing of such application and the hearing thereon to be given by mail not less than 10 days, exclusive of the date of mailing, before such hearing, addressed to an officer or owner of every common motor carrier that is operating in the territory proposed to be served by the applicant, or of any common motor carrier which has applied for a certificate to operate in that territory, and to such other interested parties as determined by the commission, and any such common motor carrier or interested party is hereby declared to be an interested party to said proceedings and may intervene in person or by counsel, cross-examine witnesses, and offer testimony for or against the granting of such permit. Any other interested person may offer testimony and cross-examine witnesses at such hearing. After hearing and such investigation as the commission may make, it shall be the duty of the commission, by order, to grant or refuse the permit and to cause a certified copy of such order to be delivered to the common motor carriers and other interested persons affected thereby who have entered an appearance in opposition in the cause, which order shall of its own force take effect and become operative 20 days after the service thereof or at such other reasonable time, not less than 20 days after service, as shall be specified in the order of the commission.

HISTORY: CL 1948, 477.5.

477.6 Regulation as to rates and operation.

Sec. 6. Regulation by commission. The commission is vested with power and authority, and it shall be its duty, to supervise and regulate all contract motor carriers of property or passengers, to prescribe minimum rates, fares and charges to be collected by such contract motor carriers, to require the filing of annual and other reports and other data by such contract motor carriers; to prescribe rules and regulations covering the filing with the commission of the charges, and the operations, of contract motor carriers in competition with common motor carriers over the highways of this state; to prescribe rules and regulations for the purpose of promoting safety upon the highways and the conservation of their use, to the end that the provisions of this act may be fully and completely carried out. The commission shall have power and authority, by general order or otherwise, to prescribe rules and regulations in conformity with this act applicable to any and all such contract motor carriers, and to do all things necessary to carry out and enforce the provisions of this act.

HISTORY: CL 1948, 477.6.

477.7 Unfair competition prohibited.

Sec. 7. No unfair competition with other contract motor carriers. No contract motor carrier shall give or cause to be given or enjoyed an undue or unreasonable advantage

or preference to those whom he serves, over the patrons of any contract motor carrier; or subject the patrons of any such contract motor carriers to any undue or unreasonable discrimination or disadvantage; or by unfair competition to destroy or impair the service or business of any other contract motor carrier, and, to the end that the said commission may enforce these provisions each such contract motor carrier shall, in such form as the commission shall prescribe, maintain on file with the commission a statement of his or its charges and of such other matter as the commission may require. No contract motor carrier shall receive or accept any person or property for transportation upon the highways until such statement of charges has been duly filed with the commission. The commission may investigate and hear the complaint of any person aggrieved that the charge exacted for the transportation of property or persons by any contract motor carrier, or for any service in connection therewith, is less than the rates, fares or charges of such carrier on file with the commission for such service, and the commission may make such order as may be warranted from the evidence before it.

HISTORY: CL 1948, 477.7.

477.8 Rebates unlawful.

Sec. 8. Any person, whether carrier, shipper or consignee, or any officer, employee, agent or representative thereof, who shall knowingly offer, grant or give, or solicit, accept or receive any rebate, concession or discrimination in violation of any provision of this act, or who, by means of any false statement or representation, or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device, shall knowingly and wilfully assist, suffer or permit any person, natural or artificial, to obtain transportation of passengers or property subject to this article for less than the applicable rate, fare or charge, or who shall knowingly and wilfully, by any such means or otherwise, fraudulently seek to evade or defeat regulations as in this act provided for contract motor carriers, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not more than \$500.00, or imprisonment for not more than 6 months, or both.

HISTORY: Am. 1945, p. 383, Act 264, Eff. Sep. 6;—CL 1948, 477.8;—Am. 1959, p. 118, Act 114, Eff. Mar. 19, 1960.

477.9 Civil liability and penalty for violation of act.

Sec. 9. Liability of contract motor carrier. If any contract motor carrier shall do or cause or permit to be done any act or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, or thing required to be done by it or by any lawful order made under the provisions of this act by the Michigan public utilities commission, such carrier shall be liable to the person, firm or corporation injured thereby the actual amount of damages sustained in consequence of such violation: Provided, That any recovery as in this section provided shall in no manner affect a recovery by the state of the penalty prescribed for such violation.

HISTORY: CL 1948, 477.9.

477.10 Interstate commerce.

Sec. 10. Interstate carriers. This act shall apply to persons and motor vehicles engaged in interstate commerce, except only insofar as it may be inconsistent with, or shall contravene, the constitution or the laws of the United States.

HISTORY: CL 1948, 477.10.

477.11 Abandonment; notice to commission.

Sec. 11. Notice of abandonment. Every contract motor carrier of property or passengers who shall cease operation or abandon his rights under the permit issued shall notify the commission within 30 days of such cessation or abandonment.

HISTORY: CL 1948, 477.11.

477.12 Temporary additional service; fees.

Sec. 12. In case of emergency or unusual temporary demands for transportation, the fees for additional motor propelled or drawn vehicles for limited periods and the circumstances and regulations under which they may be permitted to be operated, used or employed by any contract motor carrier shall be prescribed and fixed by general rule or temporary order of the commission, any provisions of this act to the contrary notwithstanding.

HISTORY: CL 1948, 477.12.

ARTICLE IV.

FEES.

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| <p>478.1 Application for certificate of public convenience and necessity; filing fee, renewals.</p> <p>478.2 Motor carriers; highway taxes; operation without payment; refunds; exemptions.</p> | <p>478.2a, 478.3 Repealed.</p> <p>478.4-478.5 Repealed.</p> <p>478.5a Repealed.</p> <p>478.6 Motor carrier license fees and taxes; disposition; appropriation.</p> |
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478.1 Application for certificate of public convenience and necessity; filing fee, renewals.

Sec. 1. Every application filed with the commission for a certificate of public convenience and necessity or for a permit, as required by the provisions of this act, shall be accompanied by a fee in the sum of \$20.00, and every application filed with the commission for the renewal of any such certificate or permit shall be accompanied by a fee in the sum of \$10.00, for the administration of this act, which fee shall be in addition to all other fees, and shall be retained by the commission and deposited with the state treasurer, whether the certificate or permit or the renewal thereof is granted or not.

HISTORY: CL 1948, 478.1;—Am. 1953, p. 205, Act 170, Eff. Oct. 2.

478.2 Motor carriers; highway taxes; operation without payment; refunds; exemptions.

Sec. 2. In addition to the license fees or taxes otherwise imposed upon common motor carriers of passengers or of property, and contract motor carriers of passengers or of property, there shall be assessed against and collected from every such carrier for the administration of this act and for the construction, maintenance and repair of the public highways an annual fee of \$50.00 for each self-propelled motor vehicle operated by or on behalf of such carrier, except that for each motor bus the annual fee shall be \$20.00; for each truck or tractor subject to this act and used exclusively for the transportation of household goods as defined by the commission, the annual fee shall be \$20.00.

No common motor carrier or contract motor carrier of either passengers or property shall operate any motor vehicle upon or over the highways of this state, except as otherwise provided in this act, while any of the fees imposed by this act shall remain unpaid, and the commission is prohibited from extending the time of payment or permitting the operation while such delinquency continues. At the time of making application for a renewal of its certificate or permit, or at the time of filing an application to add equipment, any balance standing to the credit of a carrier, because of the payment in previous years of fees or minimum deposits prescribed in this act shall be applied to the annual fees provided in this section which are payable by the carrier in connection with the renewal application or application to add equipment. Any balance remaining on July 1, 1968, shall be refunded to the motor carrier by the commission.

Motor carriers subject to the act shall not be required to pay the fee on operations of vehicles within an area in which motor carriers exempt in article 5 of section 2 of paragraph (a) of this act may operate without payment of the fee.

HISTORY: CL 1948, 478.2;—Am. 1958, p. 91, Act 84, Eff. Sep. 13;—Am. 1961, p. 87, Act 85, Eff. Sep. 8;—Am. 1964, p. 32, Act 26, Eff. Aug. 28;—Am. 1966, p. 182, Act 162, Imd. Eff. Jul. 1;—Am. 1968, p. 182, Act 120, Imd. Eff. Jun. 11.

478.2a, 478.3 Repealed. 1966, p. 184, Act 162, Eff. Jan. 1, 1967.

Sections related to motor vehicles with dump type equipment and provided for annual fees, transfer fees, and records and reports.

478.4-478.5 Repealed. 1963, p. 271, Act 182, Eff. Sep. 6;—1966, p. 184, Act 162, Eff. Jan. 1, 1967.

Sections provided for daily mileage record, required payment of fees.

478.5a Repealed. 1966, p. 184, Act 162, Eff. Jan. 1, 1967.

Section required privilege fee for operation of motor vehicle.

478.6 Motor carrier license fees and taxes; disposition; appropriation.

Sec. 6. All moneys received under the provisions of this act shall be placed to the credit of the commission. The legislature shall appropriate such moneys to the commission and the motor vehicle highway fund in such proportions as the legislature may determine.

HISTORY: CL 1948, 478.6;—Am. 1951, p. 63, Act 52, Imd. Eff. May 23;—Am. 1960, p. 256, Act 180, Imd. Eff. Jul. 22.

ARTICLE V.

POLICY OF STATE, EXEMPTIONS, LIMITATIONS, GENERAL REGULATIONS AND PROCEDURE; PENALTIES; MISCELLANEOUS.

479.1	Declaration of public interest; purpose of regulation; labor organization representatives, participation in hearings.	479.10a	Lease, contract or arrangement, contents.
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479.10	Certificates and permits; expiration, renewal, penalty, revocation.	479.19	Injunctive relief.
		479.20	Motor carrier act; appeal to circuit court; proceedings stayed; rescission of order; appeal to supreme court.

479.1 Declaration of public interest; purpose of regulation; labor organization representatives, participation in hearings.

Sec. 1. The business of all motor carriers of passengers and property operating over the highways of this state for hire is declared to be affected with a public interest. The safety and welfare of the public; the preservation, conservation and maintenance of the public highways; the reduction of any existing congestion of motor carriers for hire on such highways; the integrity of the regulation of common motor carriers; the prevention of unjust discrimination between shippers; and the insurance of adequate motor transportation; all require the regulation of motor carriers to the extent herein provided, and as a matter of public policy in the administration and enforcement of this act, any elected or designated representative of a recognized labor organization which has a fiduciary relationship with its members and whose members have an interest in or are affected by the violation, approval or granting of any order, rule, tariff, regulation or practice established by the public service commission in any matters covered by this act, or in any other matters covered by this act, shall have the right to file complaints for any such violation, or petition, and to appear and be heard and participate fully as a party in interest in any hearings or investigations conducted by the public service commission in connection therewith; provided that the services rendered by such elected or designated representative shall be part of his regular duties and responsibilities, and he shall receive no special compensation or fee from such organization or any individual member thereof.

HISTORY: CL 1948, 479.1;—Am. 1968, p. 182, Act 162, Imd. Eff. Jul. 1.

479.2 Exemptions; reciprocity.

Sec. 2. This act shall not apply to:

(a) Vehicles operated entirely within any city or village of this state; nor to motor carriers of passengers whose local operations may extend a distance of not to exceed 2 miles beyond the boundary of such city or village in which such local operations are wholly carried on, provided such extension shall not be to or into another city or village; nor to motor carriers of property whose local operations may extend a distance of not to exceed 8 miles beyond the boundary of such city or village in which such local

operations are wholly carried on; and further provided the territory within the external corporate limits of any city, even though it shall include and embrace the area of 1 or more separately organized and existing cities, shall for all purposes under this act be held to a single city.

(b) Vehicles owned or operated by the state or the United States, or by any state or federal corporation, agency or instrumentality.

(c) Vehicles owned or operated by any incorporated city, village or school district, or by any county or township in the state or by any corporation, agency or instrumentality of the same, for governmental purposes.

(d) Vehicles used exclusively for the purpose of carrying United States mail.

(e) Vehicles used for the transportation of farm products, including livestock when transported by others than the owner, from the farm to the market in the raw state, or used for the transportation of milk from the farm to milk stations, or trucks owned by a farmer bearing a farm truck license, when being used by such farmer in hauling farm produce, livestock, and/or farm equipment, and supplies for other farmers for remuneration in kind or in labor, but not for money.

(f) Vehicles used for the transportation of fruits, grain, vegetables, and sugar beets from farm or orchard to market or for transferring or reloading such farm produce for other markets either local or foreign: Provided, That nothing contained in this subsection shall be deemed to exempt the transportation of such produce in other than the raw state.

(g) Vehicles used for occasional accommodative transportation service including seasonal transportation of perishable commodities even though the cost of such accommodative service and seasonal transportation of perishable commodities may be paid by the person or persons so accommodated.

(h) Vehicles of a dump truck type not exceeding 5 yards capacity used exclusively for the transportation of sand, gravel, slag, stone, limestone, crushed stone, marl, pebbles, cinders, bituminous aggregates, asphalt, blacktop, dirt or fill material, but only when such vehicles are being used to move such commodities to a building site, highway maintenance or construction project, railroad maintenance or construction project, or airport maintenance or construction project, not exceeding a distance of 50 miles from the place where the vehicle is loaded; vehicles used for the transportation of pulpwood and logs, when such vehicles are being used to move such commodities from a forest, wood lot or cutting site to a market or railroad siding, not exceeding a distance of 100 miles from the place where the vehicle is loaded: Single power unit of a capacity of 1 ½ tons or less, as rated by the manufacturer, used for the transportation of newspapers: Provided, however, That the owner or owners of such vehicles hereinbefore described in this subsection shall first have obtained from the Michigan public service commission a special license plate for each vehicle, which plate shall be properly displayed at all times when the vehicle is being used. Such plates shall be renewed annually, and they shall expire on December 31 of the year in which they were issued. The Michigan public service commission shall charge for each plate a fee of \$35.00, which fee shall be in addition to any and all other fees or charges otherwise imposed by law. The moneys received from such license plate fees shall be paid by the Michigan public service commission into the highway fund. The Michigan public service commission is authorized and empowered to issue such license plates, and shall take such steps as are necessary to design and adopt a suitable plate and to furnish proper application blanks therefor: Provided, however, Trucks operating under the special license plates herein provided shall comply with all lawful rules and regulations of the Michigan public service commission pertaining to safety of operations, insurance requirements and tariffs. Whenever the holder of a special license plate issued under this section shall by lease, contract or arrangement other than outright sale put such special licensed equipment at the disposal of any person, firm or corporation, for trans-

portation in general construction or highway, airport or railroad construction or maintenance projects, such lease, contract or arrangement shall be in writing and of such a character so as to vest in such person, firm or corporation exclusive possession and control of the vehicle under such lease or arrangement for the entire term of such lease or arrangement. Any operation of such vehicle shall be conducted under the exclusive supervision, direction and control of such lessee, person, firm or corporation. Such vehicle shall at all times be operated only by persons who are employees of such person, firm or corporation who stand in relation to such person, firm or corporation as employee to employer.

None of the exemptions in this section, where applicable, shall apply to vehicles entering Michigan from any state, foreign country or subdivision thereof which does not extend similar exemptions to Michigan vehicles entering said state, foreign country or subdivision thereof.

HISTORY: Am. 1941, p. 320, Act 211, Imd. Eff. Jun. 16;—Am. 1943, p. 37, Act 41, Imd. Eff. Mar. 29;—Am. 1948, 1st Ex. Ses., p. 93, Act 36, Imd. Eff. May 10;—CL 1948, 479.2;—Am. 1954, p. 313, Act 127, Eff. Aug. 13;—Am. 1956, p. 311, Act 164, Imd. Eff. Apr. 16;—Am. 1957, p. 172, Act 150, Eff. Sep. 27;—Am. 1965, p. 52, Act 37, Imd. Eff. May 19.

479.3 Control by cities and villages; local business.

Sec. 3. Cities and villages, control of streets. Nothing herein contained shall be construed to interfere with the right of any city or village to the reasonable control by general regulation applicable to all motor vehicles of its streets, alleys and public places; or to authorize a motor carrier to do a local business without the consent of the municipality in which such local business is wholly carried on.

HISTORY: CL 1948, 479.3.

479.4 Highway commissioners; duty to furnish information.

Sec. 4. Duty of highway commissioners. It shall be the duty of the state highway commissioner and of the several county road commissioners, upon request of the commission, to obtain and furnish information relating to the highways and congestion thereon and the bridges, tunnels and subways located in any territory designated in any application for a certificate or a permit, as well as such other information as the commission may deem pertinent upon the hearing of such application.

HISTORY: CL 1948, 479.4.

479.5 Certificates and permits; construction, transfer.

Sec. 5. No certificate and no permit issued under the terms of this act shall be construed to be a franchise nor to be irrevocable, and no such certificate and no such permit shall be assigned or otherwise transferred without the approval of the commission: Provided, however, That upon the death or bankruptcy of any individual holding a currently valid certificate or permit, the commission shall authorize the transfer of said certificate or permit to the legal representative of such person upon due proof of such death or bankruptcy and upon due proof of the qualifications of such legal representative to act in such matter. Nothing contained herein shall abrogate the provisions of sections 10, 14 and 18 of this article, nor section 13 of article 2 of this act, nor section 11 of article 3 of this act.

HISTORY: CL 1948, 479.5;—Am. 1956, p. 312, Act 164, Imd. Eff. Apr. 16.

479.6 Public service commission; rules and regulations, promulgation; bi-weekly bulletin or digest, fee.

Sec. 6. (1) The commission shall prescribe the forms of applications for certificates and permits, and make regulations pertaining to the contents and filing thereof, and is empowered to administer and enforce all provisions of this act, and to establish and enforce rules and regulations affecting the operations of all motor carriers subjected to the provisions of this act affecting their use of the highways, and affecting the conduct of investigations and hearings herein authorized, and also in respect of all matters pertaining to the proper enforcement of all provisions and purposes of this act. Such rules and regulations shall be promulgated and become effective only pursuant to and in

compliance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, being the so called "administrative code". All and any of such rules and regulations may be rescinded, suspended, modified and amended at any time in the discretion of the commission and in accordance with the aforesaid administrative code to effectuate the purposes of this act. All rules and regulations established by the commission shall be given and shall have the force and effect of law.

(2) The commission shall provide for the issuance of a bulletin or digest of notices of hearings, applications and orders for permits or certificates or the sale or transfer thereof, the filing with it of rates, fares and charges and any other matters relating to its powers and duties regulating transportation; such bulletin or digest to be issued bi-weekly and mailed to every holder of an intrastate motor carrier authority from the commission. The mailing of such bulletin or digest to such motor carrier at its registered place of business is to constitute official notice to such carrier of such applications, hearings, transfers, orders and such other official business of the commission as shall appear therein, and no other notice thereof need be given such motor carriers except as is otherwise in this act expressly required. Such bulletin or digest shall be furnished and mailed to the public upon payment by anyone subscribing therefor of an annual fee to be fixed by the commission with due regard to cost and the interest of the public in its activities.

HISTORY: CL 1948, 479.6;—Am. 1954, p. 35, Act 28, Imd. Eff. Mar. 31;—Am. 1967, p. 36, Act 27, Imd. Eff. Jun. 2.

479.6a Change in rate, fare, charge or classification; notice; postponement of effective date; investigation; service upon agent.

Sec. 6a. No change shall be made in any rate, fare, charge, or classification, or any rule, regulation or practice affecting such rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff or any motor carrier for hire, except after 30 days' notice to the commission and to the public, filed and posted in accordance with section 6 of article 2 and section 7 of article 3. Such notice shall plainly state the change proposed to be made and the time when such change will take effect. The commission may, in its discretion, after good cause shown, allow changes upon less time than the notice herein specified or modify the requirements in this section in respect to publishing, posting and filing of tariffs, either in particular instances or by general order applicable to special or peculiar circumstances or conditions. Upon the filing with the commission by any motor carrier for hire of any tariff or supplement showing any change in rates, fares, charges, or classification, or any rule, regulation, or practice affecting such rate, fare, charge or classification, or the value of the service thereunder, it shall be lawful for the said commission and it is hereby authorized, acting upon its own initiative or upon petition, to postpone the date when such new rate, fare, charge, classification, rule, regulation, or practice shall become effective to such time not to exceed in all 60 days as shall give the said commission opportunity to investigate the reasonableness of such proposed rate, fare, charge, classification, rule, regulation, or practice, and it shall thereupon be lawful for said commission and it is hereby authorized to proceed with an investigation upon at least 10 days' notice to said motor carrier as to the reasonableness of said rate, fare, charge, classification, rule, regulation, or practice, and such investigation shall take precedence over all matters of a different nature pending before the commission under this act. Except in an emergency satisfactorily shown to the commission, no petition shall be considered unless filed at least 10 days prior to the effective date of the proposed change in rate, charge, fare, or classification, rule, regulation or practice. Such petition or order shall be definite and specific and a copy shall be served upon all carriers affected at the time of filing or issuance: Provided, however, That service upon an agent who has issued and filed a tariff or schedule in behalf of such carrier or carriers shall be deemed to be due and sufficient service upon such carrier or carriers. Such petition

or order must recite the specific facts relied upon to establish that failure to postpone will work a special hardship on the petitioner, that cannot otherwise be avoided. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice is just and reasonable. If the carrier or carriers whose rates are attacked shall cause undue delay in the trial or disposition of the petition for suspension, or if other good and sufficient reasons shall be found to exist, then the commission may extend the postponement for a reasonable period but not to exceed 30 days further.

HISTORY: Add. 1943, p. 423, Act 244, Imd. Eff. Apr. 22;—CL 1948, 479.6a;—Am. 1954, p. 35, Act 28, Imd. Eff. Mar. 31.

479.7 Report of accidents.

Sec. 7. Report of accidents. Such accidents as may be specified by the commission arising from or in connection with, the operation of any vehicle upon the public highways of this state by any motor carrier under the provisions of this act shall be reported to the commission, in such detail and in such manner, as the commission shall, by its rules and regulations, require; and the failure to report any such accident within 5 days after knowledge of the happening thereof shall be deemed a wilful refusal by the owner of the vehicle implicated to obey and comply with a rule of the commission.

HISTORY: CL 1948, 479.7.

479.8 Identification plates; confiscation.

Sec. 8. Identification plates. The commission shall furnish proper and sufficient identification plates to be firmly affixed upon each vehicle authorized to operate under the terms of this act, in addition to the regular registration or license plates required by law. The commission is hereby authorized to confiscate and take possession and custody of any such identification plates found attached to any vehicle for which they were not issued, or when the holder of any such plates has made or is making any unlawful use thereof.

HISTORY: CL 1948, 479.8.

479.9 Insurance, bonds.

Sec. 9. Insurance and bond requirements. The commission shall have full power and authority to make and shall make such insurance or bond requirements under uniform regulations as it may deem necessary adequately to protect the interests of the public.

HISTORY: CL 1948, 479.9.

479.10 Certificates and permits; expiration, renewal, penalty, revocation.

Sec. 10. All certificates or permits granted hereunder shall be made to terminate as of December 31 of the calendar year during which such certificate or permit may be issued. All common motor carriers and contract motor carriers shall make application for the renewal of their certificates or permits not before November 1 and not later than December 1 of the year in which their current certificate or permit expires. Certificate and permit holders not making application by December 1 shall be advised by the commission and given the opportunity to file their applications on or before December 31 on payment of a penalty of \$10.00. Such renewal application shall be accompanied with the required fees, proof of insurance and all other things required to be filed with the commission by law or by the rules, regulations and orders of the commission. The certificate of any common motor carrier or the permit of any contract motor carrier who is delinquent in the payment of the earned fees required by this act to be paid at the time of any renewal thereof shall be deemed canceled and terminated, on and after January 1 of the year for which application should have been made under the requirements of this section, and such common motor carrier or contract motor carrier shall be prohibited from operating any of his vehicles upon or over the highways of this state and all privileges granted him under his expiring certificate or permit shall cease. In case any applicant for renewal of a certificate or a permit fails,

otherwise than in the payment of fees, to comply in all respects with the law and the rules and regulations of the commission in connection with the filing of the application for renewal, the commission shall forthwith give specific written notice thereof to such applicant and shall require in such notice that applicant correct the matter specified within 10 days after such notice. Upon the failure of the applicant to make such correction within the time, or in case of the failure to accompany said application with the required filing fee, or in case of the failure to deposit the initial minimum vehicle fee on or before December 24 of the year in which the application is made, the certificate or permit of such applicant shall be thereby revoked without any action whatever upon the part of the commission. Except as in this section otherwise provided, the provisions in this act voiding a certificate or a permit for cause shall be self-executing and shall not require any affirmative act on the part of the commission, and the commission is expressly prohibited from extending and shall not have any power to extend the privilege or permit nor to allow any such carrier to engage in any operation over the public highway of any nature whatsoever. In no case shall the revocation of any certificate or a permit release any motor carrier from liability for accrued fees. Upon full compliance with the requirements with respect to the filing of the application, the certificate or permit shall issue for the succeeding calendar year, subject to all the provisions of this act.

The holder of any certificate or permit under this act may add equipment at any time, but when adding equipment subject to a privilege fee prescribed by this act, the holder of a certificate or permit shall file an ex parte application in such form as the commission may require and pay for each unit of equipment added the fee prescribed in section 2 of article 4. No notice of hearing on such application shall be required and no public hearing shall be held thereon. Whenever the holder of any certificate or permit, excepting a certificate or permit that authorizes the transportation of household goods while such household goods are being transported, shall by lease, contract or any arrangement other than outright purchase, augment his equipment, such lease, contract or arrangement shall be in writing and of such a character so as to vest in such holder exclusive possession and control of the vehicle under such lease or arrangement for the entire term of such lease or arrangement. Any operation of such vehicle shall be conducted under the exclusive supervision, direction and control of such holder. Such vehicle shall at all times be operated only by persons who are employees of such holder who stand in relation to such holder as employee to employer. The aforesaid relationship of employee and employer shall not be required between drivers and such holder of certificate or permit in those instances where the holder augments his equipment under lease, contract or other arrangement with another carrier who furnishes such equipment with a driver and when such latter carrier maintains such employer and employee relationship with said driver pursuant to specific approval and authority granted by the commission. Any certificated or permitted unit of equipment may be withdrawn from service at any time by surrendering to the commission the identification plate allocated to such unit at the time it was certificated or permitted.

HISTORY: CL 1948, 479.10;—Am. 1956, p. 227, Act 118, Imd. Eff. Apr. 13;—Am. 1959, p. 336, Act 232, Imd. Eff. Aug. 12;—Am. 1961, p. 219, Act 156, Eff. Sep. 6;—Am. 1966, p. 183, Act 162, Imd. Eff. Jul. 1;—Am. 1967, p. 37, Act 27, Imd. Eff. Jun. 2;—Am. 1969, p. 299, Act 184, Eff. Mar. 20, 1970.

479.10a Lease, contract or arrangement, contents.

Sec. 10a. (1) The lease, contract or arrangement under which a holder augments his equipment must specify the period for which the equipment is to be operated, which shall not be less than 30 days.

(2) The lease shall specify the compensation to be paid by the lessee for the rental of the equipment.

(3) The lease shall specify the time and date or the circumstance on which the contract, lease or other arrangement begins, and the time or circumstance on which it ends.

(4) The lease shall vest in such holder exclusive possession and control of the vehicle for the entire term of such lease, contract or arrangement.

(5) The lease shall provide that any operation of such vehicle must be conducted under the exclusive supervision, direction and control of such holder.

(6) The lease shall provide that such vehicle must at all times, while being operated under such lease, contract or arrangement, be operated only by persons who are employees of such holder who stand in relation to such holder as employee to employer.

(7) The lease shall be in such manner, form and further content as the commission may by rule provide.

(8) The lease shall be executed in quadruplicate; the original shall be filed with the public service commission, 1 copy shall be retained by the authorized carrier in whose service the equipment is to be operated, 1 copy shall be retained by the owner of the equipment, and 1 copy shall be carried on the equipment specified therein during the entire period of the contract, lease or other arrangement.

(9) Nothing in this section shall apply to the interchange of trailers or semitrailers with other certificated common motor carriers or the multiple certification of motor carrier equipment when specific approval and authority to interchange such equipment has been or is granted by the commission.

(10) The provisions of subsections (1), (4), (5) and (6) of this section shall not apply to or be required of or between movers of household goods, when such equipment is used to transport household goods as defined by the commission.

(11) It shall be in the power of the commission to grant further exemptions from the provisions of subsection 1 of this section upon investigation and hearing and finding that the granting of such exemption is in the public interest.

HISTORY: Add. 1959, p. 337, Act 232, Imd. Eff. Aug. 12.

479.11 Records of motor carriers; examination, preservation; witnesses; confidential information; public files; penalty.

Sec. 11. The commission may examine all records, books, accounts and files of every motor carrier to whom a certificate or permit has been issued under the provisions of this act, having to do with the business of transportation conducted by such carrier. Such records, books, accounts and files shall at all times be kept and maintained by such motor carriers and subject to examination by the commission or by any authorized agent or employee of the commission. Such records, books, accounts and files or other data or information, by order of the commission, shall be produced at any hearing or proceeding before the commission for use at such hearing or proceeding. Such records, books, accounts and files shall be preserved at least 3 years. The commission may compel the attendance and testimony of witnesses and do all things necessary to carry out and enforce all the provisions of this act. It shall be unlawful for any member of the commission, clerk, officer or employee of the state to divulge or make known, in any manner whatsoever not provided by law, to any person the operations, style of work or any other information regarding the operations of carriers visited or inspected by him in the discharge of his official duties, or to permit any report, books, documents, accounts, files or other data examined or inspected by him to be seen or examined by any person, except as provided by law. Such information as may be obtained under the provisions of this section shall be and remain inviolate, except for the purposes of carrying out the provisions of this act, it being the express legislative intent to permit the use of such information by the commission, but to prevent its publication in any manner whatsoever, except when lawfully presented in open hearings either before the commission or some member thereof, or before a court of law. Nothing herein contained shall be construed to apply to the public files of the commission pertaining to the application for and the certificate or permit of any motor carrier, nor to quarterly or other reports, which files and reports shall during office hours be open to in-

spection by any motor carrier, shipper or consignee. The violation of any provision of this section shall be a misdemeanor.

HISTORY: CL 1948, 479.11;—Am. 1954, p. 36, Act 28, Imd. Eff. Mar. 31;—Am. 1962, p. 15, Act 17, Eff. Mar. 28, 1963.

479.12 Impounding of motor vehicles, release.

Sec. 12. Impounding. In order to prevent continued unlawful operation over the highways, the commission may direct the impounding of any motor vehicle of any motor carrier who fails or refuses to comply with all applicable law, the provisions of this act, and any lawful rule or regulation or order of the commission. Any inspector or any peace officer shall be empowered, upon an order of the commission, to impound such vehicles at the expense of the owner. Such vehicles may be released only upon order of the commission and payment by the owner of the reasonable impounding expenses.

HISTORY: CL 1948, 479.12.

479.13 Enforcement of act, rules and regulations; assistance.

Sec. 13. Enforcement and assistance. The commission may use any and all available legal and equitable remedies of a civil nature to enforce the provisions of this act or any lawful order, rule or regulation made in pursuance thereof. The commission is empowered to employ and appoint from time to time such experts, assistants, inspectors and other help as may be deemed necessary with the aid of the enforcing agencies of this state, to enable it at all times properly to administer and enforce this act. The inspectors so appointed by the commission shall have all the powers conferred upon peace officers by the general laws of this state. A record shall be kept by the commission showing the daily activities, violations found, and arrests made as to each inspector. No employee of the commission shall ask or receive any fee from any person for the taking of acknowledgements or any other service. It shall be the duty of the law enforcement department or agency of every division, branch or commission of the state government, and of every county and municipality within the state, to see that the provisions of this act, and the orders, rules and regulations of the commission thereunder are enforced; and every peace officer shall arrest, on sight or upon warrant, any person found violating or having violated, any provision of this act, or any order, rule or regulation of the commission; and it shall be the duty of the attorney general of the state and of the prosecuting attorneys of the counties of the state to prosecute all violations of this act, or any order, rule or regulation of the commission thereunder.

HISTORY: CL 1948, 479.13.

479.14 Complaints and investigations; notices; findings.

Sec. 14. Complaints and investigation. Upon complaint in writing by any person, firm, corporation, association, mercantile, agricultural or manufacturing society, or by any body politic, municipal organization, common carrier or motor carrier, that any of the rates, fares, charges or classifications, or any joint rate or rates of any common motor carrier are, in any respect unreasonable or unjustly discriminatory or otherwise in violation of this act, or that any regulation or practice whatsoever affecting the transportation of persons or property by any such common motor carrier or any service in connection therewith is in any respect unreasonable or unjustly discriminatory, or that any service of such common motor carrier is inadequate, or that this act or any order, rule, regulation or practice established by the commission applicable to such common motor carrier, or charges filed with the commission by such common motor carrier, in any respect has been violated or deviated from, or is being violated or deviated from by such carrier; or upon such complaint against any contract motor carrier that this act or any order, rule, regulation or practice established by the commission applicable to such contract motor carrier or charges filed with the commission by such contract motor carrier, in any respect, has been violated or deviated from, or is being violated

or deviated from, the commission shall notify the parties complained of that complaint has been made, and shall furnish a copy of the said complaint with said notice, and 20 days after such notice has been given, the commission may proceed to investigate the same as hereinafter provided. Before proceeding to make the investigation, the commission shall give the said motor carrier and the complainants at least 10 days' notice of the time and place when and where such matters will be considered and determined, and said parties shall be entitled to be heard and shall have process to enforce the attendance of witnesses. If upon such investigation any matters complained of shall be found to be in violation of this act, the commission shall have power to and it shall determine and by order fix and order substituted therefor such regulation, practice, service or charges as shall conform to the provisions of this act and the rules and regulations of the commission applicable to such motor carrier; and such order shall further provide that the parties complained of cease and desist from the violation and conform to the terms of the order, and the commission shall cause a certified copy of each such order to be delivered to the parties affected thereby, which order shall of its own force take effect and become operative 20 days after the service thereof. All motor carriers to which the order applies shall on or before the date when such order becomes effective, make such changes in schedules on file as shall be necessary to make the same conform to such order, and no change shall thereafter be made by any such motor carrier without the written approval of the commission. Certified copies of all other orders of the commission shall be delivered to the parties affected in like manner, and, unless otherwise prescribed in this act, shall take effect within such times thereafter as the commission shall prescribe.

Whenever the commission shall believe that any provision in this act or any rule, regulation or order of the commission made in pursuance thereof, has been or is being violated, or that any charges have been made or collected or service performed in violation thereof, and that an investigation relating thereto should be made, it may on its own motion or on the application of anyone investigate the same. Before making such investigation, it shall present to the parties alleged to be guilty of such violations a statement in writing setting forth the matters to be investigated. Thereafter, on 10 days' notice to the parties of the time and place of such investigation, the commission may proceed to investigate the matters complained of in the same manner, and make like orders in respect thereto, as if such investigation had been made upon complaint. Any investigation, inquiry, or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner or any employee of the commission when so directed by the commission or its chairman, and such commissioner or employee shall submit findings of fact and conclusions of law to the commission, and when approved and confirmed by the commission and ordered filed in its office, shall and be deemed to be the decision and the order of the commission. All such investigations, inquiries or hearings of a commissioner or an employee shall and be deemed to be the investigation, inquiry and hearing of the commission.

HISTORY: CL 1948, 479.14.

479.14a Orders of commission; determination, effective date.

Sec. 14a. In considering and passing upon applications for certificates or permits the commission shall take into account all certificates and permits in existence at the time of the hearing. The commission shall determine all cases solely upon the competent evidence admitted at the hearing. All orders of the commission concerning the grant of certificates or permits shall become effective 20 days after service upon parties of record.

HISTORY: Add. 1943, p. 423, Act 244, Imd. Eff. April 22;—CL 1948, 479.14a.

479.15 Procedure; witness fees; depositions; record.

Sec. 15. Procedure. (a) Each of the commissioners, for the purposes mentioned in this act, shall have power to administer oaths, certify to official acts, issue subpoenas,

compel the attendance of witnesses and the production of papers, way bills, books, accounts, documents and testimony. In case of disobedience on the part of any person or persons, or wilful failure to comply with any order of the commission or any commissioner or any subpoena, or upon the refusal of any witness to testify regarding any matter upon which he may be lawfully interrogated, or to produce any books or papers in his custody or control which he shall have been required by any commissioner to produce, it shall be the duty of the circuit court, or a judge thereof, upon application of a commissioner, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court, or a refusal to testify therein;

(b) Each witness who shall appear before the commission by its order shall receive for his attendance the fees and mileage now provided for witnesses in civil cases in circuit court, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of proper vouchers sworn to by such witnesses and approved by the chairman of the commission: Provided, That no witnesses subpoenaed at the instance of parties other than the commission, shall be entitled to compensation from the state for attendance and travel, unless the commission shall certify that his testimony was material and necessary to the matter investigated;

(c) The commission or any party may, in any investigation, cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the circuit courts;

(d) A full and complete record of all proceedings had before the commission on any investigation upon complaint, or upon its own motion, shall be kept, and all testimony shall be taken down by a stenographer appointed by the commission, and when transcribed shall be subject to examination by any interested party at the office of the commission.

HISTORY: CL 1948, 479.15.

479.16 Penalties; venue.

Sec. 16. Penalties. Every person to whom this act applies, who violates or who procures, aids, or abets, in the violation of any provisions of this act, or who fails to obey any order, decision, rule or regulation of the commission, or who procures or aids or abets any person in his failure to obey such order, decision, rule or regulation, for which a penalty is not otherwise herein provided, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not exceeding \$100.00, or imprisonment for not more than 90 days, or both. Whenever any provision of this act, or any order, decision or regulation of the commission has been violated, such offense may be prosecuted in any county, city, or jurisdiction in or through which any motor vehicle implicated was situated or passed while said offense was being committed, and if such offense does not arise from the wrongful operations of the motor vehicle it may be prosecuted in any county, city or jurisdiction in which the person implicated was present at the time said offense was committed.

HISTORY: Am. 1945, p. 384, Act 264, Eff. Sept. 6;—CL 1948, 479.16.

479.17 Certificate and permits; saving clause.

Sec. 17. Saving clause. Certificates and permits issued to carriers by the commission under the authority of previous acts shall remain in effect until the expiration date thereof, subject to the regulatory provisions of this act: Provided, however, The owner of any such certificate or permit may obtain a renewal thereof under this act but subject to all the terms and provisions thereof as provided in this section without the proof and findings required by the provisions of this act as a prerequisite to the issuance of any certificate or permit. Each such owner shall file his application for renewal prior to December first next preceding the expiration date of such certificate or permit, accompanied by the required fees, proof of insurance, and all other things re-

quired to be filed with the commission by law and the rules and regulations and orders of the commission; and the amount of the privilege fees paid and credited to any such motor carrier for the unused period of his certificate or permit after the December thirty-first following such time of application shall be determined by the commission on a pro rata basis; and such amount shall be credited by the commission against the minimum deposit and all other taxes and fees required to be paid upon a renewal thereof under the terms of this act; and such applicant shall only be required to pay the difference, if any. All certificates and permits granted or renewed after the effective date of this act and before the first day of January, 1934, shall be granted or renewed for the term expiring the thirty-first day of December, 1934.

HISTORY: CL 1948, 479.17.

479.18 Revocation, rehearings; copies of records.

Sec. 18. Revocation, rehearings. The commission may upon application of any person or any motor carrier, or upon its own motion, and upon at least 10 days' notice to the parties affected thereby, for good cause, and after an opportunity to be heard, revoke, suspend, alter, amend or modify any and all of its findings or orders; but no certificate or permit shall be amended, altered, modified, revoked, suspended, or impaired, except only after like notice and opportunity to be heard and upon clear proof of good, just, and sufficient cause. It shall have full power and authority to grant rehearings in all proceedings before it upon petition filed within the time allowed by law to bring proceedings for review. All orders entered in accordance with the provisions of this section shall be served and take effect as herein provided for original orders, and the time allowed by law to bring proceedings to review any order of the commission shall continue after the order denying the hearing or after the order made upon a rehearing. The commission shall keep a docket of all causes and proceedings under this act and upon request, upon payment of a reasonable fee therefor, shall furnish any interested party fair copies of any application, answer, petition, motion, order, finding, certificate or permit on file with, or made or issued by it in any proceeding.

HISTORY: CL 1948, 479.18.

479.19 Injunctive relief.

Sec. 19. Injunction. Upon the violation of any provision of this act or upon the violation of any rule, regulation, or order of the commission, any judge of the circuit court of any county where such violation occurs shall have the power to restrain and enjoin the person from further violating any of the said rules, regulations, and orders. Such injunctive relief may be granted upon the application of the commission, the attorney general, the prosecuting attorney of any county, or any person, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any motor carrier aggrieved. No bond shall be required when such injunctive relief is sought upon the application of the commission, the attorney general, or the prosecuting attorney of any county.

HISTORY: CL 1948, 479.19.

479.20 Motor carrier act; appeal to circuit court; proceedings stayed; rescission of order; appeal to supreme court.

Sec. 20. Any party to a cause before the commission under the terms of this act may within 30 days from the issuance of any order therein and notice thereof appeal therefrom by filing an action in the circuit court in chancery for the county of Ingham against the commission as defendant to vacate and set aside any such order. The complaint shall specify the grounds upon which it is claimed that the order or the things granted or ordered to be done are unreasonable or unlawful. Upon the service of a copy of the complaint and a subpoena the commission shall file its answer and the matter be at issue and stand ready for hearing upon 10 days' notice by either party. On

leave of the court any interested party may file an answer to said complaint. Any party to such suit may introduce original evidence in addition to the transcript of evidence offered to said commission and the said circuit court in chancery is hereby given jurisdiction of such suits and empowered to affirm, vacate, or set aside the order of the commission in whole or in part and to make such other order and decree as the court shall decide to be in accordance with the facts and the law. All suits brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the said circuit court shall always be deemed open for the hearing thereof, and the same shall proceed, be tried and determined as other chancery suits. No injunction shall issue suspending or staying any order of the commission except upon application to the said circuit court in chancery or to the judge thereof, notice to the commission having been given and hearing having been had thereon. If, upon the trial of such action, evidence shall be introduced which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, unless the parties in such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for 15 days from the date of such transmission. The cost of such transcript, witness fees and attorney fees may be taxed in circuit court the same as other costs are taxed. The commission may, upon receipt and consideration of such evidence alter, modify, amend or rescind its order and shall report its action thereon to the court within 10 days from the receipt of such evidence. If the commission shall rescind its order complained of then the action shall be dismissed; if it shall alter, modify or amend the same, such altered, modified, or amended order shall take the place of the original order complained of and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order. Either party to said action within 60 days after service of a copy of the order or judgment of the court may appeal to the supreme court, which appeal shall be governed by the statutes governing chancery appeals. When the appeal is taken the case shall be brought to a hearing in the same manner as other cases on the calendar or if no term is then pending shall take precedence of cases of a different nature except criminal cases at the next term of the supreme court. In all actions under this section the burden of proof shall be upon the complainant to show by clear and satisfactory evidence that the order of the commission complained of is unlawful or unreasonable, as the case may be. In all actions and proceedings in court arising under this act, all such process shall be served and the practice and rules of evidence shall be the same as in actions in equity, except as otherwise herein provided.

All appeals from orders of the Michigan public utilities commission initiated under the provisions of section 462.26 of the Compiled Laws of 1948 and now before the Ingham county circuit court or the supreme court shall not be dismissed, terminated, or abated, but shall be continued, carried on and completed under the provisions of this section exactly as though this section had been in effect at the time such appeals were taken and the appeals initiated under the provisions of this section. The Michigan public service commission shall be substituted as defendant in place of the Michigan public utilities commission in all such cases.

HISTORY: Am. 1939, p. 481, Act 261, Eff. Jan. 10, 1942;—Am. 1943, p. 424, Act 244, Imd. Eff. Apr. 22;—CL 1948, 479.20.—Am. 1961, p. 181, Act 150, Eff. Sep. 28.

Sec. 21. (This was a severing clause section.)

HISTORY: Rep. 1945, p. 414, Act 267, Imd. Eff. May 25.

Sec. 22. (This was a repeal section.)

HISTORY: Rep. 1945, p. 408, Act 267, Imd. Eff. May 25.

ACTS REPEALED: Act 209, 1923; Act 212, 1931; Act 312, 1931.

ARTICLE V I.

COMMERCIAL ZONE REGISTRATION

479.41	Commercial zone registration; definitions; unauthorized motor carrier operations.	479.45	Fees; exceptions; issuance of identification.
479.42	Application for registration by existing carriers; forms; documentary evidence; issuance.	479.46	Rates, fares and charges.
479.43	Application for registration; contents; hearing; notice.	479.47	Tacking, combining or otherwise joining operations under commercial zone registration.
479.44	Conditions for granting or denial of application.	479.48	Commercial zone registration; renewal of operations.
		479.49	Applicability of article to dump truck or trailers and transported commodities.

479.41 Commercial zone registration; definitions; unauthorized motor carrier operations.

Sec. 1. Notwithstanding the provisions of article 5, section 2 (a) of this act, no person, except a holder of a certificate or permit issued in accordance with this act, shall perform a motor carrier operation for hire in the transportation of property except the transporting of another vehicle which is temporarily disabled between a city, having a population of 500,000 or more, and points located within the commercial zone thereof, or between points within the commercial zone without first having obtained a commercial zone registration from the commission. For the purposes of this act, the term "commercial zone" means that area within an 8-mile radius of the boundary line of the city and includes all other municipalities any part of which may be located within that 8-mile radius.

HISTORY: Add. 1966, p. 213, Act 188, Eff. Jan. 1, 1967.

479.42 Application for registration by existing carriers; forms; documentary evidence; issuance.

Sec. 2. Persons who on March 1, 1966 and prior thereto have been conducting such operations shall be granted a commercial zone registration, if an application is filed with the commission within 120 days after the effective date of this article. Applications shall be on forms prescribed by the commission and shall be supported with such documentary and other evidence as the commission deems necessary to establish that the applicant has been engaged in such bona fide motor carrier operations. Such showing being made, a commercial zone registration will be issued authorizing the transportation of property of all types and classes.

HISTORY: Add. 1966, p. 213, Act 188, Eff. Jan. 1, 1967.

479.43 Application for registration; contents; hearing; notice.

Sec. 3. Any application filed other than in accordance with the provisions of section 2 shall be on forms prescribed by the commission and contain such information as the commission deems necessary. Each application shall be scheduled for hearing by the commission and proper notice of hearing shall be given in accordance with section 6 of article 5 not less than 10 days prior thereto.

HISTORY: Add. 1966, p. 213, Act 188, Eff. Jan. 1, 1967.

479.44 Conditions for granting or denial of application.

Sec. 4. If at the time of the hearing the applicant shows to the commission that it is financially responsible, that it is in compliance with the commission's requirements as to safety and condition of its vehicles and that there is a need for the service which is proposed, the application shall be granted in whole or in part. If this showing is not made, the application shall be denied.

HISTORY: Add. 1966, p. 213, Act 188, Eff. Jan. 1, 1967.

479.45 Fees; exceptions; issuance of identification.

Sec. 5. Any application for a commercial zone registration shall be accompanied by a filing fee of \$20.00. In addition, each holder of a commercial zone registration shall pay an annual fee of \$45.00 for each self-propelled motor vehicle operated under the registration, except that the annual fee for movers of household goods as defined by the commission shall be \$20.00. Upon payment of these fees, the commission shall issue proper identification. No fees shall be applicable to pick up and delivery vehicles of certificated or permitted carriers.

HISTORY: Add. 1966, p. 214, Act 188, Eff. Jan. 1, 1967.

479.46 Rates, fares and charges.

Sec. 6. All rates, fares and charges shall be just and reasonable and shall not be discriminatory, prejudicial or preferential. The commission shall supervise and regulate all rates, fares and charges to be collected by the carriers.

HISTORY: Add. 1966, p. 214, Act 188, Eff. Jan. 1, 1967.

479.47 Tacking, combining or otherwise joining operations under commercial zone registration.

Sec. 7. Operations under a commercial zone registration shall not be combined, tacked or otherwise joined with any other operations except those of a regular route general commodity common carrier.

HISTORY: Add. 1966, p. 214, Act 188, Eff. Jan. 1, 1967.

479.48 Commercial zone registration; renewal of operations.

Sec. 8. Operations under a commercial zone registration shall be renewable annually in the same manner as prescribed for holders of certificates or permits. All operations shall be subject to the applicable provisions of sections 6, 7, 8, 9 and 10 of article 2.

HISTORY: Add. 1966, p. 214, Act 188, Eff. Jan. 1, 1967.

479.49 Applicability of article to dump truck or trailers and transported commodities.

Sec. 9. The provisions of this article shall not apply to dump truck and dump trailers or commodities generally transported therein.

HISTORY: Add. 1966, p. 214, Act 188, Eff. Jan. 1, 1967.

CHAPTER 480. TRUCK DRIVERS

TRUCK DRIVERS		480.14	Rules and regulations.
Act 314 of 1937		480.15	Daily log; contents, filing, inspection and display.
480.1-480.5	Repealed.	480.16	Exemptions from act.
Act 181 of 1963		480.17	Violation of act; penalty.
480.11	Motor carrier safety act; short title.	480.18	Venue.
480.12	Truck drivers; hour limitation on driving.	480.19	Repeal.
480.13	Sleeper berth; installation, size, off-duty time.		

480.1-480.5 Repealed. 1963, p. 270, Act 181, Eff. Sep. 6.

Sections regulated operation of motor trucks, tractors and trailers.

Act 181, 1963, p. 268; Eff. Sep. 6.

AN ACT to promote safety upon the public highways by regulating the operation of motor trucks, tractors and trailers; to provide the number of persons necessary to the operation of such motor trucks and tractors; to limit the hours of service of persons engaged in operating such vehicles; to require the keeping of records of such operations; to provide penalties for the violation of this act; and to repeal certain acts and parts of acts.

*The People of the State of Michigan enact:***480.11 Motor carrier safety act; short title.**

Sec. 1. This act shall be known as the "motor carrier safety act of 1963".

HISTORY: New 1963, p. 268, Act 181, Eff. Sep. 6.

CITED IN OTHER SECTIONS: Sections 480.11 to 480.19 are cited in §§ 800.8511 and 774.4.

480.12 Truck drivers; hour limitation on driving.

Sec. 2. It is unlawful for any person to drive or for any individual, copartnership, association or corporation or their lessees, trustees or receivers appointed by any court to require or permit any person to drive a motor truck or motor tractor more than 10 hours in any 15 consecutive hours, and then only, following 8 consecutive hours off duty. For the purpose of this act, the 15 consecutive hours shall be computed from the time such person reports for duty. The 8 consecutive hours off-duty time shall be computed from the time such person is released from duty. All time elapsed between the time of reporting for duty and the time of release from duty shall be considered as on-duty time.

HISTORY: New 1963, p. 268, Act 181, Eff. Sep. 6;—Am. 1966, p. 59, Act 34, Imd. Eff. May 26.

480.13 Sleeper berth; installation, size, off-duty time.

Sec. 3. (1) Sleeper berth installed after December 1, 1952, may be operated but every sleeper berth shall be located within the cab or be immediately adjacent thereto, or be located within the cargo space of a truck. The sleeper berth shall be securely fixed with relation to the cab and shall be provided with a direct and ready means of exit into the driver's compartment. The exit shall have sufficient area to contain an ellipse having a major axis of 24 inches and a minor axis of 16 inches.

(2) The sleeper berth shall be constructed and maintained to provide, at least, the following inside dimensions: 75 inches long measured on the center line of the longitudinal axis, and at every point along the 75 inches of required length 21 inches wide and 21 inches deep measured from the top of the mattress.

(3) Persons engaged in sleeper berth operation may cumulate the required 8 consecutive hours off duty in 2 periods of at least 2 hours each, resting in the sleeper berth.

HISTORY: New 1963, p. 268, Act 181, Eff. Sep. 6;—Am. 1966, p. 59, Act 34, Imd. Eff. May 26.

480.14 Rules and regulations.

Sec. 4. The Michigan public service commission is hereby authorized and empowered to make such rules and regulations as are reasonably necessary to the accomplishment of the purpose of this act.

HISTORY: New 1963, p. 269, Act 181, Eff. Sep. 6.

480.15 Daily log; contents, filing, inspection and display.

Sec. 5. (1) Every individual, copartnership, association or corporation, or their lessees, receivers or trustees appointed by any court, engaged in the operation of a motor truck or tractors on the highways of this state, shall require the drivers or operators thereof to maintain, in duplicate, and carry on each vehicle a daily log showing the points between which the same is operated, the mileage operated, the date and the hour upon which the driver or operator went on duty which shall be entered when the operator begins, the date and the hour of the completion of his duty, the number of hours intervening between the time of going on duty and the time of completion of his duty, freight bill number, manifest number or names of consignor and consignee, and such other information as the public service commission may prescribe by rule. After making his initial entry upon commencement of duty, the driver or operator shall record his activities in the log and the record of activities shall not be more than 4 hours behind the driver's current duty status.

(2) The user of any such motor vehicle, irrespective of whether the same is operated from a garage, terminal or base point situate within or one situate without this state, shall within 72 hours of such use file in the principal office or principal place of business of such user the original daily log sheet, which shall remain on file at the principal office or principal place of business for a period of 1 year from date of trip. The user shall furnish a duplicate of any daily log of any driver or operator to the department of labor and the public service commission of this state, at their offices at Lansing, Michigan within 5 days of a written demand therefor. The daily log shall be open at all times to inspection by any representative of the public service commission. The daily log shall be displayed by the operator or driver of the vehicle upon which the same is maintained, at any time upon demand of any peace officer of the state or any division thereof. The public service commission, by rule or regulation, shall prescribe the form for the daily log required by this act. For the purpose of this section, "user" does not include the driver.

HISTORY: New 1963, p. 269, Act 181, Eff. Sep. 6;—Am. 1966, p. 59, Act 34, Imd. Eff. May 26.

480.16 Exemptions from act.

Sec. 6. The provisions of this act shall not apply to the owner, driver or operator of any motor vehicle which is being used as a wrecking, relief, or public utility service vehicle in cases of emergency, nor to the specially trained drivers of motor vehicles which are especially designed or equipped for use, and are used solely for performing services in emergency maintenance of wells, nor when the driver or operator is delayed by the act of God, public enemies, or by authority of law, nor to the owner, driver or operator of any motor vehicle having farm license plates, nor to the owner, driver or operator of any motor vehicle which is operated within the corporate limits of any city or village of this state, and for a distance of not to exceed 50 miles beyond the boundary of such city or village in which such vehicle is domiciled, nor to the owner, driver or operator of any motor vehicle being operated within 50 miles from the residential address of the title owner, nor to vehicles owned or operated by the

state or the United States, or by any state or federal corporation, agency or instrumentality.

HISTORY: New 1963, p. 269, Act 181, Eff. Sep. 6;—Am. 1965, p. 90, Act 59, Eff. Mar. 31, 1966.

480.17 Violation of act; penalty.

Sec. 7. Any driver or operator who violates any provision of this act, or any owner or user of any motor truck or tractor, or any officer or agent of any person, firm, corporation or association which is the owner or user of any vehicle, who requires or permits the driver or operator to operate or drive any motor truck or tractor in violation of any provision of this act, shall be fined not more than \$100.00 or imprisoned in the county jail not more than 90 days, or both, for each and every violation.

HISTORY: New 1963, p. 269, Act 181, Eff. Sep. 6.

480.18 Venue.

Sec. 8. Whenever any provision of this act has been violated, the offense may be prosecuted in any county, city or jurisdiction in or through which the motor vehicle implicated was situated or passed when the offense was committed.

HISTORY: New 1963, p. 270, Act 181, Eff. Sep. 6.

480.19 Repeal.

Sec. 9. Act No. 314 of the Public Acts of 1937, as amended, being sections 480.1 to 480.5 of the Compiled Laws of 1948, is repealed.

HISTORY: New 1963, p. 270, Act 181, Eff. Sep. 6.

CHAPTER 482. BILLS OF LADING

UNIFORM BILLS OF LADING ACT

Act 165 of 1911

482.1-482.43 Repealed.

482.44 Bills; issuance for goods not received, penalty.

482.45 Bills; false statement, penalty.

482.46 Bills; issuance of duplicate not so marked, penalty.

482.47 Bills; Negotiation without title, penalty.

482.48 Bills; negotiation when goods not in carrier's possession, penalty.

482.49 Bills; inducing carrier to issue when goods have not been received, penalty.

482.50 Bills; issuance of non-negotiable bill not so marked, penalty.

482.51-482.56 Repealed.

Act 165, 1911, p. 270; Eff. Aug. 1.

AN ACT to provide for uniform bills of lading, to fix the punishment for violations of this act, and to repeal all acts or parts of acts inconsistent herewith.

The People of the State of Michigan enact:

482.1-482.43 Repealed. 1962, p. 317, Act 174, Eff. Jan. 1, 1964.

Sections related to uniform bills of lading act of 1911.

482.44 Bills; issuance for goods not received, penalty.

Sec. 44. Any officer, agent or servant of a carrier, who with intent to defraud issues or aids in issuing a bill knowing that all or any part of the goods for which such bill is issued have not been received by such carrier, or by an agent of such carrier or by a connecting carrier, or are not under the carrier's control at the time of issuing such bill, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 5 years, or by a fine not exceeding 5,000 dollars, or by both.

HISTORY: CL 1915, 8217;—CL 1929, 11559;—CL 1948, 482.44.

GOODS NOT RECEIVED: Similar provisions: Warehouse receipts, see Compilers' § 443.50; railroads, see Compilers' § 466.20; brine pipe line corporations, see Compilers' § 483.227.

482.45 Bills; false statement, penalty.

Sec. 45. Any officer, agent or servant of a carrier, who with intent to defraud issues or aids in issuing a bill for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 1 year, or by a fine not exceeding 1,000 dollars, or by both.

HISTORY: CL 1915, 8218;—CL 1929, 11560;—CL 1948, 482.45.

WAREHOUSE RECEIPTS: Similar provisions, see Compilers' § 443.51.

FALSE BILLING: See Compilers' § 750.289.

482.46 Bills; issuance of duplicate not so marked, penalty.

Sec. 46. Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a duplicate or additional negotiable bill for goods in violation of the provisions of section 7, knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncanceled shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 5 years, or by a fine not exceeding 5,000 dollars, or by both.

HISTORY: CL 1915, 8219;—CL 1929, 11561;—CL 1948, 482.46.

WAREHOUSE RECEIPTS: Similar provisions, see Compilers' § 443.52.

482.47 Bills; Negotiation without title, penalty.

Sec. 47. Any person who ships goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable bill which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction

tion shall be punished for each offense by imprisonment not exceeding 1 year, or by a fine not exceeding 1,000 dollars, or by both.

HISTORY: CL 1915, 8220;—CL 1929, 11562;—CL 1948, 482.47.

WAREHOUSE RECEIPTS: Similar provisions, see Compilers' § 443.55.

482.48 Bills; negotiation when goods not in carrier's possession, penalty.

Sec. 48. Any person who with intent to deceive negotiates or transfers for value a bill knowing that any or all of the goods which by the terms of such bill appear to have been received for transportation by the carrier which issued the bill, are not in the possession or control of such carrier, or of a connecting carrier, without disclosing this fact, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 5 years, or by a fine not exceeding 5,000 dollars, or by both.

HISTORY: CL 1915, 8221;—CL 1929, 11563;—CL 1948, 482.48.

NEGOTIATION WHEN GOODS NOT IN CARRIERS' POSSESSION: See Compilers' § 466.21.

482.49 Bills; inducing carrier to issue when goods have not been received, penalty.

Sec. 49. Any person who with intent to defraud secures the issue by a carrier of a bill, knowing that at the time of such issue any or all of the goods described in such bill as received for transportation have not been received by such carrier, or an agent of such carrier or a connecting carrier, or are not under the carrier's control, by inducing an officer, agent or servant of such carrier falsely to believe that such goods have been received by such carrier, or are under its control, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 5 years, or by a fine not exceeding 5,000 dollars, or by both.

HISTORY: CL 1915, 8222;—CL 1929, 11564;—CL 1948, 482.49.

482.50 Bills; issuance of non-negotiable bill not so marked, penalty.

Sec. 50. Any person who with intent to defraud issues or aids in issuing a nonnegotiable bill without the words "not negotiable" placed plainly upon the face thereof, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding 5 years, or by a fine not exceeding 5,000 dollars, or by both.

HISTORY: CL 1915, 8223;—CL 1929, 11565;—CL 1948, 482.50.

482.51-482.56 Repealed. 1962, p. 317, Act 174, Eff. Jan. 1, 1964.

Sections related to uniform bills of lading act of 1911.

CHAPTER 483. OIL, GAS AND BRINE LINES

CRUDE OIL AND PETROLEUM

Act 16 of 1929

- 483.1 Crude oil or petroleum; buying, selling or transporting.
- 483.2 Condemnation for acquisition of rights-of-ways; use of highways.
- 483.3 Control by public utilities commission; private business excepted.
- 483.4 Common purchaser; definition, purchase without discrimination.
- 483.5 Common carrier; definition, carrier without discrimination.
- 483.6 Acceptance of act; plat, filing.
- 483.7 Penalties; civil liability.
- 483.8 Public utilities commission; rules and orders.
- 483.9 Public utilities commission; employment of assistants.
- 483.11 Immediate effect.

NATURAL GAS

Act 9 of 1929

- 483.101 Natural gas; buying, selling or transporting.
- 483.102 Condemnation to acquire rights-of-way, use of highways; limitation to intrastate transportation.
- 483.103 Control vested in public utilities commission; scope; limitations.
- 483.104 Common purchaser; definition; purchase without discrimination.
- 483.105 Regulations of public utilities commission.
- 483.106 Common carriers; preference prohibited.
- 483.107 Maximum daily flow.
- 483.108 Curtailment of purchase.
- 483.109 Map or plat of proposed line; filing with public utilities commission, approval; existing carriers.
- 483.110 Schedule of rates; filing with commission; alterations; application, approval, appeal.
- 483.111 Sale and purchase contract; filing.
- 483.112 Annual statement; contents.
- 483.113 Accounts and records.
- 483.114 Prevention of waste; rules of public utilities commission.
- 483.115 Penalties; civil liability.
- 483.116 Assistants; employment by commission.
- 483.117 Municipal corporations excepted.
- 483.120 Immediate effect.

GAS SAFETY STANDARDS

Act 165 of 1969

- 483.151 Gas safety standards; definitions.
- 483.152 Rules and standards; promulgation by public service commission; criteria; waiver; application; hearing.
- 483.153 Gas transporters, pipe line owners and operators; duties.
- 483.154 Inspection and maintenance plan; filing, changes, determination of adequacy.
- 483.155 Records and reports; inspection.

- 483.156 Inspection and investigation; reports of noncompliance; right of entry.
- 483.157 Accident reports; use in judicial proceedings; testimony; public inspection.
- 483.158 Trade secrets, confidentiality; disclosure to legislative committee.
- 483.159 Research, testing, development and training; cooperation with state and federal agencies.
- 483.160 Exemptions.
- 483.161 Penalties.
- 483.162 Injunctive relief; jurisdiction; notice; opportunity to comply.

BRINE PIPE LINE COMPANIES

Act 182 of 1881

- 483.201 Brine pipe line companies; purpose, incorporators; articles, contents, filing, recording; body corporate, powers.
- 483.202 Certified copy of articles as evidence.
- 483.203 Subscription to capital stock.
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- 483.226 Fraudulent securities; penalty for issuance.
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Act 16, 1929, p. 38; Imd. Eff. Mar. 27.

AN ACT to regulate the business of carrying or transporting, buying, selling or dealing in crude oil or petroleum or its products, through pipe lines; to authorize the use of public highways and the condemnation of private property; to regulate the purchase and storage of crude oil or petroleum; to provide for the control and regulation of all corporations, associations and persons engaged in such business, by the Michigan public utilities commission; to define the powers and duties of the commission in relation thereto; and to prescribe penalties for violations of the provisions hereof.

The People of the State of Michigan enact:

483.1 Crude oil or petroleum; buying, selling or transporting.

Sec. 1. Every corporation, association or person now or hereafter exercising or claiming the right to carry or transport crude oil or petroleum, or any of the products thereof, by or through pipe line or lines, for hire, compensation or otherwise, or now or hereafter exercising or claiming the right to engage in the business of piping, transporting or storing crude oil or petroleum, or any of the products thereof, or now or hereafter engaging in the business of buying, selling or dealing in crude oil or petroleum, within the limits of this state, shall not have or possess the right to conduct or engage in said business or operations, in whole or in part, as above described, or have or possess the right to locate, maintain, or operate the necessary pipe lines, fixtures, and equipment thereunto belonging, or used in connection therewith, concerning the said business of carrying, transporting or storing crude oil or petroleum as aforesaid, on, over, along, across, through, in or under any present or future highway, or part thereof, or elsewhere, within this state, or have or possess the right of eminent domain, or any other right or rights, concerning said business or operations, in whole or in part except as authorized by and subject to the provisions of this act, except, further, and only such right or rights as may already exist which are valid, vested, and incapable of revocation by any law of this state or of the United States.

HISTORY: CL 1929, 11652;—CL 1948, 483.1.

PIPE LINE COMPANIES: Excepted from the provisions of Act 327, 1931, see Compilers' § 450.3.

REPORTS: See Compilers' § 450.82.

ISSUANCE OF SECURITIES: Approval by commission, see Compilers' §§ 480.301 to 480.303.

Fees, see Compilers' § 460.61.

483.2 Condemnation for acquisition of rights-of-ways; use of highways.

Sec. 2. For the purpose of acquiring necessary right-of-ways, every such corporation, association or person is hereby granted the right of condemnation by eminent domain, and the use of the highways in this state, for the purpose of transporting petroleum by pipe lines, and the location, laying, constructing, maintaining and operation thereof; and such condemnation proceedings shall be conducted in accordance with the same procedure and in the same manner as is provided by the laws of this state for the condemnation of right-of-ways by railroad companies.

HISTORY: CL 1929, 11653;—CL 1948, 483.2.

CONDEMNATION: See Compilers' § 464.15 et seq.

USE OF HIGHWAYS: See Compilers' §§ 480.601 to 480.605.

483.3 Control by public utilities commission; private business excepted.

Sec. 3. There is hereby granted to and vested in the Michigan public utilities commission, hereinafter styled the "commission," the power to control, investigate and regulate every corporation, association or person, now or hereafter exercising or claiming the right to carry or transport crude oil or petroleum, or any of the products thereof, by or through pipe line or lines, for hire, compensation or otherwise, or now

or hereafter exercising or claiming the right to engage in the business of piping, transporting or storing crude oil or petroleum, or any of the products thereof, or now or hereafter engaging in the business of buying, selling or dealing in crude oil or petroleum within the limits of this state: Provided, however, That all corporations, associations, or persons who are producers, or refiners of crude oil, or petroleum, or operators of private trunk or gathering lines or other methods of conveying such products, where the nature and extent of their business is private, and where in the conduct thereof no public interest is involved, are hereby specifically excepted and excluded from the terms of this act.

HISTORY: CL 1929, 11654;—CL 1948, 483.3.

NOTE: The public utilities commission has been abolished and superseded by the public service commission, see Compilers' § 460.4.

RATES: See Compilers' §§ 460.54, 460.57 and 460.58.

483.4 Common purchaser; definition, purchase without discrimination.

Sec. 4. Every corporation, association or person, now or hereafter claiming or exercising the right to carry or transport crude oil or petroleum or any of the products thereof, by pipe line or pipe lines, for hire, compensation, or otherwise, within the limits of this state, as owner, lessee, licensee, or by virtue of any other right or claim, or now engaged or hereafter engaging in the business of purchasing or storing crude oil or petroleum, shall be a common purchaser thereof, and shall purchase all the petroleum in the vicinity of, or which may be reasonably reached by its pipe lines, or gathering branches, without discrimination in favor of 1 producer or 1 person as against another, and shall fully perform all the duties of a common purchaser; but if it shall be unable to perform the same, or be legally excused from purchasing, transporting or storing all of the petroleum produced, then it shall purchase, transport or store petroleum from each person and producer ratably, in proportion to the average daily production, and such common purchasers are hereby expressly prohibited from discriminating in price or amount for like grades of oil or facilities as between producers or persons; and in the event it is likewise a producer, it is hereby prohibited from discriminating in favor of its own production, or storage, or production or storage in which it may be interested directly or indirectly in whole or in part, and its own production and storage shall be treated as that of any other person or producer.

HISTORY: CL 1929, 11655;—CL 1948, 483.4.

483.5 Common carrier; definition, carrier without discrimination.

Sec. 5. Every corporation, association or person, now or hereafter engaged in the business of carrying or transporting crude oil or petroleum, or any of the products thereof, for hire or compensation or otherwise, by pipe line or lines, within this state, shall be a common carrier thereof as at common law, and no such common carrier shall allow or be guilty of any unjust or unlawful discrimination, directly or indirectly, in favor of the carriage, transportation, storage or delivery of any crude, stock or storage oil, or any products thereof, in its possession or control, or in which it may be interested, directly or indirectly.

HISTORY: CL 1929, 11656;—CL 1948, 483.5.

483.6 Acceptance of act; plat, filing.

Sec. 6. Before any corporation, association or person shall have, possess, enjoy or exercise the right of eminent domain, right-of-way, right to locate, maintain, or operate pipe lines, fixtures or equipment appurtenant thereto, or used in connection therewith, as authorized by the provisions of this act, or shall have, possess, enjoy or exercise any right conferred by this act, every such corporation, association or person, shall file in the office of the Michigan public utilities commission, an explicit authorized acceptance of the provisions of this act; and in cases of pipe lines a plat showing in detail the points within this state between which, and the route along which, the trunk line or trunk lines are proposed to be constructed, the intended size and capacity thereof,

and the location and capacity of all pumping stations, gate valves, check valves and connections and appliances of all kinds used, or to be used, on said trunk line or lines; and upon demand of the commission the proper party or parties, as required by said commission, shall promptly file a plat showing in detail all the lines owned and operated by them respectively, with full and explicit information as to their capacity, size and location, and the valves and connections, of all kinds, respectively required or used in the operation thereof.

HISTORY: CL 1929, 11657;—CL 1948, 483.6.

483.7 Penalties; civil liability.

Sec. 7. Any corporation, association or person, violating any provision of this act or any order or regulation of the commission made pursuant thereto, shall be deemed guilty of an unlawful act and shall be liable to a penalty of not less than 100 dollars, nor more than 20,000 dollars. Any officer, agent, representative, employee or servant of any corporation or association or any person who causes, aids or assists, or participates in any such illegal act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to a fine of not less than 100 dollars nor more than 1,000 dollars, or to imprisonment in the county jail not less than 30 days, nor more than 1 year, or to both such fine and imprisonment in the discretion of the court. Said penalty shall be exclusive of civil liability.

HISTORY: CL 1929, 11658;—CL 1948, 483.7.

PENALTY, Suit for: See (Jud. Act) Compilers' § 600.4805 et seq.

483.8 Public utilities commission; rules and orders.

Sec. 8. The commission is hereby authorized and empowered to make all rules, regulations, and orders, necessary to give effect to and enforce the provisions of this act.

HISTORY: CL 1929, 11659;—CL 1948, 483.8.

483.9 Public utilities commission; employment of assistants.

Sec. 9. The commission is hereby authorized and empowered to employ such clerks, inspectors, and experts as may be necessary to carry out and administer the provisions of this act.

HISTORY: CL 1929, 11660;—CL 1948, 483.9.

Sec. 10. (This was a severing clause section.)

HISTORY: CL 1929, 11661;—Rep. 1945, p. 414, Act 267, Imd. Eff. May 25.

483.11 Immediate effect.

Sec. 11. An emergency is hereby declared, by reason whereof it is necessary for the immediate preservation of the public peace, safety, convenience and welfare that this act take immediate effect.

HISTORY: CL 1929, 11662;—CL 1948, 483.11.

Act 9, 1929, p. 21; Imd. Eff. Mar. 19.

AN ACT to regulate corporations, associations or persons engaged in the business of carrying and transporting natural gas through pipe lines and to regulate the production, purchase and sale of natural gas; to provide for the control and regulation of such corporations, associations and persons by the Michigan public utilities commission; to define the powers and duties of the commission relative thereto; to prescribe penalties for the violations of the provisions hereof; and to repeal Act No. 29 of the Public Acts of 1889.

The People of the State of Michigan enact:

483.101 Natural gas; buying, selling or transporting.

Sec. 1. Every corporation, association or person, now or hereafter exercising or claiming the right to carry or transport natural gas by or through pipe line or lines, for hire, compensation or otherwise, or now or hereafter exercising or claiming the right to engage in the business of piping or transporting natural gas, or any other person or persons, now or hereafter engaging in the business of buying and selling or transporting natural gas within the limits of this state, shall not have or possess the right to conduct or engage in said business or operations, in whole or in part, as above described, or have or possess the right to locate, maintain or operate the necessary pipe lines, fixtures and equipment thereto belonging, or use in connection therewith, concerning the said business of carrying or transporting natural gas as aforesaid, on, over, along, across, through, in or under any present or future highway, or part thereof, or elsewhere, within the state, or have or possess the right of eminent domain, or any other right or rights, concerning said business or operation, in whole or in part, except as authorized by and subject to the provisions of this act, except, further, and only such right or rights as may already exist which are valid, vested, and incapable of revocation by any law of this state or of the United States.

HISTORY: CL 1929, 11632;—CL 1948, 483.101.

PIPE LINE COMPANIES: Excepted from the provisions of Act 327, 1931, see Compilers' § 450.3.

REPORTS: See Compilers' § 450.82.

ISSUANCE OF SECURITIES: Approval of commission, see Compilers' §§ 460.301 to 460.303.

Fees, see Compilers' § 460.61.

483.102 Condemnation to acquire rights-of-way, use of highways; limitation to intrastate transportation.

Sec. 2. For the purpose of acquiring necessary right-of-ways, every such corporation, association or person is hereby granted the right of condemnation of eminent domain, and the use of the highways in this state, for the purpose of transporting natural gas by pipe lines, and for locating, laying, constructing, maintaining and operating the same; and such condemnation proceedings shall be conducted in accordance with the procedure and in the same manner as is provided by the laws of this state for the condemnation of right-of-ways by railroad companies: Provided, however, That no corporation, association or person shall be granted such right of condemnation by eminent domain or the right to use the highways of this state to lay or construct, maintain or operate a pipe line or lines for the transmission or transportation of natural gas unless and except such pipe line or lines are to be used solely and exclusively for the transmission, transportation and distribution of natural gas within the state of Michigan.

HISTORY: CL 1929, 11633;—CL 1948, 483.102.

CONDEMNATION: See Compilers' § 464.15 et seq.

USE OF HIGHWAYS: See Compilers' § 460.601 to 460.605.

483.103 Control vested in public utilities commission; scope; limitations.

Sec. 3. There is hereby granted to and vested in the Michigan public utilities commission, hereinafter styled the "commission," the power to control and regulate corporations, associations and persons engaged, directly or indirectly, in the business of purchasing or selling or transporting natural gas for public use; and said commission shall investigate any alleged neglect or violation of the laws of the state by any corporation, association or person purchasing or selling natural gas and transmitting or conveying the same by pipe line or lines for public use: Provided, That nothing in this act shall be construed to prevent oil and gas operators or producers of gas from laying pipe lines to transport or transmit gas to drilling wells within this state: And provided further, That factories or industries in this state may transport or transmit gas through pipe lines for

their own use in plants located wholly within this state without constituting themselves a common purchaser within the terms of this act.

HISTORY: CL 1929, 11634;—CL 1948, 483.103.

NOTE: The public utilities commission has been abolished and superseded by the public service commission, see Compilers' § 480.4.

483.104 Common purchaser; definition; purchase without discrimination.

Sec. 4. Every corporation, association or person, now or hereafter claiming or exercising the right to carry or transport natural gas by pipe line or lines, for hire, compensation, or otherwise, within the limits of this state, as owner, lessee, licensee, or by virtue of any other right or claim, or now engaged or hereafter engaging in the business of purchasing and selling natural gas shall be a common purchaser thereof, and shall purchase all the natural gas in the vicinity of, or which may be reasonably reached by its pipe lines, or gathering branches, without discrimination in favor of 1 producer or 1 person as against another, and shall fully perform all the duties of a common purchaser; but if it shall be unable to perform the same, or be legally excused from purchasing and transporting all the natural gas produced or offered, then it shall purchase and transport natural gas from each person or producer ratably, in proportion to the average production, and such common purchasers are hereby expressly prohibited from discriminating in price or amount for like grades of natural gas or facilities as between producers or persons; and in the event it is likewise a producer, it is hereby prohibited from discrimination in favor of its own production, or production in which it may be interested directly or indirectly, in whole or in part, and its own production shall be treated as that of any other person or producer.

HISTORY: CL 1929, 11635;—CL 1948, 483.104.

483.105 Regulations of public utilities commission.

Sec. 5. The commission is hereby empowered and it is made its duty to make regulations for the equitable purchasing, taking and collecting of all such gas, for the metering and delivery of the same and for providing adequate facilities for service demanded, which regulations shall apply to all persons affected thereby in like manner, and it shall have authority to relieve any such common purchaser, after due application, notice and hearing, from the obligation of purchasing gas of an inferior quality or grade or from purchasing gas from wells which for economic reasons are not at the time a practicable source of supply.

HISTORY: CL 1929, 11636;—CL 1948, 483.105.

483.106 Common carriers; preference prohibited.

Sec. 6. All corporations, associations and persons, purchasing or collecting natural gas and transmitting or conveying the same for hire, compensation or otherwise by pipe line or lines as a common carrier shall be a common carrier thereof as at common law, and it shall be unlawful for any such common carrier doing business within this state to give, either directly or indirectly, any preference or advantage to any person, copartnership, corporation or locality, in any respect whatsoever as to rates, service, facilities for service or commodity delivered.

HISTORY: CL 1929, 11637;—CL 1948, 483.106.

483.107 Maximum daily flow.

Sec. 7. All corporations, associations and persons, whether producing or receiving gas from producers in any production field are hereby prohibited from taking more than 25 per centum of the daily natural flow of any gas well or wells, unless, for good cause shown, under the exigencies of the particular case, the commission shall establish a higher or lower per centum under the prescribed rules and regulations thereof.

HISTORY: CL 1929, 11638;—CL 1948, 483.107.

483.108 Curtailment of purchase.

Sec. 8. Whenever the full production from any common source or field of supply of natural gas in this state is in excess of the market demands, then any common purchaser of such natural gas as herein defined receiving production or output from such source or field shall take therefrom only such proportion of the available supply as may be marketed and utilized without waste, as the natural flow of the well or wells owned or controlled by such common purchaser bears to the total natural flow or production of such common source or field, having due regard to the acreage drained by each well, so as to prevent any common purchaser from securing an unfair proportion therefrom; and it shall be the duty of the commission and it is hereby empowered to regulate and enforce the above provision, provided that the commission may by proper order permit the taking of a greater proportion by any common purchaser whenever or wherever it shall determine a taking of such greater proportion reasonable and equitable or conducive to public convenience or necessity.

HISTORY: CL 1929, 11639;—CL 1948, 483.108.

483.109 Map or plat of proposed line; filing with public utilities commission, approval; existing carriers.

Sec. 9. Any corporation, association or person within the terms of this act desiring to construct transmission mains for the transportation or conveying of natural gas from its source to the locality or localities where utilized, shall submit to the commission, accompanied by due application, a map or plat of such proposed line or lines which it desires to construct, showing the dimensions and character of such proposed pipe line or lines, its compression stations, control valves, and connections, and shall first receive the approval of the commission of such map, route and type of construction before proceeding with the actual construction of such transmission lines, and it shall be the duty of the commission to examine and inquire into the necessity and practicability of such transmission line or lines and to determine that such line or lines will when constructed and in operation serve the convenience and necessities of the public before approval of such map and proposed transmission line or lines: Provided, That persons, associations or corporations having already acquired the rights of common purchasers and common carriers at the time the provisions of this act became effective shall be required to file the map or plat provided for in this section only.

HISTORY: CL 1929, 11640;—CL 1948, 483.109.

483.110 Schedule of rates; filing with commission; alterations; application, approval, appeal.

Sec. 10. Every common purchaser or common carrier of natural gas shall before receiving the same for transmission or delivery file with the commission a schedule of the rates and price at which it will receive gas at delivery stations from any wells, field, or source of supply as well as the rates or charges at which it will deliver gas to connecting carriers or distributing lines or customers, and, in case it is operating as a carrier for hire, the rates and charges which it will charge for the service to be performed by it, together with copies of all contracts for purchasing, receiving or supplying gas, which price to be paid, rates and charges shall be stated and set up in the manner and form required by the commission and outlined in its rules and regulations for filing of rates of artificial gas utilities or in accordance with such rules, regulations and conditions of service as may be hereafter adopted by the commission and which it is hereby empowered to make for the regulation of such common purchasers and common carriers of natural gas. Thereafter a going common purchaser or common carrier of natural gas may alter or amend its price paid, rates, charges and conditions of service by application to and approval by the commission in the same manner and by the same process and under the same legal limitations and like right and process of appeal

as are now provided by statute for the regulation by the commission of the rates for electricity transmitted in this state.

HISTORY: CL 1929, 11641;—CL 1948, 483.110.

RATES: See Compilers' §§ 460.54, 460.57 and 460.58.

483.111 Sale and purchase contract; filing.

Sec. 11. Every common purchaser or common carrier of natural gas shall file with the commission a true and verified copy of the contract for the sale and purchase of gas entered into between the producer or producers and such common purchaser or common carrier, within 30 days after the making thereof.

HISTORY: CL 1929, 11642;—CL 1948, 483.111.

483.112 Annual statement; contents.

Sec. 12. Every common purchaser and common carrier of natural gas is hereby required to file with the commission on or before April first of each year, upon blanks to be prescribed and furnished by the commission, an annual statement of its income, expenses, operating and corporate accounts for the preceding calendar year, including the state of its finances in capital securities, fixed capital and other related corporate or balance sheet accounts and including also statistical data relating to the production, purchase, transmission and sales of gas by such common purchasers and common carriers of natural gas, its equipment facilities and customers, said statement to be verified by the oath of some officer of the utility knowing the facts stated therein.

HISTORY: CL 1929, 11643;—CL 1948, 483.112.

483.113 Accounts and records.

Sec. 13. The commission shall have the power and authority and it is hereby made its duty to prescribe the manner and the form or system of accounts, financial records and operating memoranda or data to be set up and kept by all common purchasers and common carriers of natural gas and every common purchaser and common carrier of natural gas existing and operating within this state is hereby required to set up and keep its books of accounts, records and memoranda in the manner and form prescribed by the commission.

HISTORY: CL 1929, 11644;—CL 1948, 483.113.

483.114 Prevention of waste; rules of public utilities commission.

Sec. 14. The commission shall have authority to prevent the waste of natural gas in producing operations and in the piping and distribution thereof and to make rules and regulations for that purpose. It is hereby authorized and empowered to do all things necessary for the conservation of natural gas in connection with the production, piping and distribution thereof and to establish such other rules and regulations as will be necessary to carry into effect this act, to conserve the natural gas resources of the state and to preserve the public peace, safety, and convenience in relation thereto.

HISTORY: CL 1929, 11645;—CL 1948, 483.114.

483.115 Penalties; civil liability.

Sec. 15. Any corporation, association or person, violating any provision of this act or any order or regulation of the commission made pursuant thereto, shall be deemed guilty of an unlawful act and shall be liable to a penalty of not less than 100 dollars, nor more than 20,000 dollars. Any officer, agent, representative, employee or servant of any corporation or association or any person who causes, aids or assists, or participates in any such unlawful act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to a fine of not less than 100 dollars, nor more than 1,000

dollars, or to imprisonment in the county jail not less than 30 days, nor more than 1 year, or to both such fine and imprisonment in the discretion of the court. Said penalty shall be exclusive of civil liability.

HISTORY: CL 1929, 11646;—CL 1948, 483.115.

PENALTY: Suit for, see (Jud. Act) Compilers' § 800.4805.

483.116 Assistants; employment by commission.

Sec. 16. The commission is hereby authorized and empowered to employ such clerks, inspectors, and experts as may be necessary to carry out and administer the provisions of this act.

HISTORY: CL 1929, 11647;—CL 1948, 483.116.

483.117 Municipal corporations excepted.

Sec. 17. Nothing in this act contained shall be construed to vest the commission with regulatory control and authority over any natural gas utility owned and operated by a municipal corporation nor to in any way infringe upon the authority of the duly constituted official bodies having charge of such municipally owned utilities.

HISTORY: CL 1929, 11648;—CL 1948, 483.117.

Sec. 18. (This was a severing clause section.)

HISTORY: CL 1929, 11649;—Rep. 1945, p. 414, Act 267, Imd. Eff. May 25.

Sec. 19. (This was a repeal section.)

HISTORY: CL 1929, 11650;—Rep. 1945, p. 407, Act 267, Imd. Eff. May 25.
ACT REPEALED: Act 29, 1889, CL 1915, 8615-8620.

483.120 Immediate effect.

Sec. 20. An emergency is hereby declared, by reason whereof it is necessary for the immediate preservation of the public peace, safety, convenience and welfare that this act take immediate effect.

HISTORY: CL 1929, 11651;—CL 1948, 483.120.

Act 165, 1969, p. 329; Imd. Eff. Aug. 5.

AN ACT to authorize the public service commission to establish and enforce gas safety standards; and to provide penalties for violations thereof.

The People of the State of Michigan enact:

483.151 Gas safety standards; definitions.

Sec. 1. As used in this act:

- (a) "Commission" means the public service commission.
- (b) "Gas" means natural gas, flammable gas, liquefied petroleum products that are gases at normal atmospheric pressures and temperatures or gas which is toxic and corrosive.
- (c) "Interstate transmission facilities" mean pipeline facilities used in the transportation of gas.
- (d) "Person" means any individual, firm, joint venture, partnership, corporation, association, municipality, cooperative association or joint stock association, and includes any trustee, receiver, assignee or personal representative thereof.
- (e) "Pipeline facilities" includes, but is not limited to, new and existing pipe rights of way and any equipment facility, a building used in the transportation of gas or the treatment of gas during the course of transportation.
- (f) "Transportation of gas" means the gathering, transmission or distribution of gas by pipeline or its storage, except that it shall not include the gathering of gas in those rural locations which lie outside the limits of any incorporated or unincorporated city, town, village or any other designated residential or commercial area such as a subdivi-

sion, a business or shopping center, a community development, or any similar populated area which the commission may define as a nonrural area. It shall include gathering lines located in or occupying the rights of way of state highways, county roads or railroads, or the property of schools, hospitals, churches, parks or similar public places.

HISTORY: New 1969, p. 329, Act 165, Imd. Eff. Aug. 5.

483.152 Rules and standards; promulgation by public service commission; criteria; waiver; application; hearing.

Sec. 2. (1) The commission shall promulgate rules and prescribe safety standards for pipeline facilities and the transportation of gas in accordance with Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948. In prescribing safety standards the commission shall consider:

(a) Relevant available pipeline safety data.

(b) Whether such standards are appropriate for the particular type of pipeline transportation.

(c) The extent to which such standards will contribute to public safety.

(2) Upon application by any person engaged in the transportation of gas or the operation of pipeline facilities, the commission, after notice and opportunity for a hearing and under such terms and conditions and to such extent as it deems appropriate, may waive in whole or in part compliance with any standard established under this act, if the waiver is not inconsistent with gas pipeline safety. At the time of issuing the waiver the commission shall state the reasons for its issuance.

HISTORY: New 1969, p. 329, Act 165, Imd. Eff. Aug. 5.

483.153 Gas transporters, pipe line owners and operators; duties.

Sec. 3. Any person who engages in the transportation of gas or who owns or operates a pipeline facility shall:

(a) Comply with the requirements of any standard prescribed by the commission.

(b) File and comply with a plan of inspection and maintenance as required by section 4.

(c) Permit access to and copying of records, make reports and provide information and permit entry and inspection as required by sections 5 and 6.

HISTORY: New 1969, p. 330, Act 165, Imd. Eff. Aug. 5.

483.154 Inspection and maintenance plan; filing, changes, determination of adequacy.

Sec. 4. Any person who engages in the transportation of gas or who owns or operates pipeline facilities shall file with the commission a plan for inspection and maintenance of each pipeline facility owned or operated by the person and any changes in the plan, in accordance with rules prescribed by the commission. If at any time the commission finds that the plan is inadequate to achieve pipeline safety, after notice and opportunity for a hearing, it shall require the plan to be revised. In determining the adequacy of any plan the commission shall consider:

(a) Relevant available pipeline safety data.

(b) Whether the plan is appropriate for the particular type of pipeline transportation.

(c) The extent to which such plan will contribute to the public safety.

HISTORY: New 1969, p. 330, Act 165, Imd. Eff. Aug. 5.

483.155 Records and reports; inspection.

Sec. 5. Any person who engages in the transportation of gas or who owns or operates pipeline facilities shall establish and maintain such records, make such reports and

provide such information as the commission may reasonably require to enable it to determine whether the person has acted or is acting in compliance with the standards established pursuant to this act. Upon the request of an officer, employee or agent of the commission, the person shall permit the commission or person authorized by it to inspect his books, papers, records and other relevant documents to determine whether the person has acted or is acting in compliance with the standards established pursuant to this act.

HISTORY: New 1969, p. 330, Act 165, Imd. Eff. Aug. 5.

483.156 Inspection and investigation; reports of noncompliance; right of entry.

Sec. 6. The commission may conduct such inspection and investigation as may be necessary to aid in the enforcement of the provisions of this act and the standards established pursuant to this act. The commission shall furnish the attorney general any information obtained indicating noncompliance with the standards for appropriate action. For purposes of the enforcement of this act, officers, employees or agents authorized by the commission, upon presenting appropriate credentials to the person in charge of the pipeline facilities, may enter and inspect pipeline facilities at reasonable times and in a reasonable manner and with reasonable promptness.

HISTORY: New 1969, p. 330, Act 165, Imd. Eff. Aug. 5.

483.157 Accident reports; use in judicial proceedings; testimony; public inspection.

Sec. 7. Accident reports made by any officer, employee or agent of the commission shall be available for use in any civil, criminal or other judicial proceeding arising out of the accident. Any officer, employee or agent may be required to testify in the proceedings. Any report shall be made available to the public in a manner which does not identify individuals. All reports on research projects, demonstration projects and other related activities shall be public information.

HISTORY: New 1969, p. 331, Act 165, Imd. Eff. Aug. 5.

483.158 Trade secrets, confidentiality; disclosure to legislative committee.

Sec. 8. All information reported to or otherwise obtained by the commission or its representative pursuant to sections 5, 6 or 7, which information contains or relates to a trade secret referred to in section 1905 of title 18 of the United States code, shall be considered confidential for the purpose of that section, except that the information may be disclosed to other officers or employees concerned with carrying out this act or when relevant in any proceeding under this act. Nothing in this section shall authorize the withholding of information by the commission or any officer, employee or agent under its control, from the duly authorized committees of the legislature.

HISTORY: New 1969, p. 331, Act 165, Imd. Eff. Aug. 5.

483.159 Research, testing, development and training; cooperation with state and federal agencies.

Sec. 9. (1) The commission may conduct research, testing, development and training necessary to carry out the provisions of this act.

(2) Upon request, the commission shall furnish to the federal department of transportation any information it has concerning the safety of any materials, operations, devices or processes relating to the transportation of gas or the operation of pipeline facilities.

(3) The commission is authorized to advise, assist and cooperate with other state de-

partments and agencies and other interested public and private agencies and persons in the planning and development of safety standards, and methods for inspecting and testing to determine compliance with safety standards.

HISTORY: New 1969, p. 331, Act 165, Imd. Eff. Aug. 5.

483.160 Exemptions.

Sec. 10. (1) The provisions of this act shall not apply to pipeline facilities and the transportation of gas subject to the jurisdiction of the federal power commission under the natural gas act.

(2) The provisions of this act shall apply to persons engaged in interstate commerce other than those subject to the jurisdiction of the federal power commission.

HISTORY: New 1969, p. 331, Act 165, Imd. Eff. Aug. 5.

483.161 Penalties.

Sec. 11. (1) Any person who violates any provision of this act or any rule issued under this act, shall be subject to a fine of not more than \$1,000.00 for each violation for each day that the violation occurs, except that for any series of violations the penalty shall not exceed \$200,000.00. Any pipeline facility existing at the effective date of this act shall not be subject to the penalty provisions of this act for 1 year from the effective date.

(2) In determining the amount of the fine the commission shall consider:

(a) The size of the business of the violation.

(b) The gravity of the violation.

(c) The good faith of the person charged in attempting to achieve compliance after notification of the violation.

(3) The amount of the penalty stipulated may be deducted from any sums owing by the state to the person charged or may be recovered in civil action in the Ingham county circuit court.

HISTORY: New 1969, p. 331, Act 165, Imd. Eff. Aug. 5.

483.162 Injunctive relief; jurisdiction; notice; opportunity to comply.

Sec. 12. The Ingham county circuit court has jurisdiction to restrain violations of this act, including the restraint of transportation of gas or the operation of a pipeline facility, and to enforce standards established under this act upon petition by the attorney general. Whenever practical, the commission shall give notice to any person against whom an action for injunctive relief is contemplated and afford him an opportunity to be heard, and, except in the case of a knowing and wilful violation, shall afford him a reasonable opportunity to achieve compliance. The failure to give such notice and afford such opportunity shall not preclude the granting of appropriate relief.

HISTORY: New 1969, p. 331, Act 165, Imd. Eff. Aug. 5.

Act 182, 1881, p. 215; Imd. Eff. May 31.

AN ACT to provide for the incorporation of pipe line companies, and to define their powers and duties.

The People of the State of Michigan enact:

483.201 Brine pipe line companies; purpose, incorporators; articles, contents, filing, recording; body corporate, powers.

Sec. 1. That any number of persons, not less than 5, may form a company for the purpose of constructing and operating, for the public use, a line or lines of pipe, for the conveying and transporting therein of brine; and for such purpose, such persons shall make and sign articles of association, in which shall be set forth the name of the

corporation, the number of years the same is to be continued (not exceeding 30 years), the places from and to which the said pipe line is to be constructed, or maintained and operated, and the length of the same, as near as may be, and the name of each county through or into which it is to be constructed or intended to be constructed, the amount of capital stock of said company, which shall not be less than 1,500 dollars for every mile of pipe constructed, or proposed to be constructed, and the number of shares of which said capital stock shall consist, and the names and places of residence of the directors of the company, who shall manage its affairs for the first year, and until others are chosen in their places. Each subscriber to such articles of association shall subscribe thereto his name, place of residence, and the number of shares he agrees to take in said company. Whenever 1,000 dollars per mile of such pipe line shall have been subscribed upon such articles of association, and not less than 10 per cent thereof shall have been paid in cash to the directors named in said articles, and an affidavit shall have been made and attached thereto, by any 2 of said directors, that said amount has been subscribed upon such articles of association, and not less than 10 per cent thereof shall have been paid in cash to the directors named in said articles, and an affidavit shall have been made and attached thereto, by any 2 of said directors, that said amount has been subscribed, and said amount, not less than 10 per cent; paid in, in cash, in good faith as before provided; and that it is intended in good faith to construct or to maintain and operate the line of pipe mentioned in such articles of association, and that such corporation was not projected or formed with the intent or for the purpose of selling or conveying its franchise to any person or corporation, nor with the intent or for the purpose of injuring any person or corporation, nor for any fraudulent purpose; which affidavit shall be attached to and shall be taken and held to be a part of such articles of association, such articles of association shall be filed and recorded in the office of the secretary of state, and thereupon the persons who have subscribed such articles, and all other persons who shall from time to time thereafter subscribe to or become the holders of the capital stock of said corporation, in the manner to be prescribed in its by-laws, shall be a body corporate, by the name specified in such articles, and shall be capable of suing and being sued, and may have a common seal, and may make and alter the same at pleasure, and be capable in law of purchasing, holding, and conveying any real and personal property whatever necessary for the construction, maintenance and operation of said pipe line, and for the erection of all necessary buildings, machinery, yards, tanks, and appurtenances for the use of the same.

HISTORY: How. 3724;—CL 1897, 8481;—CL 1915, 8587;—Am. 1929, p. 200, Act 83, Eff. Aug. 28;—CL 1929, 11604;—CL 1948, 483.201.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

This act appeared in Ch. 163 of CL 1915. Corporations organized under that chapter were specifically excepted from the provisions of Act 84 of 1921, except as otherwise therein provided, see Sec. 8 of Ch. 1 of Pt. 1, being CL 1929, 9950. See also Compilers' § 450.3, on exemption from corporation code.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

PUBLIC UTILITIES SECURITIES: Approval by commission, see Compilers' §§ 480.301 to 480.303.

Fees, see Compilers' § 460.61.

SALE OF PROPERTY AND FRANCHISES: See Act 112 of 1889, being Compilers' §§ 450.631 and 450.632.

REPORTS: See Compilers' § 450.82.

EXAMINATION BY ATTORNEY GENERAL: See Compilers' § 450.525.

CHANGE IN NAME: See Compilers' § 450.1 et seq.

483.202 Certified copy of articles as evidence.

Sec. 2. A copy of any articles of association filed and recorded in pursuance of this act, or the record thereof, containing a copy of the affidavit made a part thereof, and duly certified to be a true copy by the secretary of state, or his deputy, shall in all courts and places in this state be prima facie evidence of the incorporation of such company, and of the facts therein stated.

HISTORY: How. 3725;—CL 1897, 8482;—CL 1915, 8588;—CL 1929, 11605;—CL 1948, 483.202.

483.203 Subscription to capital stock.

Sec. 3. When such articles of association and affidavit shall have been filed and recorded in the office of the secretary of state, the directors named in such articles of association may, in case the whole of the capital stock is not before subscribed, open books of subscription to fill up the capital stock of the company, in such places and after giving such notices as they may deem expedient, and may continue to receive subscriptions until the whole capital stock is subscribed at the time of such subscribing; and every subscriber shall pay to the directors at least 10 per cent in money on the amount of the stock subscribed by him, and no subscription shall be received, or taken, or held as a valid subscription, unless such payment is made at the time of subscribing.

HISTORY: How. 3726;—CL 1897, 6483;—CL 1915, 8589;—CL 1929, 11606;—CL 1948, 483.203.

483.204 Directors; powers, election, term, quorum, vacancy.

Sec. 4. All the corporate powers of any such corporation shall be and are hereby vested in the board of directors, except as may be herein otherwise provided. Such board of directors of every corporation formed under this act shall manage its affairs, and such directors shall be chosen annually by the stockholders voting at such election, and in the election of directors, and other meetings of stockholders, each stockholder shall be entitled to cast, in person or by proxy, 1 vote upon each share of stock owned or held by him for 10 days previous to such election or meeting, and a majority of all the votes cast shall be requisite to an election, or for the determination of any question voted upon. A majority of the board of directors shall constitute a quorum for the transaction of business by the board of directors. In case of any vacancy in the board of directors, such vacancy may be filled by the remaining directors until the next regular election of directors. The inspectors of the first election shall be appointed by the directors named in the articles of association, and thereafter in such manner as may be prescribed by the by-laws of the corporation.

HISTORY: How. 3727;—CL 1897, 6484;—CL 1915, 8590;—CL 1929, 11607;—CL 1948, 483.204.

483.205 Annual meeting.

Sec. 5. The time and place of holding the annual election for directors shall be fixed by the by-laws of such corporation, and shall be not more than 15 months after the time of filing the articles of association, and all annual meetings for the election of directors shall thereafter be held in each year on the day and at the place so designated.

HISTORY: How. 3728;—CL 1897, 6485;—CL 1915, 8591;—CL 1929, 11608;—CL 1948, 483.205.

483.206 Officers and agents; appointment.

Sec. 6. The directors shall appoint 1 of their number president; they may also appoint a treasurer and secretary, and such other officers and agents as shall be prescribed by the by-laws, who shall hold their offices at the pleasure of the directors, unless otherwise provided by the by-laws.

HISTORY: How. 3729;—CL 1897, 6486;—CL 1915, 8592;—CL 1929, 11609;—CL 1948, 483.206.

483.207 Payment of subscription; forfeiture.

Sec. 7. The directors may require the subscribers to the capital stock of the company, to pay the amount by them respectively subscribed in such manner and in such installments as they may deem proper. If any stockholder shall neglect to pay any installment, as required by resolution of the board of directors, the said board shall be authorized, by resolution, to declare his stock and all previous payments thereon forfeited to the use of the corporation, but they shall not declare it so forfeited until they have caused a notice in writing, or partly written and partly printed, to be served on him personally, or by depositing the same in the postoffice, with the postage prepaid thereon, and properly directed to him at the postoffice nearest his place of residence, which notice shall state that he is required to make such payments at the time and

place specified in said notice, and that if he fails to make the same, his stock and all previous payments thereon will be forfeited to the use of such corporation, which notice shall be so served at least 60 days previous to the day on which such payment is required to be made; or the directors may sue for and collect the same.

HISTORY: How. 3730;—CL 1897, 6487;—CL 1915, 8593;—CL 1929, 11610;—CL 1948, 483.207.

483.208 Shares of stock; status as personalty, transfer, purchase by company; assumption of liabilities.

Sec. 8. The stock of every corporation formed under this act shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of such corporation, but no shares shall be transferable by sale until all previous calls thereon shall have been fully paid in, and it shall not be lawful for such corporation to use any of its funds in the purchase of any stock in its own, or in any other corporation, nor shall such corporation in any manner become liable for the debt or miscarriage of any other person or persons or corporations.

HISTORY: How. 3731;—CL 1897, 6488;—CL 1915, 8594;—CL 1929, 11611;—CL 1948, 483.208.

UNIFORM STOCK TRANSFER ACT: See Compilers' § 440.8301 et seq.

483.209 Shares of stock; increase, procedure.

Sec. 9. In case the capital stock of any company formed under this act is found to be insufficient for constructing and operating its pipe line, such company may, with the concurrence of 2/3 in amount of all its stockholders, and upon [an] order of the circuit court for the county in which the general office of said company is located, to be granted in the discretion of said court, upon the petition of the directors; and notice of such application, of not less than 15 days, upon all stockholders appearing upon the stock book of said corporation, who shall not have consented to such increase, in such manner as said court shall direct, increase its capital stock from time to time, to any amount required for the purposes aforesaid, and in all such cases the petition to the court shall be verified and shall show the amount of the proposed increase and the reasons therefor, that 2/3 of all the stockholders of such corporation entitled to vote at such meeting, in person or by proxy, had voted for such increase at a meeting of the stockholders, called by a resolution of the directors for that purpose, and notice thereof served upon each stockholder thereof, at least 20 days previous to the time of such meeting, in the manner provided in the seventh section of this act for serving notices, and that such notice contained the time, place, and object of such meeting, and the amount to which such capital was proposed to be increased, and that the amount of the increased prayed for in the petition is not for a greater amount than that specified in the notices; and thereupon, upon the hearing, the court, or the judge thereof at chambers, may make an order increasing the capital stock of such company in the amount prayed for in such petition, or in such lesser sum or amount as the court may fix, and upon the filing and entry of such amount mentioned therein; and the directors may proceed to take and receive subscriptions therefor, in the manner provided in section 3 of this act, and upon payment of the percentage therein provided, upon subscribing thereto.

HISTORY: How. 3732;—CL 1897, 6489;—CL 1915, 8595;—CL 1929, 11612;—CL 1948, 483.209.

SECURITIES OF PUBLIC UTILITIES: Approval of commission, see Compilers' §§ 460.301 to 460.303.

483.210 Stockholder's liability.

Sec. 10. Each stockholder of any company organized under this act, shall be individually liable to the creditors of such company to an amount unpaid on the capital stock held by him, for all debts and liabilities of such corporation, until the whole amount of the capital stock so held by him shall have been paid to the company; and all the stockholders of any such company shall be jointly and severally liable for the debts due or owing to any of its laborers and servants, other than contractors, for personal services for such company, but shall not be liable to an action therefor, before an exe-

cution shall be returned unsatisfied in whole or in part, against the corporation, and the amount due on such execution shall be the amount recovered with costs against such stockholder, by such laborer or servant.

HISTORY: How. 3733;—CL 1897, 6490;—CL 1915, 8596;—CL 1929, 11613;—CL 1948, 483.210.
CONTRIBUTION: See Compilers' § 450.519.

483.211 Holder of stock in fiduciary capacity or as security; pledgor; liability.

Sec. 11. No person holding stock in any such company as executor, administrator, guardian or trustee, and no person holding such stock as collateral security shall be personally subject to any liability as stockholder of such company; but the person pledging such stock shall be considered as holding the same, and shall be held liable as a stockholder accordingly, and the estates and funds in the hands of such executor, administrator, guardian, or trustee shall be liable in like manner and to the same extent as the testator, or intestate, or the ward or person interested in such trust fund would have been if he had been living and competent to act and held the stock in his own name.

HISTORY: How. 3734;—CL 1897, 6491;—CL 1915, 8597;—CL 1929, 11614;—CL 1948, 483.211.

483.212 Labor lien; enforcement.

Sec. 12. As often as any contractor for the construction of any line of pipes which is in progress of construction shall be indebted to any laborer for 30 or any less number of days' labor performed in constructing such pipe line, such laborer may give notice of such indebtedness to said company in the manner herein provided, and said company shall thereupon become liable to pay such laborer the amount so due him for such labor, and an action may be maintained against such company therefor; such notice shall be given by such laborer to said company within 20 days after the performance of the number of days' labor for which claim is made. Such notice shall be in writing, and shall state the months and particular days of the month upon which labor was performed, and remains unpaid for, the price per day, the amount due, with the name of the contractor from whom due, the section or portion of the pipe line upon which the same was performed, and shall be signed by such laborer or his attorney, to which notice an affidavit shall be annexed, made by such laborer or his attorney, to the effect, that to the knowledge of the person making the affidavit, the statements contained in such notice are in all respects true. Such notice so verified may be served upon the president, secretary, or any director of the company, or upon any agent or superintendent employed by said company having charge of the section or portion of the pipe line on which such labor was performed, either personally or by leaving the same at the office or usual place of business of any such officer or employe, with some person of suitable age, but no action shall be maintained against such company unless the same is commenced after 10 days and within 6 months after giving the notice above provided.

HISTORY: How. 3735;—CL 1897, 6492;—CL 1915, 8598;—CL 1929, 11615;—CL 1948, 483.212.

483.213 Staking of pipe line; survey and map, filing.

Sec. 13. Every company organized under the provisions of this act, shall, before commencing the constructing of their pipe line in any county, plainly and distinctly mark and designate the line adopted and located by them by a line of stakes, not more than 20 rods apart from each other, so that such line can be definitely known and ascertained in all places. Such stakes shall be numbered by consecutive numbers, and shall be at equal distances from each other; and such company shall also, before commencing work on such line, make a map and survey of the route so located and staked out, and shall indicate thereon plainly the points where such route crosses the lines of each parcel of land to which they have not acquired title by agreement, and shall

cause such map and survey to be certified by the president and engineer of such company, and filed in the office of the register of deeds of the county into or through which the line so located and mapped passes.

HISTORY: How. 3736;—CL 1897, 6493;—CL 1915, 8500;—CL 1929, 11616;—CL 1948, 483.213.

483.214 Pipe line in highway; consent.

Sec. 14. No pipe line shall be constructed across, along or upon any public highway without the consent of the highway commissioner of the township in which such highway is located, upon such terms as may be agreed upon with such commissioner, or upon the order of the circuit court for the county in which such highway is located, made upon petition and notice to the commissioner of highways of such town, according to the practice or order of said court, or an order to show cause, and in such manner and upon such terms as shall be ordered by said court.

HISTORY: How. 3737;—CL 1897, 6494;—CL 1915, 8600;—CL 1929, 11617;—CL 1948, 483.214.

USE OF HIGHWAYS: See Compilers' §§ 400.601 to 400.605.

483.215 Pipe line in village or city; consent; bond; suit.

Sec. 15. No pipe line shall be constructed into or through any incorporated village or city in this state unless the same be sanctioned by 2/3 of the common council of such city, or trustees of such village, by a resolution adopted at a regular meeting of such common council or board of trustees, which resolution shall prescribe the route, manner of construction and the terms upon which consent is granted; and nothing in this or the preceding section shall be construed or held to confer any other right than the relinquishment of the public right and the consent of the people to the construction of such pipe line, and shall not affect any private right. No pavement shall be removed in any of the cities of this state for the laying of pipes, under the provisions of this act, unless the same is done under the direction of the common council of the cities through which the pipes are to be laid, nor until any of the pipe line companies incorporated under the provisions of this act, shall give a bond in such sum as the common council may require for the replacing of any pavements that shall have been removed for the laying of the pipes. In case any pipes shall have been removed and not properly relaid, the common council may bring suit in any court of record of this state, for the cost of relaying any of such pavement against any such pipe line companies.

HISTORY: How. 3738;—CL 1897, 6495;—CL 1915, 8601;—CL 1929, 11618;—CL 1948, 483.215.

483.216 Public lands; grant.

Sec. 16. If any such company shall, for its purposes aforesaid, require any land belonging to the state, or to any city, village, county, or town, the commissioner of the state land office, and the city, village, and county, or town officers respectively having charge of the said lands, may grant such to such company for a compensation, which shall be agreed upon between them.

HISTORY: How. 3739;—CL 1897, 6496;—CL 1915, 8602;—CL 1929, 11619;—CL 1948, 483.216.

COMMISSIONER OF STATE LAND OFFICE: Abolished; powers and duties transferred to the public domain commission, which in turn has been abolished and superseded by the conservation department, see Compilers' §§ 322.221 and 299.2, respectively.

483.217 General powers and restrictions.

Sec. 17. Every corporation formed under this act shall possess the general powers and be subject to the liabilities and restrictions following—that is to say:

Examination and survey.

First, To cause such examinations and surveys of its proposed line of pipe to be made as may be necessary to the selection of the most advantageous route, and for such purpose by its officers or agents and servants may enter upon the lands and waters of any person, upon through or across which such company can construct their line of pipe by the provisions of this act: Subject, however, To liability for all actual damage which shall be done thereto;

Property; voluntary grants, use.

Second, To take and hold such voluntary grants of real estate and other property as shall be made to it, to aid in the construction, maintenance, operating, and accommodations of its pipe line; but the real estate acquired by purchase or voluntary grant shall be held and used for the purposes of such grant only;

Same; purchase.

Third, To purchase and hold all such real estate and other property as may be necessary for the purposes of its incorporation;

Laying out of route; additional width.

Fourth, To lay out its pipe line route, not exceeding 12 feet in width, except that at the terminations of such pipe line, and at all receiving and discharging points, and at all places where machinery may properly or necessarily be set up for the operating of such pipe line, such company may purchase and hold such additional width, and for such length as may be proper;

Conveyance of brine.

Fifth, To take and convey through pipes, brine, by any force, power, or mechanical agency, and to erect and maintain all necessary and convenient tanks, buildings, stations, fixtures, and machinery for the purposes of their incorporation;

Same; compensation.

Sixth, To regulate the time and manner in which brine shall be transported over their pipe line and the compensation to be paid therefor, but such compensation shall not exceed the sum or be above the rate of 25 cents per 100 miles, for the transportation of 42 gallons of any brine transported or conveyed, which shall be reckoned and adjusted upon the quantity or number of gallons delivered by such company at the point to which such company shall have undertaken to deliver the same;

Use; storage; rates; rules; penalty.

Seventh, Any pipe line constructed by any company formed under this act shall be open for transportation to the public use, and all persons desiring to transport brine through such line shall have the absolute right to such transportation in the order of application therefor, on complying with the general requirements of such company, as to delivery for and payment of such transportation; and no application for such transportation shall be a valid application beyond or for a greater quantity of brine than such applicant shall then own and have ready for delivery for transportation to such companies; and every such company shall provide suitable and proper and necessary receptacles for receiving all such brine for transportation, and for storage at the places of delivery, until the same can reasonably be moved by the consignee, and shall be liable as common carriers therefor, from the time the same is delivered for transportation until a reasonable time after the same has been transported to the place of consignment, and ready for delivery to the consignee, which time shall be fixed by general regulation by such company, and shall not be less than 2 days, from and after the time the same shall be ready for delivery to such consignee, and notice thereof given to such consignee; and all rates and charges of every description, for or on account of, or in any manner connected with the transportation of any brine, shall be fixed by such company by general rules and regulations, which shall be applicable to all parties who shall transport any products through such pipe line, or deliver or contract to deliver brine for transportation. Such rules and regulations shall be in writing or printed and exposed to public view, and at all times open to public examination. The intention of this act being that absolute equality shall be had by and between all parties transporting any brine by any pipe line company, and any officer, agent, or manager of any pipe line company organized under this act, who shall knowingly neglect or refuse to transport any brine delivered for transportation, according to such general rules and

regulations, or to accept and allow a delivery thereof, in the order of application, as above provided, or who shall charge for such receiving, transportation, and delivery more than the sum fixed by such general rules and regulations, or shall accept or agree to accept less than the amount fixed in such general rules and regulations, or shall allow or pay, or suffer to be allowed or paid, or repaid, any drawback or rebate or allowance in any manner, so that any person or party shall, by any device, have or procure any transportation of brine over such pipe line at any less cost, rate, expense, or charges than is expressed in such general rules and regulations, shall be guilty of a misdemeanor, and on conviction by any court of competent jurisdiction, shall be punished by a fine not exceeding 1,000 dollars, or imprisonment not exceeding 6 months, or by both fine and imprisonment, in the discretion of the court.

HISTORY: How. 3740;—CL 1897, 6497;—CL 1915, 8603;—CL 1929, 11620;—CL 1948, 483.217.

483.218 Construction restrictions.

Sec. 18. No company formed under the provisions of this act shall locate or construct any line of pipe or pipe line through or under any building, door-yard, lawn, garden or orchard, except by the consent of the owner thereof in writing, duly acknowledged before some officer duly authorized to make acknowledgment of deeds; and no pipe line shall be constructed through any cemetery or burial ground, nor within 100 feet of any building except that in cases where such line is authorized by public officers to be laid across or upon any public highway, or where the same is laid across or upon any railroad or plank road, the above restrictions shall not be applicable, and in all cases hereby excepted; and such pipe line shall be located with all reasonable care and prudence, so as to avoid danger from bursting the pipes.

HISTORY: How. 3741;—CL 1897, 6498;—CL 1915, 8604;—CL 1929, 11621;—CL 1948, 483.218.

483.219 Fencing of pipe lines; liability.

Sec. 19. It shall not be necessary for any pipe line company to fence the lands acquired by them for the purposes of their incorporation. But if such lands be not enclosed by a substantial fence, the owner or owners of the adjoining lands, from whom such lands were obtained, their heirs or assigns, may occupy and use such lands in any manner not injurious to the interests of such company, and shall not be liable to such company therefor, or for any trespass upon such lands, except for willful or negligent injuries to such company's pipes, fixtures, machinery, or any personal property thereon; and in case such company shall keep such lands substantially enclosed, they shall construct and provide all suitable and necessary crossings, with gates for the use and convenience of any owners of lands adjoining the portions of lands of such company so enclosed, and no claim shall be made by such company against any owner of adjoining lands, to make or contribute to the making or maintaining of any division fence between such adjoining lands and the lands of such company. In all cases where such company shall neglect to keep and maintain substantial fences along their lands, the owners of adjoining lands may construct and maintain all farm or division fences, and all line fences crossed by such pipe line, in the same manner as though such company had not acquired such lands for such pipe line; and such company shall be liable for all injuries to such fences caused or done by any person acting for any officer or agent of such company, or by any laborer in their employ or in the employ of a contractor under such company.

HISTORY: How. 3742;—CL 1897, 6499;—CL 1915, 8605;—CL 1929, 11622;—CL 1948, 483.219.

483.220 Injury to company property; penalty.

Sec. 20. Any person who shall willfully injure or destroy any pipe or other property

of such company, shall be guilty of a misdemeanor, and on conviction thereof may be punished by a fine, not exceeding 1,000 dollars, or by imprisonment not exceeding 6 months, or by both such fine and imprisonment, in the discretion of the court.

HISTORY: How. 3743;—CL 1897, 6500;—CL 1915, 8606;—CL 1929, 11623;—CL 1948, 483.220.

483.221 Borrowing power; bonds and mortgages, issuance.

Sec. 21. Any company formed under this act may, from time to time borrow such sums of money as may be necessary for completing and finishing or operating their pipe line, and may issue and dispose of their bonds, for any amount so borrowed, and may secure payment thereof by a mortgage on their corporate real, and personal property and franchises.

HISTORY: How. 3744;—CL 1897, 6501;—CL 1915, 8607;—CL 1929, 11624;—CL 1948, 483.221.

PUBLIC UTILITIES SECURITIES: Approval by commission, see Compilers' §§ 480.301 to 480.303.

Fee, see Compilers' § 480.61.

483.222 Annual report; contents.

Sec. 22. Every company organized under this act shall, on or before the first day of May in each year, make and file with the auditor general a report, which shall be verified by the president or vice-president and secretary of such company, of its operations for the year ending on the last day of December next previous thereto and shall state:

First, The capital stock and the amount paid in;

Second, The amount expended for the purchase of lands or for other property;

Third, The amount and nature of its indebtedness, and the amount due to the company;

Fourth, The amount received for the transportation of brine, and from all other sources, including receipts for real estate or property sold;

Fifth, The amount paid for operating expenses and ordinary repairs and construction;

Sixth, The number and amount of dividends, and when paid;

Seventh, The number of buildings, engines and pumps, and their character;

Eighth, The number of miles of pipe completed and in operation, and between what points completed, and between what points operated;

Ninth, The quantity of brine transported, specifying such quantity in gallons of brine, and in barrels of salt;

Tenth, Such other matters as the auditor general may require.

HISTORY: How. 3745;—CL 1897, 6502;—CL 1915, 8608;—CL 1929, 11625;—CL 1948, 483.222.

REPORTS: See Compilers' § 450.82.

483.223 Annual report; failure to make or falsification; penalty, forfeiture of franchises.

Sec. 23. Any such company which shall neglect to make such report, or which shall willfully make a false report, shall be liable to a penalty of 500 dollars; and it shall be the duty of the auditor general, and he is hereby required, in case any such corporation incurs the penalty aforesaid, to forthwith issue his warrant for the collection of the same in the same manner, and to levy and collect the same in all respects as herein provided for the collection of taxes against such corporation; and the collection of such penalty shall not absolve the corporation from the obligation to make such report, but it shall still be its duty to make the same, and a willful neglect or refusal to do so may be cause for a forfeiture of the corporate franchises.

HISTORY: How. 3746;—CL 1897, 6503;—CL 1915, 8609;—CL 1929, 11626;—CL 1948, 483.223.

483.224 Annual tax.

Sec. 24. Every company organized under this act shall, on or before the first Monday of July in each year, pay to the state treasurer, on the statement of the auditor general, an annual tax of 1 per cent on the whole amount of capital paid in upon the capital stock of said company, which tax shall be estimated upon the last preceding report of said company.

HISTORY: How. 3747;—CL 1897, 6504;—CL 1915, 8610;—CL 1929, 11627;—CL 1948, 483.224.

TAXATION: See Compilers' § 207.1 et seq. and, as to collection, Compilers' § 207.441 et seq.

483.225 State's lien for taxes and penalties.

Sec. 25. This state shall have a lien upon all lines of pipe therein, and their appurtenances and stock therein, for all penalties, taxes and dues which may accrue to the state from the companies owning or operating the same, which lien of the state shall take precedence of all demands, judgments or decrees against such companies.

HISTORY: How. 3748;—CL 1897, 6505;—CL 1915, 8611;—CL 1929, 11628;—CL 1948, 483.225.

483.226 Fraudulent securities; penalty for issuance.

Sec. 26. If any president, secretary, or other officer of any pipe line company within this state, shall willfully, and with intent to defraud said corporation, or any other person, make, sign, issue, sell or offer to sell, any false or fraudulent stock, or other evidence of debt of said corporation, he shall be deemed guilty of felony, and shall be punished by imprisonment in the state prison, at hard labor, for a term not exceeding 10 years.

HISTORY: How. 3749;—CL 1897, 6506;—CL 1915, 8612;—CL 1929, 11629;—CL 1948, 483.226.

SECURITIES OF PUBLIC UTILITIES: Approval of commission, see Compilers' §§ 460.301 to 460.303.

FRAUDULENT SECURITIES: Penalty for issuance, similar provisions: corporations, see Compilers' § 750.271; officers of railroad corporations, see Compilers' § 467.9.

483.227 Commodity; issuance of receipt, certificate or order.

Sec. 27. No receipt, certificate, voucher or order of any kind shall be made, accepted or issued by any corporation formed under this act, for any commodity unless such commodity represented by such receipt, certificate, voucher or order is actually in possession of said corporation at the time of such making, issuing or acceptance. Whenever any such corporation shall have parted with the possession of any commodity, and received therefor any order, voucher, receipt or certificate, such order, voucher, receipt or certificate shall not be issued or used again, but shall be canceled, and filed and preserved by such corporation, and a record thereof be kept by the secretary of such corporation.

HISTORY: How. 3750;—CL 1897, 6507;—CL 1915, 8613;—CL 1929, 11630;—CL 1948, 483.227.

ISSUANCE FOR COMMODITY NOT RECEIVED: Provisions as to uniform bills of lading, see Compilers' § 482.44; railroads, see Compilers' § 466.20; warehouse receipts, see Compilers' §§ 443.50 and 444.105; forwarding merchants, see Compilers' § 750.278.

483.228 Amendments.

Sec. 28. No corporation formed under this act shall be held or deemed to have acquired any vested rights thereunder, as against the people of this state, but all companies so formed shall be subject to any and all changes made by any amendment hereto.

HISTORY: How. 3751;—CL 1897, 6508;—CL 1915, 8614;—CL 1929, 11631;—CL 1948, 483.228.

CHAPTER 484. TELEPHONE, TELEGRAPH AND RADIO

TELEPHONE AND MESSENGER SERVICE COMPANIES
Act 129 of 1883

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- 484.301 Radio broadcasting; regulation of interference.
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- 484.304 Radio broadcasting; receiving instruments.
- 484.305 Radio broadcasting; purpose of act.

ACTIONS FOR DEFAMATORY STATEMENTS
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- 484.331 Actions for damages against owners, operators or licensees of radio broadcasting stations for defamatory statements.
- 484.332 Defamatory statement by or on behalf of candidate for public office; liability.

Act 129, 1883, p. 131; Imd. Eff. May 31.

AN ACT for the organization of telephone and messenger service companies.

The People of the State of Michigan enact:

484.1 Incorporators; articles, contents, recording, filing.

Sec. 1. Any 3 or more persons may organize a corporation under this act. The persons associating for such organization shall make, subscribe and acknowledge, before any officer competent to take such acknowledgment, articles which shall contain:

First, The name of the corporation to be organized;

Second, The place where the principal business office in this state is to be located;

Third, The term of the existence of such corporation, which shall not exceed 30 years;

Fourth, The amount of authorized capital stock, the number of shares into which the same shall be divided and the class and par value of the shares; the amount of the capital stock subscribed at the time of the execution of such articles, and the amount paid thereon; and a statement of all or any of the designations and the powers, preferences and rights and the qualifications, limitations or restrictions thereof;

Fifth, The number of directors, which shall be not less than 3, to manage the affairs of the corporation and the names and addresses of the first board of directors;

Sixth, The names of the persons to act as the first directors. Each subscriber shall set opposite his name, his place of residence and the number of shares of stock by him subscribed. Such articles shall be recorded in the office of the clerk of the county in which the principal business office of such corporation is to be located, and a copy thereof filed in the office of the secretary of state, and thereupon such corporation shall be deemed fully organized.

HISTORY: How. 3718a; — CL 1897, 6688; — CL 1915, 8788; — CL 1929, 11690; — CL 1948, 484.1; — Am. 1959, p. 274. Act 194. Eff. Mar. 19, 1960.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

ISSUANCE OF STOCK: See Compilers' §§ 460.301 to 460.303.

EXAMINATION BY ATTORNEY GENERAL: See Compilers' § 450.525.

FRANCHISE FOR USE OF HIGHWAYS: See Compilers' §§ 460.601 to 460.605.

OFFENSES: See Compilers' §§ 750.539 and 750.540.

TELEPHONE COMPANIES: This act comprised Ch. 169 of CL 1915. Corporations organized under that chapter were specifically excepted from the provisions of Act 84 of 1921, except as otherwise therein provided, see Sec. 8 of Ch. 1 of Pt. 1, being CL 1929, 9450. See also Compilers' § 450.3 as to exemption from corporation code.

COMMON CARRIERS: Telephone companies are common carriers, see Compilers' § 484.101.

484.2 Directors; powers, election, term, qualifications.

Sec. 2. The stock, property, and affairs of every corporation organized hereunder shall be managed by its directors. The directors shall be chosen by the stockholders, at such time and place and for such term as shall be provided in its articles or bylaws, and shall continue in office for such term and until others shall be chosen in their stead. In case the articles or bylaws make no provision for a term of office of a director, such term shall be for 1 year and until a successor is chosen. If the articles or bylaws provide for a term of office for longer than 1 year, they shall provide that at least 1/3 as near as may be of the members of the board shall be elected each year. No person except a stockholder shall be a director.

HISTORY: How. 3718b; — CL 1897, 6689; — CL 1915, 8789; — CL 1929, 11691; — CL 1948, 484.2; — Am. 1957, p. 64, Act 60, Eff. Sep. 27.

484.3 Shares of stock; par value, status as personality.

Sec. 3. The stock of every such corporation shall be divided into shares of not less than 10 dollars nor more than 100 dollars each, and shall be deemed personal property.

HISTORY: How. 3718c;—Am. 1897, p. 156, Act 135, Eff. Aug. 30;—CL 1897, 6690;—CL 1915, 8790;—CL 1929, 11692;—CL 1948, 484.3.
UNIFORM STOCK TRANSFER ACT: See Compilers' § 440.8301 et seq.

484.4 Construction of line; restrictions; condemnation; purchase of stock; holding of realty.

Sec. 4. Every such corporation shall have power to construct and maintain lines of wire or other material, for use in the transmission of telephonic messages along, over, across, or under any public places, streets and highways, and across or under any of the waters in this state, with all necessary erections and fixtures therefor: Provided, That the same shall not injuriously interfere with other public uses of the said places, streets and highways, or injure any trees located along the line of such streets or highways nor shall the same interfere with the navigation of said waters, or the running of railway trains; to construct, provide and furnish instruments, devices, and facilities for use in the transmission of such messages, and to construct, maintain and operate telephone exchanges and stations, and generally to conduct and carry on the business of providing and supervising communication by telephone, and also the business of furnishing messenger service in cities and towns: Provided further, That whenever any corporation organized under the provisions of this act for the purpose of constructing any public telephone line in the upper peninsula of this state finds it impracticable to construct its said lines upon any of the public places, streets and highways and across or under any waters in this state, on account of which it may desire to acquire any right of way for its said lines over, through, under and across any lands needed therefor, and is unable to agree with the owner of such lands for the purchase of said right of way, such corporation shall have the right to acquire the title to said right of way, outside of the corporate limits of cities and villages, upon making just compensation to the owner of such lands, in the same manner and by the same proceedings as provided for in chapter 164 of the Compiled Laws of 1897 of this state for the condemnation of lands for right of way by railway companies: Provided further, that whenever the owner of any lands which are not traversed by any railway objects to having any telephone company run its line of right of way across his lands at any point, then the said telephone company shall confine its line of right of way to established subdivision lines. Whenever the owner of any lands which are traversed by any railway shall object to having any telephone company run its line of right of way across his lands at any point then the said telephone company shall confine its line of right of way to established subdivision lines or immediately adjoining and along the right of way of said railway. And it shall be lawful for any such corporation to purchase and hold a portion of the stock of any corporation owning or controlling by patent, or otherwise, the use of any instrument or device necessary or convenient for use, in the transmission or reception of telephonic messages, and to purchase and hold all real property necessary to carry out the purposes of its organization.

HISTORY: How. 3718d;—CL 1897, 6691;—Am. 1899, p. 18, Act 16, Imd. Eff. March 9;—CL 1915, 8791;—CL 1929, 11693;—CL 1948, 484.4.

This section is largely superseded by Sec. 4 of Ch. XI of Act 283 of 1909, being Compilers' § 231.4.

NOTE: Ch. 164 of CL 1897, above referred to, is Compilers' §§ 463.1 to 467.103.

Sec. 5.

HISTORY: How. 2718e;—CL 1897, 6692;—Rep. 1915, p. 480, Act 314, Eff. Jan. 1, 1916. This section dealt with service of process on telephone companies.

484.6 Injury to property; penalty.

Sec. 6. Any person who shall unlawfully injure or molest any line of wire or property of any such corporation, appurtenant thereto, or any of the instruments or apparatus

of such corporation, shall on conviction thereof, be deemed guilty of a misdemeanor, and be punished by a fine not exceeding 100 dollars, or imprisonment in the county jail not exceeding 3 months, or both, in the discretion of the court in which such conviction shall be had.

HISTORY: How. 3718f;—CL 1897, 6693;—CL 1915, 8792;—CL 1929, 11694;—CL 1948, 484.6.

484.7 Stockholder's liability for corporate debts.

Sec. 7. The stockholders of all corporations organized under this act shall be individually liable for (all labor performed, and materials furnished for) said corporation during the time they were stockholders as aforesaid which said liability may be enforced against any stockholder, founded on this statute, at any time after an execution shall be returned not satisfied against such company: Provided, always, That if any stockholder shall be compelled by any such action to pay such debts of any creditor, or any part thereof, he shall have the right to call upon all [the] stockholders to contribute their part of the sum so paid by him as aforesaid, and may sue them jointly or severally, or any number of them, and recover in such action the ratable amount due from the person or persons so sued.

HISTORY: How. 3718g;—CL 1897, 6694;—CL 1915, 8793;—CL 1929, 11695;—CL 1948, 484.7.

484.8 Governing laws.

Sec. 8. Every corporation organized hereunder shall be subject to the provisions of chapter 130 of the Compiled Laws of 1871, so far as applicable, and of Act No. 168 of the session laws of 1881, approved May 26, 1881, entitled "An act to provide for the assessment of and taxation of telegraph and telephone lines within the state of Michigan and to repeal Act No. 77 of the session laws of 1879, approved May twentieth, 1879."

HISTORY: How. 3718h;—CL 1897, 6695;—CL 1915, 8794;—CL 1929, 11696;—CL 1948, 484.8.

NOTE: Ch. 130 of CL 1871, above referred to, contained the following provisions which have not been repealed or re-enacted: *Compiled* §§ 450.504 to 450.525.

Act 168 of 1881, above referred to, relative to assessment and taxation of telephone and telegraph lines, was superseded by *Compiled* §§ 207.1 to 207.21.

484.9 Lines in lower peninsula; location.

Sec. 9. Whenever any corporation organized under the provisions of this act shall desire to construct a line of public telephones in the lower peninsula of this state, the same shall in all cases, when not located upon the public places, streets and highways of the said lower peninsula, or within the corporate limits of cities and villages, be located along side of and adjacent to the railway right of way in cases where the railway right of way lies adjacent to the lands sought to be acquired.

HISTORY: Add. 1899, p. 134, Act 93, Imd. Eff. May 31;—CL 1915, 8795;—CL 1929, 11697;—CL 1948, 484.9.

484.10 Condemnation; procedure, restrictions.

Sec. 10. Whenever any such corporation shall desire to acquire a right of way over, through, under or across any lands which may be adjacent to the right of way of any railway operated by steam power, and is unable to agree with the owner or owners of such lands for the purchase of said right of way such corporation shall have the right to acquire the title of said right of way, outside the corporate limits of cities and villages, in the same manner and by the same proceedings as are provided for in chapter 164 of the Compiled Laws of 1897 of this state, providing for the condemnation of lands for right of way by railroad companies: Provided, That the owner or owners of the lands over which any such right of way shall be acquired shall have the right to occupy and use the same, but such occupancy and use shall not be to the injury of the property of such corporation situated upon such right of way: Provided, The strip of land so condemned shall not exceed 10 feet in width, together with the right to set and maintain outside of the same guy posts and anchors reasonably requisite to the proper construction and maintenance of a pole line thereon: Provided further, however, That the right

to set guy posts and anchors outside such 10 foot strip shall be acquired in the manner hereinbefore described: Provided further, That the provisions of this act will not apply to such land located within 5 miles of the corporate limits of any city having a population of 250,000 or more.

HISTORY: Add. 1899, p. 134, Act 93, Imd. Eff. May 31;—CL 1915, 8796;—Am. 1923, p. 185, Act 125, Eff. Aug. 30;—CL 1929, 11698;—CL 1948, 484.10.

NOTE: Ch. 164 of CL 1897, above referred to, is Compilers' §§ 463.1 to 467.103.

DETROIT: In 1948 this was the only city in the state meeting the population requirement of the last proviso in the above section.

Act 72, 1883, p. 56; Eff. Sep. 8.

AN ACT relating to telephone companies, and to regulate the use and rental of telephones in this state.

The People of the State of Michigan enact:

484.51 Duty to serve; service to house of ill fame; forfeiture.

Sec. 1. It shall be the duty of every telephone company, or person, firm or corporation engaged in the business of leasing telephones to the public or supplying the public with telephones and telephonic service, or operating a telephone exchange, to receive and transmit without discrimination messages from and for any other company, person or persons, upon payment or tender of the usual or customary charges therefor, and upon payment or tender of the usual or customary charges, or usual or customary rental sum, it shall be the duty of every telephone company, or person or persons, firm or corporation engaged in the business of leasing telephones to the public, or supplying the public with telephones and telephonic service, or operating a telephone exchange, to furnish without unreasonable delay, without discrimination and without further or additional charge to the person, firm or corporation applying for the same, including all telegraph companies, a telephone or telephones, with all of the proper or necessary wires and fixtures, and the use of such telephones, wires and fixtures, as well as connection with the central office or telephone exchange, if desired, and shall connect the telephone of such person, firm or corporation with the telephone of any other person, firm or corporation having connection with the same, or a connecting exchange, or central office, whenever requested so to do, without regard to the character of the message to be transmitted, provided it is not obscene nor profane: Provided, That where party lines, so-called, are used by any telephone company in supplying telephonic service to its users, said company shall not supply such telephonic service to any house of ill repute, assignation house or any other like place under police surveillance, nor to any saloon, over the same party line which serves any private residence with telephone connections. Every company, person, firm or corporation neglecting or refusing to comply with any of the provisions of this act, shall forfeit all right to transact a telephone business in this state, and may be enjoined therefrom and from leasing telephones to the public, from supplying the public with telephones and telephonic service, and from operating a telephone exchange, by bill of complaint filed in any court of competent jurisdiction, by any person, firm or corporation injured, interested or denied any of the rights herein given; or such person, firm or corporation neglecting or refusing to comply with any of the provisions of this act, shall forfeit not less than 25 nor more than 100 dollars for each and every day such neglect or refusal shall continue, 1/2 to the use of the person, firm or corporation prosecuting therefor.

HISTORY: How. 3718;—CL 1897, 5270;—Am. 1909, p. 734, Act 301, Eff. Sept. 1;—CL 1915, 6688;—CL 1929, 11699;—CL 1948, 484.51.

Act 206, 1913, p. 412; Eff. Aug. 14.

AN ACT to declare telephone lines and telephone companies within the state of Michigan to be common carriers, to regulate the business of the same, provide for the consolidation thereof and prescribe a penalty for the violation of this act.

The People of the State of Michigan enact:

484.101 Telephone companies; status as common carriers; governing laws.

Sec. 1. All persons, corporations and associations operating telephone lines or exchanges doing a telephone business within the state of Michigan, are hereby declared to be common carriers; and all laws so far as applicable now in force or that may be hereafter enacted, regulating the transportation of persons or property by railroad companies within the state, shall apply with equal force and effect to telephone companies.

HISTORY: CL 1915, 6689;—CL 1929, 11700;—CL 1948, 484.101.
FORMER ACT: Act 138 of 1911.

484.102 Powers of Michigan railroad commission.

Sec. 2. The Michigan railroad commission, hereinafter styled "the commission," shall have the general control of all telephones, telephone lines and telephone companies within the state, and shall investigate any alleged neglect or violation of the laws of the state by any person, copartnership or corporation doing a telephone business within the state, or by the officers, agents or employees thereof.

HISTORY: CL 1915, 6690;—CL 1929, 11701;—CL 1948, 484.102.
RAILROAD COMMISSION: Abolished; powers and duties transferred to the public service commission, see Compilers' §§ 460:4 and 460:53.

484.103 Duty to serve; reasonable rates; commission powers.

Sec. 3. All persons, copartnerships or corporations doing a telephone business within this state are required to furnish reasonably adequate service and facilities for the use of their lines by the public. All charges made for any service rendered, furnished or performed, or to be rendered, furnished or performed within the state by any telephone company shall be reasonable and just, and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful; and the commission shall have power to make, alter, amend or abolish any rate or charge for any service, and may regulate by rules or orders any service or facility; and it shall likewise prescribe the standard of construction and equipment that shall be maintained by any person, copartnership or corporation maintaining a physical connection between the lines and facilities of any such person, copartnership or corporation, and the lines and facilities of any other person, copartnership or corporation.

HISTORY: CL 1915, 6691;—CL 1929, 11702;—CL 1948, 484.103.

484.104 Discrimination; rebates.

Sec. 4. If any telephone company doing business within this state shall directly or indirectly by any special rate, rebate, drawback or other device, charge, demand, collect or receive from any person or persons, copartnership or corporation a greater or less compensation for any service rendered, furnished or performed than it charges, demands, collects or receives from any other person or persons, copartnership or corporation for rendering, furnishing or performing for him or them a like contemporaneous service, such telephone company shall be guilty of unjust discrimination which is hereby prohibited and declared to be unlawful. It shall further be unlawful for any

person, copartnership or corporation directly or indirectly to ask, demand or accept any rebate, drawback or other device whereby he shall obtain telephone service for any less rate than that charged others in like circumstances.

HISTORY: CL 1915, 6692;—CL 1929, 11703;—CL 1948, 484.104.

484.105 Preferences.

Sec. 5. It shall be unlawful for any telephone corporation doing business within this state to make or give any preference or advantage to any person, copartnership, corporation or locality, or subject any person, copartnership, corporation or locality to any prejudice or disadvantage in any respect whatever.

HISTORY: CL 1915, 6693;—CL 1929, 11704;—CL 1948, 484.105.

484.106 Physical connection, joint rates; power of commission to order; division of cost.

Sec. 6. Whenever the commission, after a hearing had on its own motion or upon complaint of any party in interest, shall find that a physical connection can reasonably be made between the lines of 2 or more persons, copartnerships or corporations operating telephone lines, whose lines by such connection can be made to form a continuous line of communication, and that public convenience and necessity will be subserved thereby, or shall upon like motion or complaint find that 2 or more persons, copartnerships or corporations so operating telephone lines have failed to establish joint rates, tolls or charges for service by or over their said lines, the commission may by its order require that such physical connection be made, and may prescribe through lines and joint rates, tolls and charges to be made and to be used and observed in the future. If such persons, copartnerships or corporations so operating telephone lines and telephone facilities do not agree upon the division between them of the cost of installing of such physical connection or connections, or the division of any joint rate, tolls or charges established by the commission over such through line, the commission shall have authority, after hearing to establish such division.

HISTORY: CL 1915, 6694;—CL 1929, 11705;—CL 1948, 484.106.

484.107 Switching service.

Sec. 7. All persons, copartnerships or corporations required by an order of the commission to provide for the physical connection of telephone lines and facilities, and to establish joint rates, tolls and charges, are hereby required to perform switching service for the transmission of messages between the lines and facilities operated by such persons, copartnerships or corporations without favor or discrimination. The person, copartnership or corporation on whose line or lines messages originate shall be responsible to and make settlement with the person, copartnership or corporation owning or operating the terminal line or lines for the share of said person, copartnership or corporation in the joint toll rate or charge for such message.

HISTORY: CL 1915, 6695;—CL 1929, 11706;—CL 1948, 484.107.

484.108 Sale or lease of lines; procedure.

Sec. 8. In case any telephone company shall desire to sell or lease its lines or facilities, or any part thereof, to any other telephone company in this state, such sale or lease shall be lawful only upon compliance with the following conditions, that is to say: The company or companies desiring to sell or lease any telephone line, lines or facilities, shall join with the company or companies desiring to purchase or lease the same in a verified application to the commission, setting forth a general description of the property, together with the price and conditions under which it is proposed that the same shall be taken. The application shall be accompanied by an affidavit signed by duly authorized representatives of the applicants that the property is of at least the value at which it is to be taken. Upon the receipt of such application the commission may require a public hearing, which shall be held not less than 10 days from the date

of the filing of such application. If it appears to the commission, after examination of the application and affidavit or after hearing, that such sale, lease, merger or consolidation is in furtherance of public convenience and necessity, and that the property to be sold or leased is of at least the value at which it is to be taken, the commission shall by its order authorize such sale, lease, merger or consolidation, and by its order determine the terms and conditions upon which such sale, lease, merger or consolidation may be made, and the connections, joint rates, tolls and charges that shall be accorded by the purchasers or lessees of such property to any and all persons, copartnerships and corporations, owning or operating telephone lines and facilities over and through the lines and facilities of said consolidated property; all of which terms and conditions shall be binding upon the purchasers or lessees of said property until the further order of the commission.

HISTORY: CL 1915, 6696;—CL 1929, 11707;—CL 1948, 484.108;—Am. 1959, p. 116, Act 111, Eff. Mar. 19, 1960.
SALE OF PROPERTY AND FRANCHISES: See Act 112 of 1889, being Compilers' §§ 450.631 and 450.632.

484.109 Construction of lines; procedure.

Sec. 9. Any person, copartnership or corporation desiring to obtain a franchise to construct a telephone system in any municipality in the state of Michigan, shall apply to the commission for a certificate of public convenience and necessity, and the commission may grant or withhold said certificate after a public hearing and investigation upon the merits of the application in the manner provided herein for holding of public hearings and investigations on complaint, and no such person, copartnership or corporation shall be granted a franchise in any municipality in the state of Michigan to construct a telephone system until they have received a certificate of public convenience and necessity herein provided for. Every application under this section shall be in substantial compliance with a form to be furnished by the commission; it shall be accompanied by a map or plat showing the proposed line or lines which it is desired to construct and the line or lines of any person, copartnership or corporation serving the same territory. Such application shall likewise be accompanied by a schedule of the rates, tolls, rents and charges which it is proposed to charge for service in the event of the construction of said line or lines. In the granting of any certificate of public convenience and necessity under the provisions of this section, the commission shall fix the rates, tolls, rentals and charges to be imposed in the event of the construction of such telephone line or lines, which shall continue to be the lawful rates, tolls, rentals and charges of such person, copartnership or corporation until changed under and by virtue of the provisions of this act.

HISTORY: CL 1915, 6697;—CL 1929, 11708;—CL 1948, 484.109.

484.110 Increase of rates; application, finding, notice, proof of publication.

Sec. 10. No person, copartnership or corporation, owning telephone lines and facilities and rendering telephone service within this state shall increase any rate, toll, rental or charge, or so alter any classification, contract, practice, rule or regulation as to result in any increase in any rate, toll, rental or charge under any circumstance whatsoever, except upon an application to the commission, and a finding by the commission after public hearing that such increase is justified. The commission shall have the power to require the applicant to give such notice as it deems reasonable and necessary under the circumstances, except in those instances where such application is accompanied by a notice and proof of publication thereof for at least 1 insertion in some newspaper of general circulation in the territory served by the line or lines of such applicant, which said notice shall state the increase of rate, toll, rental or charge proposed.

HISTORY: CL 1915, 6698;—CL 1929, 11709;—CL 1948, 484.110;—Am. 1952, p. 218, Act 173, Eff. Sep. 18.
CHANGE OF RATES: See Compilers' §§ 480.54, 480.57 and 480.58.

484.111 Hearing and determination of complaints; authority of commission.

Sec. 11. The commission shall, acting upon its own motion and likewise upon the complaint of any person, copartnership, association, corporation, body politic or municipal corporation, have authority to hear and determine all complaints against the practices, rates, tolls, rentals or charges, or services rendered, or facilities furnished, or complaints as to service withheld or refused to be rendered, furnished or performed by persons, copartnerships or corporations within the terms of this act.

HISTORY: CL 1915, 6699;—CL 1929, 11710;—CL 1948, 484.111.

484.112 Hearing and determination of complaints; procedure.

Sec. 12. Upon the filing of any complaint against any practice, rate, charge or service rendered or facility furnished, or against any service withheld or refused to be rendered, furnished or performed under and by virtue of the provisions of the preceding section, the commission shall give the person, copartnership or corporation against which complaint is made, at least 20 days' notice of the time and place when and where a hearing will be given said person, copartnership or corporation upon the matters in such complaint alleged. The commission shall have power to administer oaths, certify to all official acts and to compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony as in cases arising under Act No. 300 of the Public Acts of 1909.

HISTORY: CL 1915, 6700;—CL 1929, 11711;—CL 1948, 484.112.

NOTE: Act 300 of 1909, above referred to, is Compilers' § 462.2; see particularly Compilers' § 462.23.

484.113 Rules of procedure.

Sec. 13. The commission shall have the power to adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings of telephone companies and other companies before it in the establishment of rates, facilities, charges, service and other acts required of it under this act, which rules shall as near as may be, conform to the practice heretofore established under Act No. 300 of the Public Acts of 1909.

HISTORY: CL 1915, 6701;—CL 1929, 11712;—CL 1948, 484.113.

NOTE: Act 300 of 1909, above referred to, is Compilers' §§ 462.2 to 462.50.

484.114 Judicial review of orders; procedure.

Sec. 14. Any telephone company or other party in interest, being dissatisfied with any final order of the commission made in any proceeding under this act, may within 30 days from the issuance of such order and notice thereof, commence an action in the circuit court in chancery against the commission as defendant to vacate and set aside any such order on the ground that the certificate granted or withheld is not in accordance with the rights of the parties, that the rate or rates, charges, joint rate or rates fixed are unlawful or unreasonable, or that any such regulation, practice or service fixed in such order is unreasonable; in which suit the commission shall be served with a subpoena and a copy of the complaint. The commission shall file its answer and on leave of court any interested party may file an answer to said complaint. Upon the filing of the answer of the commission said cause shall be at issue and stand ready for hearing upon 10 days' notice by either party. All suits brought under this action shall have precedence over any civil cause of a different nature pending in such court, and the circuit court shall always be deemed open for the hearing thereof, and the same shall proceed, be tried and determined as other chancery suits. Any party to such suit may introduce original evidence in addition to the transcript of evidence offered to said commission, and the circuit courts in chancery are hereby given jurisdiction of such suits and empowered to affirm, vacate or set aside the order of the commission in

whole or in part, and to make such other order or decree as the courts shall decide to be in accordance with the facts and the law.

HISTORY: CL 1915, 6702;—CL 1929, 11713;—CL 1948, 484.114.

484.115 Judicial review of orders; injunction.

Sec. 15. No injunction shall issue suspending or staying any order of the commission, except upon application to the circuit court in chancery or to the judge thereof, notice to the commission having been given and hearing having been had thereon.

HISTORY: CL 1915, 6703;—CL 1929, 11714;—CL 1948, 484.115.

484.116 Judicial review of orders; procedure when new evidence is introduced.

Sec. 16. If upon the trial of said action evidence shall be introduced which is found by the court to be different from that offered upon the hearing before the commission or additional thereto, the court before proceeding to render judgment, unless the parties in such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for 15 days from the date of such transmission. Upon receipt of such evidence the commission shall consider the same, and may alter, modify, amend or rescind its order relating to such rate or rates, charges, joint rate or rates, regulations, practice or service complained of in said action, and shall report its action thereon to said court within 10 days from the receipt of such evidence. If the commission shall rescind its order complained of the action shall be dismissed; if it shall alter, modify or amend the same, such altered, modified or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

HISTORY: CL 1915, 6704;—CL 1929, 11715;—CL 1948, 484.116;—Am. 1951, p. 180, Act 149, Eff. Sep. 28.

484.117 Judicial review of orders; procedure on appeal.

Sec. 17. Either party to said action, within 60 days after service of a copy of the order or judgment of the court, may appeal to the supreme court, which appeal shall be governed by the statutes and rules of court governing chancery appeals. When the appeal is taken the case shall, on the return of the papers to the supreme court, be immediately placed on the calendar of the then pending term, and shall be brought to a hearing in the same manner as other cases on the calendar, or if no term is then pending shall take precedence of cases of a different nature, except criminal cases, at the next term of the supreme court.

HISTORY: CL 1915, 6705;—CL 1929, 11716;—CL 1948, 484.117.

CHANCERY APPEALS: See Compilers' §§ 600.232 and GCR 806.

484.118 Judicial review of orders; burden of proof.

Sec. 18. In all actions under this section the burden of proof shall be upon the complainant to show by clear and satisfactory evidence that the order of the commission complained of is unlawful or unreasonable, as the case may be.

HISTORY: CL 1915, 6706;—CL 1929, 11717;—CL 1948, 484.118.

484.119 Annual report; contents.

Sec. 19. Each person, copartnership or corporation within this state, operating telephone lines and facilities, is hereby required to make on or before the first day of May of each year, upon blanks to be furnished by the commission, a statement of the income of such person, copartnership or corporation, and the expenses for the preceding calendar year, amount of stock and other securities issued, investment in exchanges, toll lines and real estate used in connection with such telephone business, and such other information as the commission may require, said statement to be similar in form and detail to the annual report, if any, required to be made by telephone companies to

the interstate commerce commission and to be verified by the oath of some person knowing the facts stated therein.

HISTORY: CL 1915, 6707;—Am. 1917, p. 803, Act 323, Eff. Aug. 10;—CL 1929, 11718;—CL 1948, 484.119.

484.120 Records; form.

Sec. 20. The commission shall have the power and authority and it is hereby made its duty to prescribe the manner and the form of accounts, records and memoranda and the keeping of same, and it shall be the duty of all telephone companies within the state to keep accounts, books of accounts, records and memoranda in the manner and form prescribed by the said commission, and in no other manner and form: Provided, however, That no such regulation shall be in conflict with or in addition to any regulations covering the same subject matter made by the government of the United States or any municipality of this state.

HISTORY: CL 1915, 6708;—Am. 1917, p. 803, Act. 323, Eff. Aug. 10;—CL 1929, 11719;—CL 1948, 484.120.

484.121 Schedules of rates; filing, public inspection.

Sec. 21. Each person, copartnership, corporation or telephone company operating telephone lines and facilities within the state shall have on file and accessible to the public in the principal place of business of such person, copartnership or corporation, a schedule of rates, charges and tolls made, charged or collected by said person, copartnership or corporation for service rendered, furnished or performed, and for joint service rendered, furnished or performed, and at every exchange or toll station a schedule of rates, charges and tolls made, charged or collected by any such person, copartnership or corporation for service rendered, furnished or performed, and for joint service rendered, furnished or performed in connection with said exchange or toll station, and it shall be the duty of each person, copartnership or corporation, operating telephone lines or facilities within the state to file with the commission a copy of each such schedule. It shall be unlawful for any person, copartnership or corporation owning telephone lines, facilities, or transacting a telephone business within this state, to neglect or refuse to have such schedule on file, or to neglect or refuse to file a copy of the same with the commission, and it shall be unlawful for any person, copartnership or corporation operating telephone lines and facilities, and transacting a telephone business within the state, to make any other or different charge for service than that shown in such schedule.

HISTORY: CL 1915, 6709;—CL 1929, 11720;—CL 1948, 484.121.

484.122 Penalty.

Sec. 22. If any person, copartnership or corporation, operating telephone lines and facilities and conducting a telephone business within this state shall violate any of the provisions of this act, or shall 30 days after the establishing or fixing thereof, have failed, neglected or refused to observe any rate, charge, toll or order fixed or established by the commission, unless the enforcement of the same shall have been enjoined by a court of competent jurisdiction, or shall do or commit any other thing or act in this act declared to be unlawful, such telephone company shall forfeit and pay to the state of Michigan for the first offense not less than 50 dollars nor more than 1,000 dollars, and for each subsequent offense shall pay not less than 100 dollars nor more than 2,000 dollars. Any penalty herein provided for shall be collected under the direction of the attorney general in an action of assumpsit.

HISTORY: CL 1915, 6710;—CL 1929, 11721;—CL 1948, 484.122.

PENALTY: Suit for, see (Jud. Act) Compilers' § 600.4905.

484.123 Saving clause.

Sec. 23. All complaints made and now pending before the commission, and all investigations, examinations and proceedings undertaken, commenced or instituted by the commission, may be heard, conducted and continued to final determination, and all

pending actions or proceedings brought by or against said commission may be prosecuted or defended in the same manner, under the same terms and conditions, and with the same effect as though conducted or continued under the provisions of Act No. 138 of the Public Acts of 1911.

HISTORY: CL 1915, 6711;—CL 1929, 11722;—CL 1948, 484.123.

NOTE: Act 138 of 1911, above referred to, was repealed by Sec. 26 of this act.

484.124 Employees of commission.

Sec. 24. The commission is hereby authorized and empowered to employ such clerks, inspectors, examiners and experts as may be necessary to carry out and administer the provisions of this act.

HISTORY: CL 1915, 6712;—CL 1929, 11723;—CL 1948, 484.124.

Sec. 25. (This was a severing clause section.)

HISTORY: CL 1915, 6713;—CL 1929, 11724;—Rep. 1945, p. 413, Act 267, Imd. Eff. May 25.

Sec. 26. (This was a repeal section.)

HISTORY: CL 1915, 6714;—CL 1929, 11725;—Rep. 1945, p. 404, Act 267, Imd. Eff. May 25.

ACT REPEALED: Act 138, 1911.

Act 59, 1851, p. 61; Imd. Eff. Mar. 20.

AN ACT to authorize the formation of telegraph companies.

The People of the State of Michigan enact:

484.151 Telegraph companies; incorporators.

Sec. 1. That any number of persons may associate for the purpose of constructing a line of wires of telegraph through this state, or from and to any point within this state, upon such terms and conditions, and subject to the liabilities prescribed in this act.

HISTORY: CL 1857, 2049;—CL 1871, 2625;—How. 3693;—CL 1897, 6667;—CL 1915, 8767;—CL 1929, 11663;—CL 1948, 484.151.

TELEGRAPH COMPANIES: This act comprised Ch. 168 of CL 1915. Corporations organized under that chapter were specifically excepted from the provisions of Act 84 of 1921, except as otherwise therein provided, see Sec. 8 of Ch. 1 of Pt. 1, being CL 1929, 9650. See also Compilers' § 450.3, as to exemption from corporation code.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

EXAMINATION BY ATTORNEY GENERAL: See Compilers' § 450.525.

USE OF HIGHWAYS: Franchise, see Compilers' §§ 460.601 to 460.605.

OFFENSES: See Compilers' §§ 750.539 and 750.540.

484.152 Telegraph companies; certificate of organization, contents, filing.

Sec. 2. Such persons under their hands and seals, shall make a certificate which shall specify:

1st. The name assumed to distinguish such association, and to be used in its dealings, and by which it may sue and be sued;

2nd. The general route of the line of telegraph, designating the points to be connected;

3rd. The capital stock of such association, and the number of shares into which the stock shall be divided;

4th. The names and places of residence of the shareholders, and the number of shares held by each of them respectively;

5th. The term of its existence; not to exceed 30 years; which certificate shall be proved or acknowledged, and recorded in the office of the clerk of the county where any office of such association shall be established, and a copy thereof filed in the office of the secretary of state; such acknowledgement may be taken by any officer authorized to take the acknowledgement of deeds of real estate, at the place where such acknowledgement is taken.

HISTORY: CL 1857, 2050;—CL 1871, 2626;—How. 3694;—CL 1897, 6668;—CL 1915, 8768;—CL 1929, 11664;—CL 1948, 484.152.

ISSUANCE OF STOCK: See Compilers' §§ 460.301 to 460.303.

484.153 Body corporate; certified copy of certificate as evidence.

Sec. 3. Upon complying with the provisions of the last preceding section, such association shall be, and hereby is declared to be a body corporate, by the name designated in said certificate, and a copy of said certificate duly certified by the clerk of the county where the same is filed and recorded, or by the secretary of state, may be used as evidence in all courts and places, for and against any such association.

HISTORY: CL 1857, 2051;—CL 1871, 2627;—How. 3695;—CL 1897, 6669;—CL 1915, 8769;—CL 1929, 11665;—CL 1948, 484.153.

484.154 Power to hold realty; officers and agents; rules and by-laws.

Sec. 4. Such association shall have power to purchase, receive and hold and convey such real estate, and such only, as may be necessary for the convenient transaction of the business, and for effectually carrying on the operations of such association, and may appoint such directors, officers and agents, and make such prudential rules, regulations and by-laws as may be necessary in the transaction of their business, not inconsistent with the laws of this state or of the United States. But this section shall not be so construed as to authorize any such association to hold any real estate except such as shall be actually occupied by such association in the exercise of its franchises.

HISTORY: CL 1857, 2052;—CL 1871, 2628;—How. 3696;—CL 1897, 6670;—CL 1915, 8770;—CL 1929, 11666;—CL 1948, 484.154.

484.155 Telegraph lines; construction, restrictions.

Sec. 5. Such association is authorized to enter upon, and construct, and maintain lines of telegraph through, along, and upon any of the public roads and highways, or across or under any of the waters within the limits of this state, by the erection of the necessary fixtures, including posts, piers, or abutments for sustaining the cords or wires of such lines: Provided, That the same shall not be so constructed as to incommode the public use of said roads or highways, or injuriously interrupt the navigation of said waters; nor shall this act be so construed as to authorize the construction of any bridge across any of the waters of this state: And provided, further, That this act shall not be construed to authorize any such association to injure, deface, tear, cut down, or destroy any tree or shrub planted along the margin of any highway in this state, or purposely left there for shade or ornament. Said association, instead of running or placing their wires on posts, may, if they choose, run or place the same under ground, with a suitable or proper covering for the protection of the same; and any part of this act, or any law made or to be made, providing for the appraisal of damages to any person injured by the construction or maintenance of such line or lines, shall be construed to include damages occasioned by the construction of said lines underground, as provided by this act.

HISTORY: CL 1857, 2053;—Am. 1863, p. 421, Act 240, Eff. June 22;—CL 1871, 2629;—Am. 1873, p. 27, Act 28, Eff. July 31;—Am. 1875, p. 157, Act 129, Imd. Eff. Apr. 27;—How. 3697;—CL 1897, 6671;—CL 1915, 8771;—CL 1929, 11667;—CL 1948, 484.155.

This section is largely superseded by Sec. 3 of Ch. XI of Act 283 of 1909, being Compilers' repealed § 231.3.

FRANCHISE FOR USE OF HIGHWAYS: See Compilers' §§ 460.601 to 460.605.

POLES: Distance from center of highway, see Compilers' § 247.186.

484.156 Aggrieved property owner; remedy, procedure.

Sec. 6. If any person over or through whose lands said lines shall pass, upon which said posts, piers or abutments shall be placed, or through whose lands said lines shall be run under ground, shall consider himself aggrieved or damaged thereby it shall be the duty of the circuit court of the county within which said lands are, on the application of such person, and on notice to said association (to be served on the president or any director) to appoint 3 discreet and disinterested persons as commissioners, who shall severally take an oath before any person authorized to administer oaths, faithfully and impartially to perform the duties required of them by this act, and it shall be the duty of said commissioners, or a majority of them to make a just and equitable appraisal of all the loss or damages sustained by said applicant, by reason of said lines, posts, piers, or abutments, which appraisal shall be in writing, signed by said commis-

sioners or a majority of them, and filed in the office of the clerk of said court. Said report or appraisal may be confirmed by said court at any term thereof, and the court shall appoint some day when it will consider said report or appraisal and objections against the confirmation thereof on the part of all parties interested therein, notice of which day shall be given to said association, by service thereof on the president or any director. Said objections shall be as to matters of substance, and shall be filed with the clerk of said court, in writing, but may be argued, and the hearing of said report and objections may be adjourned from time to time until said report or appraisal be confirmed or otherwise disposed of. Upon the confirmation of said report or appraisal, in case any damages be adjudged to said applicant, such association shall pay the amount thereof with costs of such appraisal; said costs to be liquidated and ascertained on said award. In case no damages shall be reported to have been sustained by such applicant, and the report thereof being confirmed said applicant shall thereafter be held to have sustained no loss or damage by reason of said lines. In case said report or appraisal shall not be confirmed it shall not prejudice the right of such applicant to renew his application. Said commissioners shall receive for their services 2 dollars for each day they are actually engaged in making said appraisal.

HISTORY: CL 1857, 2054;—Am. 1863, p. 421, Act. 240 Eff. June 22;—CL 1871, 2630;—How. 3699;—CL 1897, 6672;—CL 1915, 5772;—CL 1929, 11668;—CL 1948, 484.156.

*NOTE: It is evident the word "appraisal" should be "appraise".

APPRAISAL OF DAMAGES: In case lands lie in more than one county, see Compilers' §§ 484.170 and 484.171.

484.157 Injury to line; penalty.

Sec. 7. Any person who shall unlawfully or intentionally injure, molest, or destroy any of said lines, posts, piers or abutments, or the materials or property belonging thereto, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be punished by a fine not exceeding 500 dollars, or imprisonment in the county jail, not exceeding 1 year, or both, at the discretion of the court before which the conviction shall be had.

HISTORY: CL 1857, 2055;—CL 1871, 2631;—How. 3699;—CL 1897, 6673; CL 1915, 8773;—CL 1929, 11669;—CL 1948, 484.157.

PENAL CODE PROVISIONS: Constitutes a felony, see Compilers' § 750.383a.

484.158 Stockholder's liability for corporate debts; contribution.

Sec. 8. The stockholders of every association organized in pursuance of this act, shall be jointly and severally, individually liable for the payment of all debts and demands for labor performed, and materials furnished for such association, which shall be contracted, or which shall be, or shall become due during the time of their holding such stock; but no stockholder shall be proceeded against for the collection of any such debt or demand against such association, until judgment thereon shall have been obtained against the association, and an execution returned unsatisfied in whole or in part, or unless such association shall be dissolved; and every stockholder against whom any such recovery shall have been had for labor and materials furnished, shall have the right to recover the same of the other stockholders in said corporation, in ratable proportion to the amount of stock they shall respectively hold.

HISTORY: CL 1857, 2056;—CL 1871, 2632;—Am. 1875, p. 180, Act 149, Imd. Eff. April 28;—How. 3700;—CL 1897, 6674;—CL 1915, 8774;—CL 1929, 11670;—CL 1948, 484.158.

484.159 Annual report; contents; failure to make, liability of directors.

Sec. 9. Every such corporation shall, annually, within 10 days from the first of January, make a report which shall state the amount of capital and the amount actually paid in, the investment of any portion of the earnings of such company in its business, and the whole amount of money which has at any time been borrowed and then remaining unpaid; the commencement, general route, termination and length of the lines of the wires of such company, and the names of the places through which they pass; which report shall be signed by the president and a majority of the directors, and shall be verified by the oath of the president or secretary of such corporation, and filed

in the office of the clerk of the county in which the business of any such company is carried on, and a duplicate thereof in the office of the secretary of state; and if any such company shall fail so to do, all the directors thereof shall be jointly and severally liable for all the debts of the company then existing, and that shall be contracted before such report shall be made.

HISTORY: CL 1857, 2057;—CL 1871, 2633;—How. 3701;—CL 1897, 6675;—CL 1915, 8775;—CL 1929, 11671;—CL 1948, 484.159.

484.160 Annual tax; in lieu of other state taxes.

Sec. 10. All corporations formed under this act shall pay to the treasurer of the state of Michigan an annual tax of 1 per-centum on the whole amount of capital actually paid in, and any investment of the earnings of any such company in their business, shall be considered as so much capital paid in; also, upon all sums of money at any time borrowed by any such company and then remaining unpaid in whole or in part; which tax shall be paid on the first Monday of February in each year, and shall be estimated upon the report of such company for that year, made as required by section 9 of this act; and such tax shall be in lieu of all state taxes upon the real and personal estate of such company.

HISTORY: CL 1857, 2058;—CL 1871, 2634;—How. 3702;—CL 1897, 6676;—CL 1915, 8776;—CL 1929, 11672;—CL 1948, 484.160.

TAXATION: Ad valorem system, see Const. IX, 5, and Act 49 of 1909, being Compilers' §§ 207.1 to 207.21. Collection of taxes, see Compilers' §§ 207.441 to 207.447.

484.161 Shares of stock; status as personalty, transfer, purchase in other corporations.

Sec. 11. The stock of any such corporation shall be deemed personal estate, and shall be transferable in such a manner as shall be prescribed by the by-laws of the company; but no transfer shall be valid for any purpose whatever except to render the person to whom it shall be transferred liable for the debts of such company, according to the provisions of this act, until the same shall have been entered upon the books of the corporation, so as to show the names of the parties, by and to whom transferred, the number and designation of the shares, and the date of the transfer, and no shares shall be transferable until all previous calls or assessments thereon shall have been fully paid in, or shall have been declared forfeited for the non-payment of calls thereon. It shall not be lawful for any such corporation to use any of their funds in the purchase of, or in any manner to purchase stock in any other corporation.

HISTORY: CL 1857, 2059;—CL 1871, 2635;—How. 3703;—CL 1897, 6677;—CL 1915, 8777;—CL 1929, 11673;—CL 1948, 484.161.

UNIFORM STOCK TRANSFER ACT: See Compilers' § 440.8301 et seq.

Sec. 12.

HISTORY: CL 1857, 2060;—CL 1871, 2636;—How. 3704;—CL 1897, 6678;—Rep. 1915, p. 480, Act 314, Eff. Jan. 1, 1916.

This section dealt with service of process on telegraph companies.

484.163 Books; inspection, use as evidence; penalty, forfeiture.

Sec. 13. It shall be the duty of the directors of every such corporation or company to cause books to be kept by the treasurer or secretary or other officers thereof, containing the names of all persons, alphabetically arranged, who are or shall within 6 years have been stockholders of such company, and showing their place of residence, the number of shares of stock held by them respectively, and the time when they respectively became owners of such shares, and the amount of stock actually paid in; which book shall be kept open in the principal office of every such company in every county in which such company transact [sic] business, for the inspection of stockholders and creditors of such company and their personal representatives; and any and every such person shall have a right to make extracts from any such book. Such books shall be presumptive evidence of the facts therein stated in favor of the plaintiff, in any suit or proceeding against such company, or against any 1 or more stockholders. Every officer or agent of any such company, who shall fail or neglect to make any proper entry in any such book, or shall neglect or refuse to exhibit the same, or allow the same to be

inspected, and extracts to be taken therefrom as provided by this section, shall be deemed guilty of a misdemeanor, and the company shall forfeit and pay to the party injured a penalty of 50 dollars, for every such neglect or refusal, or for neglecting to keep such books open for inspection as aforesaid.

HISTORY: CL 1857, 2061;—CL 1871, 2637;—How. 3705;—CL 1897, 6679;—CL 1915, 8778;—CL 1929, 11674;—CL 1948, 484.163.
MISDEMEANOR: Penalty, see Compilers' § 750.504.

484.164 Transmission of dispatches; penalty.

Sec. 14. It shall be the duty of the owner or association owning any telegraph line, doing business within this state, to receive dispatches from and for other telegraph lines and associations, and from and for any individual, and on payment of their usual charges for individuals for transmitting dispatches, as established by the rules and regulations of such telegraph line, to transmit the same with impartiality and good faith, under the penalty of 100 dollars for every neglect or refusal so to do, to be recovered with costs of suit, in the name and for the benefit of the person or persons sending or desiring to send such dispatch.

HISTORY: CL 1857, 2062;—CL 1871, 2638;—How. 3706;—CL 1897, 6680;—CL 1915, 8779;—CL 1929, 11675;—CL 1948, 484.164.
CIVIL LIABILITY: See Compilers' § 484.251.

484.165 Transmission of dispatches; order of transmission; penalty.

Sec. 15. It shall likewise be the duty of every such owner or association, to transmit all dispatches in the order in which they are received, under the like penalty of 100 dollars, to be recovered with costs of suit, by the person or persons whose dispatch is postponed, out of its order, as herein prescribed; Provided, however, That arrangements may be made with the proprietors or publishers of newspapers, for the transmission for the purpose of publication of intelligence of general and public interest, out of its regular order.

HISTORY: CL 1857, 2063;—CL 1871, 2639;—How. 3707;—CL 1897, 6681;—CL 1915, 8780;—CL 1929, 11676;—CL 1948, 484.165.
CIVIL LIABILITY: See Compilers' § 484.252.

484.166 Divulging contents; willful failure to transmit; penalty, civil liability.

Sec. 16. Any person connected with any telegraph company in this state or connected with any such company transacting business in this state, either as clerk, operator, messenger or in any other capacity who shall willfully or negligently divulge the contents or the nature of the contents of any private communication entrusted for transmission or delivery to the agent, clerk, operator, messenger or other person in the employ of such company or who shall willfully refuse or neglect to transmit or deliver the same, shall, on conviction before any court, be adjudged guilty of a misdemeanor and shall suffer imprisonment in the county jail where such conviction shall be had, for a term not exceeding 6 months, or shall pay a fine not exceeding 500 dollars, in the discretion of the court; and such company shall be liable to the party aggrieved for all damages sustained thereby.

HISTORY: CL 1857, 2064;—CL 1871, 2640;—How. 3708;—CL 1897, 6682;—CL 1915, 8781;—CL 1929, 11677;—CL 1948, 484.166.
MISDEMEANOR: Similar provisions, see Compilers' § 750.539.

484.167 State's lien for taxes; sale; surplus.

Sec. 17. The state shall have a lien upon any line constructed under this act, and its appurtenances, and for all taxes which may accrue thereon to the state, by virtue of the provisions of this act, which shall have precedence of all other liens; and in case the tax or any part thereof shall remain unpaid at the time hereinbefore provided for its payment, then the state treasurer shall have power, and it is hereby made his duty, to advertise such line for sale for the amount of such tax remaining unpaid, in some newspaper published in the city of Detroit, by giving 3 weeks' previous notice, and to sell the same accordingly for the amount of tax and interest and charges of sale: Pro-

vided, The same shall not be paid before the time of sale, and the surplus money, if any, shall be paid to the owner or owners of such line.

HISTORY: CL 1857, 2065;—CL 1871, 2641;—How. 3709;—CL 1897, 6683;—CL 1915, 8782;—CL 1929, 11678;—CL 1948, 484.167.

484.168 Amendment or repeal of act.

Sec. 18. The legislature may at any time alter, amend or repeal this act, and any such alteration or amendment shall act as an alteration or amendment of the corporate rights of all companies formed, created, organized or at any time doing business under its provisions; or they may annul or repeal any corporation formed or created under this act; but such alteration, amendment, annulling or repeal shall not, nor shall the dissolution of any such company, take away or impair any remedy given for or against any such corporation, its stockholders or officers for any right acquired or liability which shall have been previously incurred.

HISTORY: CL 1857, 2066;—CL 1871, 2642;—How. 3710;—CL 1897, 6684;—CL 1915, 8783;—CL 1929, 11679;—CL 1948, 484.168.

484.169 Immediate effect.

Sec. 19. This act shall take effect immediately.

HISTORY: CL 1857, 2066;—CL 1871, 2642;—CL 1915, 8784;—CL 1929, 11680;—CL 1948, 484.169.

484.170 Appraisal of damages; lands in more than 1 county.

Sec. 20. When any person owning or occupying lands lying in or extending into 1 or more counties, shall desire to have the damages occasioned by the passing or extension of said lines over or through the said lands, appraised, the circuit court for any county in which any part of the said lands may lie, shall have power to appoint commissioners, as provided in section 6, to appraise the damages to such person upon all the lands so owned or occupied by him whether they lie in the county where the said court is held or not, provided they are contiguous to each other.

HISTORY: Add. 1863, p. 422, Act 240, Eff. June 22;—CL 1871, 2643;—How. 3711;—CL 1897, 6685;—CL 1915, 8785;—CL 1929, 11681;—CL 1948, 484.170.

484.171 Appraisal of damages; contiguous lands of same person.

Sec. 21. Whenever any person shall apply to any circuit [sic] circuit [court] for the appointment of commissioners to appraise the damages to any lands owned or occupied by him, under the provisions of this act, and it shall appear to said court that such person owns or occupies other lands contiguous thereto, whether in the county where said court is held or otherwise, it shall be the duty of said circuit court to authorize and require said commissioners to appraise the damages to such applicants upon all [the] contiguous lands of such person, in whatever county they may lie, unless said association shall otherwise consent in writing.

HISTORY: Add. 1863, p. 423, Act 240, Eff. June 22;—CL 1871, 2644;—How. 3712;—CL 1897, 6686;—CL 1915, 8786;—CL 1929, 11682;—CL 1948, 484.171.

484.172 Amendment to articles; filing, recording, use of certified copy as evidence.

Sec. 22. It shall and may be lawful for any telegraph company organized as a corporation under the laws of this state, by the vote of 2/3 of its stockholders in value at any regular or special meeting, to amend its articles of association in any or all the particulars specified in the original articles, and in case of such amendment it shall be the duty of the president and secretary of the company to execute, acknowledge, and cause to be filed and recorded in the office of the clerk of the county where the principal office of the company is located, and in the office of the secretary of state an instrument in writing reciting the action of such stockholders, and setting forth the entire articles as amended, a copy of which said instrument, duly certified by said clerk or the secretary of state, may be used in evidence in all courts and places for and against said corporation.

HISTORY: Add. 1873, p. 12, Act 14, Imd. Eff. Feb. 20;—How. 3713;—CL 1897, 6687;—CL 1915, 8787;—CL 1929, 11683;—CL 1948, 484.172.

Act 123, 1867, p. 163; Eff. Jun. 27.

AN ACT to regulate telegraph companies and their agents, and individuals doing telegraph business, not incorporated by the state of Michigan.

The People of the State of Michigan enact:

484.201 License and reports.

Sec. 1. That it shall not be lawful for any telegraph company association or individual to transact the business of telegraphing or sending messages by telegraph within this state without first procuring a certificate of authority or license from the state treasurer of this state, and before obtaining such certificate, such company, association or individual, shall furnish the state treasurer of this state annually, in the month of March in each year, with a statement under oath, of the president, treasurer, or superintendent of such company, association or individual which statement shall show:

First The name and locality of the company or association.

Second The amount of its capital stock, and how much is paid up on such stock.

Third The amount of gross receipts on their current business in this state, for the year ending December 31, next preceding such report.

HISTORY: CL 1871, 1615;—How. 3714;—CL 1897, 5264;—CL 1915, 6682;—CL 1929, 11694;—CL 1948, 484.201.

484.202 Taxation.

Sec. 2. It shall be a condition precedent to the issuing or the renewal of the annual certificate or license of the state treasurer, that the company making the statement shall pay into the state treasury a specific state tax of 2 per cent on the gross amount received by said company in this state for business done therein for the year covered by the report provided for in section 1 of this act; which said specific state tax may be recovered in any court, at the suit of this state. It shall be the duty of the state treasurer to give his receipt for all money paid into the state treasury, under the provisions of this act, and to issue as many copies of the annual certificate or license as may be desired by said company.

HISTORY: CL 1871, 1616;—How. 3715;—CL 1897, 5265;—CL 1915, 6683;—CL 1929, 11695;—CL 1948, 484.202.

TAXATION: Ad valorem system, see Const. IX, 5, and Act 49 of 1909, being Compilers' §§ 207.1 to 207.21.

Collection of taxes, see Compilers' §§ 207.441 to 207.447.

484.203 Permission to do business.

Sec. 3. Any telegraph company, association, firm, copartnership or individual, complying with the requirements of this act, and receiving the certificate or license from the state treasurer of this state shall be permitted to do business freely in any part of this state.

HISTORY: CL 1871, 1617;—How. 3716;—CL 1897, 5266;—CL 1915, 6684;—CL 1929, 11696;—CL 1948, 484.203.

484.204 Penalty.

Sec. 4. Any person or persons violating the provisions of this act, shall, upon conviction thereof in any court of competent jurisdiction, be fined in any sum of not less than 10 and not exceeding 100 dollars, for each and every act, at the discretion of the court. Violations of the provisions of this act may be prosecuted in the name of the people of the state of Michigan, and it shall be the duty of the prosecuting attorney of each county in this state to prosecute for any violations of the provisions of this act.

HISTORY: CL 1871, 1618;—How. 3717;—CL 1897, 5267;—CL 1915, 6685;—CL 1929, 11697;—CL 1948, 484.204.

Act 195, 1893, p. 312; Eff. Aug. 28.

AN ACT to prescribe the duties of telegraph companies, incorporated either within or without this state, relative to the transmission of messages, and to provide for the recovery of damages for negligence in the performance of such duties.

The People of the State of Michigan enact:

484.251 Duty to serve; civil liability.

Sec. 1. That it shall be the duty of all telegraph companies incorporated either within or without this state, doing business within this state to receive dispatches from and for other telegraph companies' lines, and from and for any individual, and on payment of their usual charges for individuals for transmitting dispatches as established by the rules and regulations of such telegraph companies, to transmit the same with impartiality and good faith. Such telegraph companies shall be liable for any mistakes, errors or delays in the transmission or delivery, or for the non-delivery of any repeated or non-repeated message in damages to the amount which such person or persons may sustain by reason of mistakes, errors or delays in the transmission or delivery due to negligence of such company, or for the non-delivery of any such dispatch, due to negligence of such telegraph company or its agents, to be recovered with costs of suit, by the person or persons sustaining such damage.

HISTORY: CL 1897, 5268;—CL 1915, 6686;—CL 1929, 11688;—CL 1948, 484.251.

PENALTY: Similar provisions in part, see Compilers' § 484.164.

484.252 Duty to transmit dispatches in order; civil liability.

Sec. 2. It shall likewise be the duty of every such telegraph company to transmit all such dispatches in the order in which they are received. In case such telegraph company shall refuse or neglect to so transmit such dispatches, such telegraph company shall be liable for all damages sustained by any person or persons whose dispatch is postponed or delayed out of its order as herein prescribed, to be recovered as in the foregoing section: Provided, however, That arrangements may be made with the proprietors or publishers of newspapers for the transmission, for the purpose of publication of intelligence of general and public interest, out of its regular order.

HISTORY: CL 1897, 5269;—CL 1915, 6687;—CL 1929, 11689;—CL 1948, 484.252.

PENALTY: For failure to transmit dispatches in proper order, see Compilers' § 484.165.

Act 131, 1927, p. 188; Eff. Sep. 5.

AN ACT to regulate radio broadcasting originating within the state of Michigan, and to prohibit interference; to empower the Michigan utilities commission to make rules and orders to carry out the purposes of this act, and to prescribe penalties for the violation of such orders.

The People of the State of Michigan enact:

484.301 Radio broadcasting; regulation of interference.

Sec. 1. The Michigan public utilities commission shall make just and reasonable regulations and orders to prohibit the interference in radio reception caused by the simultaneous broadcasting of 2 or more radio transmitting stations within the state of Michigan, effective within the zones hereinafter prescribed; and where such broadcasting originates within the state of Michigan, but the broadcasting station is located outside thereof, it may be regulated at its origin if interference in reception is caused within the said zone or zones.

HISTORY: CL 1929, 11726;—CL 1948, 484.301.

STATE POLICE RADIO: See Act 152 of 1929, being Compilers' § 28.281 et seq.

484.302 Radio broadcasting; designation of zones.

Sec. 2. From time to time as may be deemed necessary, the Michigan utilities commission shall designate a zone or zones as units for purposes of regulating hereunder, and the orders of the said commission shall be applicable to such zone or zones as the commission shall prescribe.

HISTORY: CL 1929, 11727;—CL 1948, 484.302.

484.303 Radio broadcasting; time schedule for stations, preference.

Sec. 3. The commission, shall by general order, after notice to all owners of broadcasting stations to be affected thereby and after due hearing, prescribe a time schedule for operations of broadcasting stations so as reasonably to prevent interference within the zone or zones, and to that end the said commission may prohibit the operations of other than 1 station during certain hours, or the said commission may permit operations of more than 1 station at the same time under such conditions as it shall prescribe. In the making of such time schedule, preferences shall be accorded so far as is reasonable to stations in the order in which said stations have become established as broadcasting stations.

HISTORY: CL 1929, 11728;—CL 1948, 484.303.

484.304 Radio broadcasting; receiving instruments.

Sec. 4. The commission may also make reasonable rules and orders prohibiting the use of such receiving instruments as shall cause interference in radio reception.

HISTORY: CL 1929, 11729;—CL 1948, 484.304.

484.305 Radio broadcasting; purpose of act.

Sec. 5. It is the intention of this act to make reasonable state regulations within the power of the state to control interference caused within the state of Michigan, and no order shall authorize the doing of anything in contravention to the regulations of the United States.

HISTORY: CL 1929, 11730;—CL 1948, 484.305.

Sec. 6.

HISTORY: CL 1929, 11731;—Rep. 1931, p. 754, Act 328, Eff. Sept. 18.

This section was a penalty section. For present law, see Compilers' § 750.510.

Act 221, 1951, p. 332; Eff. Sep. 28.

AN ACT relating to actions for damages against the owners, licensees or operators of a radio broadcasting station or network of stations, for defamatory statements.

The People of the State of Michigan enact:

484.331 Actions for damages against owners, operators or licensees of radio broadcasting stations for defamatory statements.

Sec. 1. The owner, licensee or operator of a visual or sound radio broadcasting station or network of stations, and the agents or employees of any such owner, licensee or operator, shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a visual or sound radio broadcast, by one other than such owner, licensee or operator, or agent or employee thereof, unless it shall be alleged and proved by the complaining party that such owner, licensee, operator or such agent or employee has failed to exercise due care to prevent the publication or utterance of such statement in such broadcast.

HISTORY: New 1951, p. 332, Act 221, Eff. Sep. 28.

484.332 Defamatory statement by or on behalf of candidate for public office; liability.

Sec. 2. The owner, licensee or operator, or the agents or employees of any such owner, licensee or operator of such a station or network of stations, shall not be liable for any damages for any defamatory statement uttered over the facilities of such station or network by or on behalf of any candidate for public office where such statement is not subject to censorship or control by reason of any federal statute or any ruling or order of the federal communications commission made pursuant thereto.

HISTORY: New 1951, p. 332, Act 221, Eff. Sep. 28.

CHAPTER 485. CANAL, HARBOR AND RIVER IMPROVEMENT COMPANIES

CANAL AND HARBOR COMPANIES

Act 233 of 1875

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IMPROVEMENT OF RIVERS FOR LOGGING

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- 485.301 Corporations to improve rivers for logging; incorporation, control of stream.
- 485.302 Procedure to come under act; forfeiture of rights.
- 485.303 Corporation; vested rights, restrictions.

Act 233, 1875, p. 287; Imd. Eff. May 4.

AN ACT to re-enact and amend chapter 84 of the Compiled Laws of 1871, relative to the formation of corporations to construct canals or harbors and improve the same, by adding 2 new sections thereto, and by restricting its operations to the upper peninsula.

The People of the State of Michigan enact:

485.1 Canal or harbor company; incorporators, procedure; articles, contents.

Sec. 1. Any number of persons, not less than 3, may be formed into a corporation for the purpose of constructing a canal or harbor, or improving the navigation of any river or stream in the upper peninsula and in Branch and Macomb counties, by dredging out the channel, making a new entrance, and constructing canals to straighten the same, or by any of said methods, by complying with the following requirements. Notice shall be given in at least 1 newspaper printed in each county where the said canal or improvement is proposed to be constructed, at least 2 weeks, of the time and place or places where books for subscribing to the stock of such company will be opened, and of the estimated cost of said canal or improvement, which notice may be signed by any 2 persons proposing to enter upon the construction of said canal or improvement. If there be no newspaper printed in such county, then it shall be printed in some newspaper in an adjoining county, if any, or if none then it shall be printed in some newspaper in the city of Detroit, and in the latter case notices shall be posted in 3 of the most public places in the township, city, or village, where said meeting is to be held during the same time; and when stock, to the amount of 1,000 dollars per mile of such canal or improvement so intended to be built shall be subscribed, and 5 per cent paid thereon, then the said subscribers upon due and proper notice signed by any 2 of said subscribers, may elect directors for the said corporation and thereupon they shall severally subscribe articles of association in which shall be set forth the name of said company, the number of years the same is to be continued, the amount of capital stock, the number of shares of said stock, the number of directors, the names of those elected to hold office for the first year, the nature and extent of said canal or improvement and the length thereof as near as may be.

HISTORY: Am. 1879, p. 36, Act 39, Imd. Eff. April 18;—How. 3820;—Am. 1885, p. 276, Act 197, Imd. Eff. June 16;—CL 1897, 668-6;—CL 1915, 8797;—CL 1929, 11732;—CL 1948, 485.1.

The original act referred to in the title (Ch. 84 of CL 1871) was passed in 1861, p. 203, Act 137. It was amended in 1862, p. 49, Act 15, as in 1863, p. 306, Act 170; also in 1864, p. 76, Act 34; also in 1865, p. 489, Act 230 and was repealed in 1875, p. 36, Act 43. This Ch. 84 of CL 1871 was re-enacted in 1875, being the present act.

COMPILERS' NOTE: The Act of 1875 applies only to the Upper Peninsula. The amendatory Act of 1879 extends the act to the counties of Branch and the amendatory Act of 1885 extends the Act to the county of Macomb but neither of these acts amends the title. The body of the act as amended, therefore, embodies territory not within the title.

CANAL, RIVER AND HARBOR IMPROVEMENT COMPANIES: Specifically excepted from the provisions of Act 84 of 1921, as amended, otherwise therein provided, see Sec. 8 of Ch. 1 of Pt. I, being CL 1929, 9950. See also Compilers' § 450.3, as to exemption from corporate code.

REPORTS: See Compilers' § 450.82.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

EXAMINATION BY ATTORNEY GENERAL: See Compilers' § 450.525.

SALE OF PROPERTY AND FRANCHISES: See Act 112 of 1899, being Compilers' §§ 450.631 and 450.632.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.1 et seq.

485.2 Articles; signing, filing; powers of company.

Sec. 2. Each subscriber to such articles of association shall subscribe thereto his name and place of residence, and the number of shares of stock taken by him. The said articles shall be filed in the office of the secretary of state, and thereupon the persons who have so subscribed, and all persons who shall, from time to time, become stock-

holders in said company, by assignment or otherwise, shall be a body corporate by the name specified in such articles, and as such shall be capable of suing and being sued in all courts, purchasing and acquiring all property necessary to be used in the construction and keeping in repair of said canal, or harbor, or improvement, or any works necessary for the same, and may, by such by-laws as shall be adopted by said company, prescribe the manner of calling and conducting the meetings of the stockholders, and shall possess the power and privileges, and be subject to the provisions contained in chapter 55 of the Revised Statutes of 1846, so far as the same shall be applicable, and not inconsistent with the provisions of this act, and shall also have power to issue bonds to the amount of 1/2 the capital paid in, bearing such rates of interest as shall be directed by the board of directors: Provided, That no such bond shall be issued for a less sum than 100 dollars, nor sold at less than the face thereof, without a vote of the stockholders authorizing the same.

HISTORY: How. 3821;—CL 1897, 6697;—CL 1915, 8798;—CL 1929, 11733;—CL 1948, 485.2.

NOTE: Ch. 55 of R.S. 1846, above referred to, is Compilers' § 450.504 et seq.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

485.3 Articles; filing, prerequisites; vote of stockholder.

Sec. 3. Such articles of agreement shall not be filed in the office of the secretary of state until 5 per cent of the capital subscribed shall have been paid to the directors named in the articles, nor until there is endorsed on said articles, or annexed thereto, an affidavit of 2 of the directors that the amount of capital stock required by the first section has been subscribed, and 5 per cent paid: and no stockholder shall be entitled to vote on any question which shall come before a meeting of the stockholders unless all assessments due on stock standing in his name shall have been paid.

HISTORY: How. 3822;—CL 1897, 6698;—CL 1915, 8799;—CL 1929, 11734;—CL 1948, 485.3.

485.4 Articles; certified copy as evidence.

Sec. 4. A copy of said articles, filed in pursuance of this act, certified by the secretary of state to be a true copy, and of the whole thereof, shall be in all courts and places presumptive evidence of the incorporation of such company and of the facts therein stated.

HISTORY: How. 3823;—CL 1897, 6699;—CL 1915, 8800;—CL 1929, 11735;—CL 1948, 485.4.

485.5 Directors; number, election, term, vacancy.

Sec. 5. The business and property of such company shall be managed by a board of not less than 3, nor more than 7 directors, who after the first year shall be elected annually, at such time and place as the by-laws direct, and public notice shall be given of such election not less than 20 days previous thereto, in such manner as shall be prescribed by the by-laws. The election shall be made by such stockholders as shall attend for that purpose in person or by proxy. Each share shall be entitled to 1 vote, and the person receiving the greatest number of votes shall be declared elected. All vacancies in the board shall be filled by the remaining directors until another election. In case the election of directors is not held on the day fixed by the by-laws, it may be held on any day thereafter fixed by the board, on giving the same notice of the time and place as in case of an annual election.

HISTORY: How. 3824;—CL 1897, 6700;—CL 1915, 8801;—CL 1929, 11736;—CL 1948, 485.5.

ELECTIONS FOR DIRECTORS: See Act 112 of 1885, being Compilers' § 485.5.

485.6 Directors; quorum; selection of officers.

Sec. 6. A majority of the directors shall be a board for the transaction of business. At the first meeting after their election, they may elect 1 of their number president, and appoint such other officers as the articles of association or by-laws require.

HISTORY: How. 3825;—CL 1897, 6701;—CL 1915, 8802;—CL 1929, 11737;—CL 1948, 485.6.

485.7 President and directors; powers; annual report, contents.

Sec. 7. The president and directors shall have power to make and prescribe such rules and regulations respecting the transfer of the stock, either before its full payment or thereafter, and for the general management of the affairs of said association, as they may deem proper, not inconsistent with the laws of this state, and shall have power to appoint and employ officers, clerks, agents, and servants, for conducting and carrying on the business of said corporation, and fix the salaries or compensation to be paid to them. It shall be the duty of the said president and directors to make, verified by the oath of some one of them, an annual report to the secretary of state on the first day of January in each year, showing: First, the capital stock and the amount actually paid in; second, the amount expended, and for what purpose; third, the amount received from tolls, and from all other sources, distinguishing from what sources; fourth, the number and amount of dividends, and how paid; fifth, the number of men employed and their occupation.

HISTORY: How. 3826;—CL 1897, 6702;—CL 1915, 8903;—CL 1929, 11738;—CL 1948, 485.7.

See notes under Sec. 1 of this act.

UNIFORM STOCK TRANSFER ACT: See Compilers' § 440.8301 et seq.

485.8 Construction of route; restrictions.

Sec. 8. It shall be lawful for such company, their officers, engineers, and agents, to enter upon any lands for the purpose of exploring, surveying, and locating the route of any such canal, harbor, or the improvement of any such river or stream, doing thereto no unnecessary damage, and paying any damage which may accrue; but said company shall not locate any such canal through any orchard over 1 year old, or garden, without the consent of the owner, or through any building or fixtures, or any yard or enclosure necessary for the use and enjoyment thereof, without the like consent, and when the said route or improvement shall be established by the said company, it shall be lawful for them, their officers and servants to enter upon, take possession of, and use such lands, to the width of 200 feet, as said company shall have purchased or obtained from the owners or occupants the right to use, and also to take and use any other lands which may be necessary for the construction of said canal, or the improvement of the navigation of such river, or the erection of any locks, gates, toll-houses, or other fixtures, or the construction of any dam that may be necessary to raise the water for the purposes of washing out any channel or harbor: Provided, If such dam shall obstruct any channel navigable for vessels, it shall be made during the winter months and removed before the opening of navigation, the necessity for such taking, and the damages to be paid therefor being first ascertained, and such damages paid as hereinafter provided.

HISTORY: How. 3827;—CL 1897, 6703;—CL 1915, 8904;—CL 1929, 11739;—CL 1948, 485.8.

485.9 Real estate; power to hold.

Sec. 9. Said corporation shall not, in their corporate capacity, hold, purchase, or deal in any lands other than lands donated to said corporations to aid in constructing said improvements, or the lands in which their canals shall run, to the width of 300 feet on each side of said canals, or which are donated to or purchased by said corporation for wharves or docking purposes, or which may actually be necessary for the construction and maintenance of the canals or improvements, or the fixtures connected therewith.

HISTORY: How. 3828;—CL 1897, 6704;—CL 1915, 8905;—CL 1929, 11740;—CL 1948, 485.9.

485.10 Condemnation; procedure; use of property.

Sec. 10. Whenever said company shall desire to enter upon, use, or occupy any lands, or condemn any franchises or right to the use of running water, when no agreement can be made with the owners thereof, the like proceedings shall be had and

taken as is provided in "An act to provide for the incorporation of railroad companies," and the acts amendatory thereto; and after the payment or tender of such damages as shall be then ascertained, may enter upon and take the lands so appraised, for the purposes of constructing said canal, harbors, or making the improvement in such river, its fixtures and appurtenances.

HISTORY: How. 3829;—CL 1897, 6705;—CL 1915, 8806;—CL 1929, 11741;—CL 1948, 485.10.

NOTE: The act above referred to, is Act 82 of 1855, which was repealed and superseded by Act 198 of 1873. See Compilers' § 464.15 et seq.

485.11 Tolls and charges; establishment, lien, evidence.

Sec. 11. Any such company shall be authorized to charge, demand, and receive such rates of toll for the use of said canal or harbor, or for the use of any river or stream of this state, improved by said company, or for any dock, wharf, or other improvements, as may be established by 3 commissioners, who shall be appointed by the board of supervisors of the county where the tolls are collected, or in which the greater part of such improvements shall be constructed. Said commissioners, after making a personal examination of such canal or improvement, shall fix and establish the rate of tolls and charges for each boat, vessel, raft, or craft of any description using such canal, or passing through said improved river, or any of the works of said company, and upon the goods, merchandise, or other cargo, on said boat or vessel, which said tolls or charges shall be a lien upon the boat or vessel using any of the improvements of said company, or having such goods or merchandise on board, and may be collected under the provisions of an act entitled "An act to repeal chapter 122 of the Revised Statutes of 1846, and the amendments thereto, and provide for the collection of demands against watercraft," approved February 5, in the year of our Lord 1864, and shall be collected in the distribution of funds, as provided by section 33 of said act, under the fourth specification of said section; and it shall be the duty of the master or clerk of any such boat or vessel, on demand of the collector, or any other person authorized by said company to receive or collect such tolls or charges, to give such collector, or other person so authorized, a true and correct statement of all goods, merchandise, or other cargo, on said boat or vessel, and subject to pay any toll, or charges, which statement shall be verified by the oath of the master, or clerk of such vessel or boat. Said board of commissioners shall deliver a certified copy of such rates of tolls or charges to said company, a printed copy of which shall always be posted up at such place where toll is demanded, and the board shall file another copy with the secretary of state, which shall be duly recorded in his office. A certified copy of such record may be read in evidence in any court of this state, and shall be sufficient proof of the rates of tolls and charges due on any boat or vessel, or any goods, merchandise, or other cargo: Provided, however, That no charge whatever shall be made for the use of any river where such improvement has been made, for any boat, vessel, raft, or craft of any description, which might or could have used said river before said improvements had been made: Provided further, That the said board shall, in determining the rates of toll or charges, declare what boats, or vessels, or rafts are entitled to use said river free of charge.

HISTORY: How. 3830;—CL 1897, 6706;—CL 1915, 8807;—CL 1929, 11742;—CL 1948, 485.11.

NOTE: The Act of 1864, above referred to, is the water craft act, being Compilers' §§ 570.401 to 570.449.

CARGO STATEMENT: Penalty for failure to furnish, see Compilers' § 485.19.

485.12 Injury to property; violation of regulation; liability for damages, lien.

Sec. 12. If any person shall willfully obstruct, or in anywise injure any such canal, harbor, or improvements, or any dock, wharf, or other fixture connected therewith, or shall violate any rule, or regulation established by said company, such person, or [such] boat or vessel, or other craft, as the said company may elect, shall be liable for all damages done or committed; and said damages, if against the person, may be recovered in an action of trespass, and if proved to have been done willfully, treble damages may

be recovered. Any such claim for damages, if the company shall so elect, shall be a lien on any such boat or vessel, or other craft, and such lien may be enforced under the existing provisions of the law therefor.

HISTORY: How. 3831;—CL 1897, 6707;—CL 1915, 8806;—CL 1929, 11743;—CL 1948, 485.12.

485.13 Repair of bridges.

Sec. 13. Whenever any canal shall cross any highway, the company shall make and keep in good repair such bridges as the board of supervisors of the county in which such canal is located shall direct.

HISTORY: How. 3832;—CL 1897, 6708;—CL 1915, 8809;—CL 1929, 11744;—CL 1948, 485.13.

485.14 Stockholder's liability; recovery prerequisites; subrogation; contribution.

Sec. 14. The stockholders of said companies incorporated under this act, shall be jointly and severally liable for all labor performed for such company; but no suit shall be brought against any individual stockholder for any debt of said company until judgment on the demand shall have been obtained against the company and execution thereon returned unsatisfied in whole or in part; and any stockholder who has paid any debt of such company, either voluntarily or otherwise, shall have the right to sue and recover of such company the full amount thereof, with interest, costs, and expenses; and in case of failure to recover the amount from said company, may sue the said stockholders, or any 1 of them, for their due proportion thereof, which such stockholders ought to pay, and if such action for contribution shall be brought against more than 1, the judgment shall specify the sum due and to be recovered from each of the defendants named.

HISTORY: How. 3833;—CL 1897, 6709;—CL 1915, 8810;—CL 1929, 11745;—CL 1948, 485.14.

485.15 Avoidance of payment of toll; penalty.

Sec. 15. Any boat, vessel, raft, or craft which shall willfully pass through said canal or said improvement without paying the toll required, shall be liable to pay to said company the sum of 100 dollars, to be collected by proceeding against said boat or against the owners thereof, by attachment or otherwise.

HISTORY: How. 3834;—CL 1897, 6710;—CL 1915, 8811;—CL 1929, 11746;—CL 1948, 485.15.

485.16 Amendment or repeal.

Sec. 16. The legislature shall, at all times hereafter, have the free right to alter, amend or repeal this act.

HISTORY: How. 3835;—CL 1897, 6711;—CL 1915, 8812;—CL 1929, 11747;—CL 1948, 485.16.

485.17 Taxation.

Sec. 17. All corporations formed or existing under this act shall be liable to be assessed for all real and personal estate held by them in this state, as provided by law for the assessment of other real and personal estate, and shall pay thereon a tax for township, village, city, county, state and other purposes, the same as other real and personal estate; and such tax shall be assessed, collected and paid in the same manner as other taxes on real and personal estate are required to be assessed, collected, and paid. Provided, That the capital stock of such corporations shall not be taxed as capital stock, And provided further, That if any of the property of any such corporation is now exempt from taxation, nothing herein contained shall impair or effect [affect] such exemption during the continuance thereof.

HISTORY: Am. 1879, p. 58, Act 66, Imd. Eff. May 7;—How. 3836;—CL 1897, 6712;—CL 1915, 8813;—CL 1929, 11748;—CL 1948, 485.17.

TAXATION: See Compilers' § 211.1 et seq.

485.18 Existing corporation; organization under act, preference in subscription.

Sec. 18. Any person or private association or corporation in the upper peninsula and Branch and Macomb counties, who have previous to the passage of this re-enacted and amended act, constructed any canal or harbor, or have improved the navigation of any river or stream in the state of Michigan within the meaning of section 1 of this act, when the amount of money actually expended by them in the construction of any such canal or improvement exceeds the sum of 10,000 dollars, may organize under this act, and like notice shall be given by section 1 of this act: Provided, That such persons, associations, or corporations shall have the preference in the subscriptions to the stock of such company to the amount so expended by them.

HISTORY: Am. 1879, p. 36, Act 39, Imd. Eff. April 18;—How. 3837;—Am. 1885, p. 277, Act 197, Imd. Eff. June 16;—CL 1897, 6713;—CL 1915, 8814;—CL 1929, 11749;—CL 1948, 485.18.

485.19 Failure to furnish cargo statement; penalty.

Sec. 19. In case the master or clerk of any boat or vessel shall neglect or refuse to furnish the statement as required by section 11 of this re-enacted and amended act, he shall be liable to a fine not exceeding 100 dollars, to be sued for and be recovered by said company.

HISTORY: How. 3838;—CL 1897, 6714;—CL 1915, 8815;—CL 1929, 11750;—CL 1948, 485.19.

485.20 Bonds; issuance, restrictions.

Sec. 20. Any company organized under this act may borrow money, and issue bonds for the payment of the same, for the purpose of providing means for repairing, altering, or enlarging said improvements: Provided, however, That the amount so raised shall not at any one time exceed in amount 50 per cent of the amount of the capital stock of said company.

HISTORY: How. 3839;—CL 1897, 6715;—CL 1915, 8816;—CL 1929, 11751;—CL 1948, 485.20.

485.21 Canal or improvement, purchase by county; procedure; operation; sale to United States.

Sec. 21. Any county through which any such improved river or stream shall pass, or in which the greater part of any such improvements have been constructed, or which any canal shall have been constructed, within the provisions of this act, shall have the right to purchase any such canal or improvement by paying to any such company the amount of their capital stock and the amount of all subsequent expenditure in repairing, altering or enlarging any such canal or improvements, and interest, at the rate of 10 per cent per annum, on said amounts, deducting from the amount of interest the net proceeds of any such company; and the board of supervisors of any such county to take the management of any such canal or improvement so purchased; to receive and collect tolls the same as provided for in this act; to appoint proper officers for the management of the same, with proper salaries for their services, and shall be entitled to the privileges and remedies provided in this act. Any corporation organized under this act may convey its property and franchises to the United States, and such conveyance shall extinguish the power of the county to purchase the same.

HISTORY: Am. 1879, p. 195, Act 216, Eff. Aug. 30;—How. 3840;—CL 1897, 6716;—CL 1915, 8817;—CL 1929, 11752;—CL 1948, 485.21.

485.22 Canal or improvement, purchase by county; procedure; submission to electors; bonds, issuance.

Sec. 22. The board of supervisors of any such county may at any time, by a majority vote, submit the question of purchasing any such canal, harbor or improvement, to the electors of said county; and if a majority of the electors shall decide to purchase any such canal, harbor or improvement, then the board of supervisors shall be authorized to purchase the same, and may, for that purpose, issue the bonds of said county to an amount sufficient to make such purchase: Provided, That if the property and fran-

chises of any corporation, organized under the provisions of this act, shall be conveyed to the United States, as provided in section 21 of this act, then in such case the provisions of this section shall not be operative.

HISTORY: Am. 1879, p. 196, Act 216, Eff. Aug. 30;—How. 3841;—CL 1897, 6717;—CL 1915, 8818;—CL 1929, 11753;—CL 1948, 485.22

485.23 Re-instated corporations.

Sec. 23. The corporations heretofore formed under said chapter 84 in the upper peninsula and in Branch and Macomb counties, are herein re-instated in all their rights, privileges, franchise, and property.

HISTORY: Am. 1879, p. 37, Act 39, Imd. Eff. April 18;—How. 3842;—Am. 1885, p. 277, Act 197, Imd. Eff. June 16;—CL 1897, 6715;—CL 1915, 8819;—CL 1929, 11754;—CL 1948, 485.23.

COMPILERS' NOTE: Title of act does not include Branch and Macomb counties.
As to Ch. 84, above referred to, see history note under Sec. 1 of this act, ante.

485.24 Re-instated corporations; formation of companies to purchase and operate.

Sec. 24. Corporations may be formed under this act in the upper peninsula and Branch and Macomb counties for the purpose of operating and further improving any canal or improvement in the upper peninsula and Branch and Macomb counties, of any corporation formed under the act hereby re-instated, and may purchase the canal or other improvements, lands, or other property of such corporations.

HISTORY: Am. 1879, p. 37, Act 39, Imd. Eff. April 18;—How. 3843;—Am. 1885, p. 277, Act 197, Imd. Eff. June 16;—CL 1897, 6719;—CL 1915, 8820;—CL 1929, 11755;—CL 1948, 485.24.

COMPILERS' NOTE: Title of act does not include Branch and Macomb counties.

485.25 Purchasing corporation; powers and duties; log interest; public rights.

Sec. 25. When any such corporation shall have purchased any canal or other improvements, lands, or other property of any such other corporation under the provisions of section 24 of this act, the rate of tolls shall not thereafter be increased but the corporation purchasing shall be entitled to collect the tolls established and existing at the time of such purchase, and no other additional charges shall be imposed. And when any corporation formed under the provisions of this act shall have made improvements on or at the mouth of any navigable stream, said corporation is hereby required to furnish reasonable facilities in said harbor, in, at, or near the mouth of said stream, for the making up of rafts at such place and in such manner that it will be practicable to float such rafts to the lake. They shall also be required to furnish reasonable facilities for operating, tying up, or anchoring, as the case may be, such rafts, or any tugs or boats necessary to be used in making up or removing such rafts: Provided, That nothing in this act shall be construed as conferring upon the log interest any paramount rights, nor as authorizing any unnecessary interference with the rights of the public in any navigable waters, nor any unnecessary interference with the rights or privilege of the owners of the adjacent banks or shore, except as hereinbefore provided.

HISTORY: Add. 1881, p. 209, Act 171, Imd. Eff. May 31;—How. 3844;—CL 1897, 6720;—CL 1915, 8821;—CL 1929, 11756;—CL 1948, 485.25.

Act 149, 1869, p. 287; Imd. Eff. Apr. 5.

AN ACT to authorize the formation of corporations for the purpose of improving the navigation of rivers.

The People of the State of Michigan enact:

485.101 Corporations to improve on rivers; formation; tolls.

Sec. 1. That any number of persons may associate for the purpose of improving the navigation of any river in this state, by deepening the channel thereof and the construction of dams therein, and canals to connect therewith, upon such terms and conditions and subject to such liabilities as are prescribed in this act, and to take and receive such amounts of toll for the passage of vessels, boats, rafts, timber, logs and lumber, through such river, when the navigation shall be thus improved, as the board of control of the St. Mary's Falls ship canal may prescribe, as hereinafter provided.

HISTORY: CL 1871, 2716;—How. 3845;—CL 1897, 6721;—CL 1915, 8822;—CL 1929, 11757;—CL 1948, 485.101.

RIVER AND CANAL IMPROVEMENT COMPANIES: Specifically excepted from the provisions of Act 84 of 1921, except as otherwise therein provided, see Sec. 8 of Ch. 1 of Pt. I, being CL 1929, 9950. See also Compilers' § 450.3 as to exemption from corporation code.

Reports, see Compilers' § 450.82.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

SALE OF PROPERTY AND FRANCHISES: See Act 112 of 1889, being Compilers' §§ 450.631 and 450.632.

EXECUTIONS: For provisions as to executions against corporations authorized to receive toll, see Compilers' § 600.6017.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.1 et seq.

FOREST PRODUCTS: Lien on and regulatory provisions concerning, see Compilers' § 426.1 et seq.

ST. MARY'S FALLS SHIP CANAL: Act 21 of 1855, being How. 5491-5501, provided for the care, charge and operating of the canal and the collection of tolls and created a board of control for management, consisting of the governor, auditor general and state treasurer. By Act 17 of 1881, being How. 5502-5504, the canal was transferred to the United States and is no longer operated by the state. The act of 1855 is therefore deemed obsolete, except as far as the board of control created by it has had other functions conferred upon it. Joint Resolution 20 of 1897, p. 438, transfers to the general fund in the state treasury a balance to the credit of the canal and authorizes the board of control to dispose of certain tools and machinery.

PORTAGE LAKE AND LAKE SUPERIOR SHIP CANAL: Act 166 of 1873, being How. 5505-5516, places the charge of the canal under the board mentioned in the preceding note and provides for the tolls and operating of the canal. Since this canal also is operated by the United States that act is deemed obsolete.

485.102 Corporations to improve on rivers; certificate, contents, acknowledgment, recording, filing.

Sec. 2. Such persons, under their hands and seals, shall make a certificate which shall specify:

1. The name of the corporation;
2. The stream and section of the stream the navigation of which it is proposed to improve;
3. A statement of the amount of capital stock of such company, and the number of shares into which the capital stock shall be divided;
4. The names and places of residence of the shareholders, and the number of shares held by each of them respectively;
5. The names of the first directors, being not less than 3 or more than 7;
6. The place in this state where their office for the transaction of business is located;
7. The term of existence of such corporation, which shall not exceed 30 years; which certificate shall be acknowledged as deeds are required to be acknowledged, and recorded in the office of the clerk of the county in which the office of said company for the transaction of business is located, and a copy thereof filed in the office of the secretary of state.

History: CL 1871, 2717;—How. 3846;—CL 1897, 6722;—CL 1915, 8823;—CL 1929, 11758;—CL 1948, 485.102.

485.103 Body corporate; powers; governing law.

Sec. 3. Upon complying with the provisions of the last preceding section, such company shall be, a body corporate, by the name designated in said certificate and as such shall be capable of suing and being sued, in all courts and in all manner of actions, and may have a common seal, and may by by-laws prescribe the manner of calling and conducting the meetings of the stockholders, and shall possess the powers and privi-

leges, and be subject to the provisions contained in chapter 55, of title 10, of the Revised Statutes of A.D. 1846, entitled "General provisions relating to corporations," as far as the same shall be applicable and not inconsistent with the provisions of this act.

HISTORY: CL 1871, 2718;—How. 3847;—CL 1897, 6723;—CL 1915, 8824;—CL 1929, 11759;—CL 1948, 485.103.

NOTE: Ch. 55, title 10 of R.S. 1846, above referred to, is Compilers' § 450.504 et seq.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

485.104 Improvement of streams; consent of governor and attorney general.

Sec. 4. No company formed or created under this act shall be authorized to improve the navigation of any stream under the provisions of this act, until they shall have obtained the assent in writing of the governor, and attorney general of this state.

HISTORY: CL 1871, 2719;—How. 3848;—CL 1897, 6724;—CL 1915, 8825;—CL 1929, 11760;—CL 1948, 485.104.

NAVIGABLE STREAM: To bridge or dam, permission must first be obtained from board of supervisors where dam or bridge is to be located. See Compilers' §§ 46.21 to 46.24.

485.105 Map or plan; application for approval; hearing, procedure, approval; alteration of plan.

Sec. 5. After the organization of any such company as aforesaid, they may prepare a map or plan of the section or sections of the stream or streams, the navigation of which they propose to improve, and a plan for the improvement of the same, which shall show and set forth the several points in such stream where improvements are proposed to be made and the nature and character of such improvements, and may submit the same to the board of control, and make application to said board for their approval thereof and their assent to the proposed improvements, whereupon the said board shall designate some regular meeting of their body at which said application shall be had. The company shall cause notice of said application and the meeting of the board fixed for the hearing thereof to be published once in each week for [the] 6 successive weeks next preceding the first day of said regular meeting in some newspaper published in Detroit, in some newspaper published in Grand Rapids and East Saginaw, and also in some newspaper published in the town where said corporation has its office, if there be one, and if not then in some newspaper of the same or an adjoining county, and also in some newspaper published nearest the place where said improvements are to be made, and shall cause proper proofs of said publication to be filed with the board of control. At the meeting designated therefor, or at such subsequent meeting as the hearing shall be adjourned to, the board of control shall proceed to hear and determine the matter of said application, on which hearing all parties interested therein may appear and be heard. If upon such hearing, the board shall be of opinion that the construction of the proposed improvement will be a public benefit, and that the company is a proper one to make the same, they shall endorse upon such map or plan their approval thereof, and their assent to the construction of the improvement proposed, and shall also fix the time within which the same shall be completed by the company. Said board of control may, in their discretion, alter or amend such plan or plans before approving the same, or may, at any time after such approval consent to the alteration of such plans, upon the petition of the company which shall have presented the same after the publication of a notice of the hearing of said petition in the same manner required in this section upon the hearing of the original application.

HISTORY: Am. 1871, p. 326, Act 194, Eff. July 18;—CL 1871, 2720;—Am. 1879, p. 180, Act 197, Eff. Aug. 30;—How. 3849;—CL 1915, 8826;—CL 1929, 11761;—CL 1948, 485.105.

BOARD OF CONTROL: See note relative to St. Mary's Falls Ship Canal under Sec. 1 of this act.

485.106 Directors; powers, election, term, vacancy, qualification.

Sec. 6. The business and property of such company shall be managed and directed by a board of not less than 3, nor more than 7 directors, who, after the first year, shall be elected annually, or once in 2 years, as the by-laws of said company shall direct.

and at such time and place as said by-laws may direct; and public notice shall be given of the time and place of holding such election not less than 20 days previous thereto, in such a manner as the by-laws of such company may direct; the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy. All elections shall be by ballot, and each stockholder shall be entitled to as many votes as he shall own shares of stock, and the persons having the greatest number of votes shall be directors. Whenever any vacancy shall happen in the board of directors, such vacancy shall be filled, for the remainder of the term, by the remaining directors. The directors shall hold their offices for 1 or 2 years, as said by-laws may direct, and until others are elected in their places, and no person shall be a director unless he is a stockholder in said company.

HISTORY: CL 1871, 2721;—How. 3850;—CL 1897, 6726;—CL 1915, 8827;—CL 1929, 11762;—CL 1948, 485.106.

ELECTIONS FOR DIRECTORS: See Act 112 of 1885, being Compilers' § 485.5.

485.107 Directors; calling of election.

Sec. 7. In case it shall happen that an election for directors shall not be held as provided, the said corporation shall not be for that reason dissolved, but such election shall be held on some future day, to be fixed by the directors holding over, upon giving the notice therefor as in this act provided.

HISTORY: CL 1871, 2722;—How. 3851;—CL 1897, 6727;—CL 1915, 8828;—CL 1929, 11763;—CL 1948, 485.107.

485.108 Directors; majority control.

Sec. 8. A majority of the directors shall be a board for the transaction of business, and the acts of a majority of the board shall bind the corporation.

HISTORY: CL 1871, 2723;—How. 3852;—CL 1897, 6728;—CL 1915, 8829;—CL 1929, 11764;—CL 1948, 485.108.

485.109 Directors; president; treasurer; selection, vacancy.

Sec. 9. The directors at their first meeting after their election, shall choose by ballot, 1 of their number as president, and 1 as treasurer, and they shall supply any vacancy in the office of president, or treasurer, whenever the same shall occur.

HISTORY: CL 1871, 2724;—How. 3853;—CL 1897, 6729;—CL 1915, 8830;—CL 1929, 11765;—CL 1948, 485.109.

485.110 President and directors; powers.

Sec. 10. The president and directors shall have power to make and prescribe such by-laws, rules and regulations respecting the transfer of stocks, and the management and control of the affairs and property of such corporation, as they may deem best, not inconsistent with the laws of the United States or of this state, and shall have power to appoint and employ officers, clerks, agents and servants for conducting and carrying on the business of such incorporation, and determine their duties, and salaries, and wages to be paid to them.

HISTORY: CL 1871, 2725;—How. 3854;—CL 1897, 6730;—CL 1915, 8831;—CL 1929, 11766;—CL 1948, 485.110.

485.111 Subscriptions; increase in capital stock, certificate, filing.

Sec. 11. The directors of any such company may at any time receive subscriptions to stock in said company until the whole amount of the stock mentioned in their articles of association shall be subscribed; and whenever, in the judgment of the directors, it shall be necessary to increase the capital stock of any such company for the extension or more perfect completion of such proposed work, or to provide lands and buildings needful for its use, it shall be competent for such directors with the approval or ratification of the holders of a majority of the capital stock, at any lawful meeting of stockholders to provide for such increase; and in all cases where such capital stock is increased, a certificate thereof shall be signed, certified and filed as hereinbefore required in case of the original articles of association.

HISTORY: CL 1871, 2726;—How. 3855;—CL 1897, 6731;—CL 1915, 8832;—CL 1929, 11767;—CL 1948, 485.111.

485.112 Subscriptions; calling in; sale, procedure, purchaser's rights.

Sec. 12. The directors may call in subscriptions to the capital stock of such corporation by installments, in such portions, and at such times and places, as they shall think proper, by giving notice thereof as the by-laws shall prescribe; and in case any stockholder shall neglect or refuse payment of any such installment for the space of 60 days after the same shall become due and payable, and after he shall have been notified thereof, the stock of such delinquent stockholder may be sold by the directors, at public auction, at the office of the secretary of the corporation, giving at least 30 days' notice in some newspaper published in the county: Provided, That if said stockholder shall reside in this state, the stock shall be sold at the business office of said corporation, in the county in which they are doing business, giving at least 30 days' notice thereof in some newspaper published in the county; if no newspaper be published in the county in which such corporation transacts their business then it shall be published in the newspaper in the city of Detroit, which shall have, at the time, the largest circulation; and the proceeds of such sale shall be first applied in payment of the installment called for and the expenses on the same, and the residue shall be refunded to the owner thereof; and such sale shall entitle the purchaser to all the rights of a stockholder, to the extent of the shares so bought.

HISTORY: CL 1871, 2727;—How. 3856;—CL 1897, 6732;—CL 1915, 8833;—CL 1929, 11768;—CL 1948, 485.112.

485.113 Corporate powers.

Sec. 13. Every such corporation organized as hereinbefore prescribed may make the improvements thus set forth in said plans after the same shall have been approved by said board of control, and shall have the following powers and be subject to the liabilities and restrictions following, that is to say:

First, to cause such examinations and surveys of [for] the proposed improvements whether of dams or canals, or deepening of the channels to be made along the stream, the navigation of which it is proposed to improve, as may be necessary to prepare for the work to be done, and by their officers and agents and servants to enter upon the lands or waters of any person or company, but subject to liability for all damages which they shall do thereto;

Second, To purchase and by voluntary grants and donations to receive, enter upon, take, hold and use all such lands and real estate and other property as may be necessary for the construction and maintenance of the work proposed in the approved plans of such company.

Third, To divert into such stream to be improved, waters from any lake or lakes in the vicinity thereof by canals to be constructed for that purpose; to divert the water from the present channel of the stream to be improved by cutting across bends in said river; to flood lands by constructing the necessary dams according to plans approved as aforesaid, and to enter upon, take and use any lands which may be necessary for the purpose of constructing and maintaining such works and improvements; Provided, That the necessity for such diversion of the water, flooding of lands, and of taking such lands for such purposes, and the damages to be paid therefor, in each case of diversion of water, flooding of land, or taking of the same shall be ascertained and such damages paid as provided for in sections 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of an act entitled "An act to provide for the formation of companies to construct plank roads," approved April 8th, 1851, being sections 1894 to 1905 inclusive of the Compiled Laws and the amendments thereto;

Fourth, (To have power to drive the logs put into such stream, and for that purpose to make and enforce all necessary contracts with the owners of the logs and other floatables to be driven in such stream, and may also make contracts relative to tolls to be paid by any person for the use for any number of years of any portion of any stream

improved by such corporation and when any such contract is in writing the same shall be executed on the part of such corporation by its president and secretary under the seal of such corporation.)

HISTORY: CL 1871, 2728;—How. 3857;—Am. 1883, p. 50, Act 62, Imd. Eff. May 2;—CL 1897, 6733;—CL 1915, 8834;—CL 1929, 11769;—CL 1948, 485.113.

NOTE: Secs. 13 to 25, inclusive, of Act 155 of 1851, above referred to, are CL 1915, 8891-8702, Rep. 1921, p. 186, Act 84, being CL 1929, 10134.

485.114 Tolls; forfeiture of right to collect.

Sec. 14. It shall be the duty of such company to complete the improvements contemplated by the plans approved as aforesaid within the time which shall be prescribed by the said board of control, at the time said plans shall be approved by said board of control, and in case of failure so to do said company shall forfeit all right to collect tolls of any person or persons whatever, who shall use for the purposes of navigation the improvements made by such company, unless the time for completing the same shall have been previously extended by said board of control, upon good cause shown, and after publication of a notice of said application as required by section 5 of this act.

HISTORY: CL 1871, 2729;—Am. 1879, p. 181, Act 197, Eff. Aug. 30;—How. 3858;—CL 1897, 6734;—CL 1915, 8835;—CL 1929, 11770;—CL 1948, 485.114.

485.115 Tolls; power of board to fix; jurisdiction of corporation; annual statement, contents.

Sec. 15. Whenever any portion of said work shall be completed to the satisfaction of said board of control, and it is so far useful that in the opinion of said board of control tolls should be paid for the use thereof, said board may fix the tolls to be paid for the use of such portion until the whole of said work is completed; and whenever said improvements have been completed and accepted by said board of control, the rates of toll which any company organized under this act may charge for running rafts, timbers, logs or lumber through said improved stream, shall be fixed by said board of control, and may be graduated with reference to the distance run upon the portion of said stream improved by said company, and shall not be increased without the consent of said board, but may be changed from time to time by said board; but such toll shall not at any time be increased so that the sum shall amount to more than 15 per cent a year upon the actual cost of such improvements after deducting the necessary expenses and repairs, and the said board shall, as far as may be practicable, so fix the rates of toll on timber, logs, and lumber, that the same shall not at any time exceed the sum of 25 cents per 1,000 feet board measure on any stream where 10,000,000 of feet or less are run in any 1 year, 20 cents per 1,000 feet board measure on any stream where 30,000,000 of feet or less are run in any 1 year, nor more than 15 cents per 1,000 feet board measure on any stream where from 30,000,000 to 50,000,000 of feet are run in any 1 year, nor more than 10 cents per 1,000 feet board measure on any stream where from 50,000,000 to 100,000,000 of feet are run in any 1 year, nor more than 5 cents per 1,000 feet board measure on any stream where from 100,000,000 to 200,000,000 of feet or more are run in any 1 year, and the collection of such tolls shall be confined strictly to that part or portion of a river or stream so improved, and to that class of floatables benefited by the improvement; and nothing in this act shall be construed to give jurisdiction to any corporation over any portion of a river or stream other than the portion specifically improved by such corporation. Such corporation shall cause to be made out and filed with said board of control at or before its meeting, on the last Wednesday in March each year the affidavit of its president or 1 of its directors, setting forth in detail upon his best information and belief what amount of timber logs and lumber will be run through any section or sections of the river im-

proved by the company during that year, and that the official has made due and reasonable inquiry on the subject from persons lumbering on the river and otherwise.

HISTORY: Am. 1871, p. 327, Act 194, Eff. July 18;—CL 1871, 2730;—How. 3859;—CL 1897, 6735;—CL 1915, 8636;—CL 1929, 11771;—CL 1948, 485.115.

485.116 Tolls; improved streams open to all.

Sec. 16. Any stream improved under this act shall be open to all persons for use, upon the payment of tolls, prescribed as aforesaid, for the passage of vessels, boats, logs, rafts, timber and lumber, through such improved stream or waters, and uniform rates of toll shall be charged to all persons, whether stockholders in such company or not.

HISTORY: CL 1871, 2731;—How. 3860;—CL 1897, 6736;—CL 1915, 8637;—CL 1929, 11772;—CL 1948, 485.116.

485.117 Tolls; collection.

Sec. 17. Whenever said tolls are prescribed as aforesaid, the directors of the corporation may collect the same by action of assumpsit from persons using such improved portions of such stream. The proceedings in such action shall be in accordance with the practice of the courts in which such action is commenced in actions of assumpsit.

HISTORY: CL 1871, 2732;—Am. 1881, p. 75, Act 87, Imd. Eff. April 15;—How. 3861;—CL 1897, 6737;—CL 1915, 8638;—CL 1929, 11773;—CL 1948, 485.117.

485.118 Lien on floatables; sale, procedure.

Sec. 18. Such company shall have a lien upon all logs, rafts, timber or lumber or other floatables driven, rafted or run through such stream or waters upon which toll shall be due, for such toll, and may sell a sufficient quantity of such logs, timber or lumber, or other floatables to satisfy said claim or demand, with the expense of such sale, at public auction on not less than 10 days' notice, either personally served upon such owner, or posted in 3 or more conspicuous places in the township where such logs are held, and in either case, by posting a like notice, also in the office of such company, of the mark, description and supposed owner of such logs, timber or lumber, and the charges for which the same is to be sold.

HISTORY: CL 1871, 2733;—How. 3862;—CL 1897, 6738;—CL 1915, 8639;—CL 1929, 11774;—CL 1948, 485.118.

485.119 Stream to be kept in repair; forfeiture.

Sec. 19. The board of directors of any such company shall, at all times after commencing the collection of any tolls from persons using said improved stream or waters, keep such portions of the stream or waters clear of all unnecessary obstructions, and in good condition for the passage of rafts, timber, logs, lumber, vessels or boats for which toll is charged, and in case of any dilapidation or obstruction which is calculated to endanger or delay the passage of rafts, timber, logs or lumber, boats or vessels, as aforesaid, it shall be the duty of the board of directors, without unnecessary delay, to make such repairs, as shall restore such stream or waters to their proper condition; and in case said board of directors shall fail to comply with the provisions of this section, the corporation shall, for every such neglect or refusal, be liable to a forfeiture of 100 dollars to be recovered in an action of debt, by any person aggrieved or injured thereby: Provided, That in all cases 1 of said board of directors shall first have been notified of such defect, and the necessary time for its repair shall have elapsed after such notice and before the commencement of such suit.

HISTORY: CL 1871, 2734;—How. 3863;—CL 1897, 6739;—CL 1915, 8640;—CL 1929, 11775;—CL 1948, 485.119.

485.120 Injury to stream or property; penalty.

Sec. 20. If any person shall wilfully obstruct any stream or waters improved, under the provisions of this act, or any part thereof, or shall wilfully destroy or injure any buildings, piers, dams, fixtures, banks or other constructions in use upon the same be-

longing to said company, such person or persons so offending shall, for every offense, be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding 500 dollars, or by imprisonment in the county jail not more than 1 year, in the discretion of the court.

HISTORY: CL 1871, 2735;—How. 3864;—CL 1897, 6740;—CL 1915, 8841;—CL 1929, 11776;—CL 1948, 485.120.

485.121 Log jam; power to break, lien for cost.

Sec. 21. If any person or persons shall put, or cause to be put, into said stream or waters, any logs, timber, or lumber, and shall not make adequate provisions and put on sufficient force for breaking jams of such logs, timber or lumber in or upon such stream or waters, or for running, rafting or driving the same, and thereby obstruct the floatage, or navigation, it shall be lawful for such company, to cause such jams to be broken, and such logs, lumber or timbers to be run, driven, boomed, rafted or secured, at the charge and expense of the person or persons owning said logs, timber or lumber; and said company shall have a lien upon such logs, timber or lumber, as shall be sufficient to pay and satisfy all just and reasonable charges therefor, and expense and cost thereof, and shall be entitled to take and retain possession of such logs, timber or lumber, or so much thereof as may be necessary to satisfy the amount of such charges, for breaking such jams, and for driving, booming, rafting, and running of said logs, timber or lumber, and expenses and costs thereon, until the same be satisfied and paid; and such corporation shall proceed to collect such charges, costs and expenses, in the manner hereinafter prescribed.

HISTORY: CL 1871, 2736;—How. 3865;—CL 1897, 6741;—CL 1915, 8842;—CL 1929, 11777;—CL 1948, 485.121.

LOG JAM: See also Compilers' § 426.51.

485.122 Lien; enforcement.

Sec. 22. Any such corporation claiming any lien may bring an action of assumpsit against the owner of such property to determine and satisfy the amount of such lien or such corporation may waive its claim of lien and bring such action against such owner for the amount thereof. The proceedings in such actions shall be in accordance with the practice of the courts in which such action is commenced in actions of assumpsit. The property held under a claim of lien may be levied upon and sold to satisfy any judgment which may be rendered against such owner in such action, and the taxable costs in such case shall include the cost and expense of providing for the care and safety of such property. In cases where the claim of lien is waived under the provisions of this section the plaintiff shall have judgment if he shall establish on the trial such a state of facts as would have entitled him to a lien, and the judgment shall be collected as in ordinary cases in assumpsit: Provided, That such action shall be commenced within 60 days after such tolls shall become due.

HISTORY: CL 1871, 2737;—Am. 1883, p. 138, Act 132, Imd. Eff. May 31;—How. 3866;—CL 1897, 6742;—CL 1915, 8843;—CL 1929, 11778;—CL 1948, 485.122.

485.123 Lien on floatables; owner unknown or without jurisdiction of court.

Sec. 23. If the owner of such logs, timber or other floatables, cannot be ascertained, or is without the jurisdiction of the court, the proceeding to ascertain and determine the amount of such lien may be against the property, and commenced by filing the petition of said corporation, claiming such lien, in the proper court, which shall contain a statement of the nature and amount of the claim, and a description of the property seized, and that the owner of such property is unknown, or is without the jurisdiction of the court, and praying for a judgment against such property for the amount of such claim, which petition shall be verified by the oath of the president of such corporation filing the same, or its agent or attorney. The plaintiff shall thereupon, and before any trial shall be had, or judgment rendered, in such proceeding, cause a notice to be published for 4 successive weeks, at least once in each week, in some newspaper printed

and circulated in such county, or if none is printed and circulated in such county, then in such other newspaper published in this state as such court shall direct, which notice shall state the title of the court, the name of the plaintiff, the name of the owner of the property taken, if known, the nature and amount of the claim, and the description of the property upon which the lien is sought to be enforced. The owner of such property shall have a right to appear and defend in such proceedings, at any time before judgment, upon such terms as the court shall direct; and in case of his appearance, an issue shall thereupon be formed as in actions of assumpsit, and all subsequent proceedings in such case shall be in accordance with the practice of such court in actions of assumpsit. If the owner shall fail to appear, in such proceeding the court may proceed ex parte, to hear, try and determine the facts alleged in such petition, and render such judgment thereon as justice may require. If judgment shall be rendered in favor of such plaintiff, the court shall thereupon order that the property covered by such lien, or as much thereof as may be necessary, be sold to satisfy the amount of such judgment, with costs.

HISTORY: CL 1871, 2738;—How. 3867;—CL 1897, 6743;—CL 1915, 8844;—CL 1929, 11779;—CL 1948, 485.123.

FOREST PRODUCTS: Lien on, and regulatory provisions concerning, see Compilers' § 426.1 et seq.

485.124 Annual report; contents.

Sec. 24. On or before the first Monday in January in each year it shall be the duty of the directors of every company formed under this act, to report to the secretary of state, under the oath of the secretary and 1 or more of the directors, the length of the stream or waters so improved; the cost of such improvements; the amount of money expended; the amount of their capital; how much of the same is paid in and how much is expended; the whole amount of tolls or earnings expended on such improvement; the amount received during the previous years for tolls and from all other sources, stating each separately; the amount set apart for repairs; the amount of dividends made and the amount of indebtedness of such company, specifying the object for which such indebtedness accrued.

HISTORY: CL 1871, 2739;—Am. 1883, p. 2, Act 3, Eff. Sept. 8;—How. 3868;—CL 1897, 6744;—CL 1915, 8845;—CL 1929, 11790;—CL 1948, 485.124.

485.125 Taxation.

Sec. 25. Each and every company formed under this act, shall pay to the treasurer of the state of Michigan an annual tax at the rate of 1 per cent, on the whole amount of capital paid in upon the capital stock of said company; which tax shall be estimated upon the last preceding report of said company, and shall be paid to the said treasurer, on the first Monday in July of each year, and shall be in lieu of all other taxes upon all the property of said company.

HISTORY: CL 1871, 2740;—How. 3869;—CL 1897, 6745;—CL 1915, 8846;—CL 1929, 11781;—CL 1948, 485.125.

SPECIFIC TAXES: Collection of, see Compilers' § 207.441.

485.126 Stockholder's liability; recovery prerequisites.

Sec. 26. The stockholders of every company organized in pursuance of this act, shall be jointly and severally personally liable for the payment of all debts, and demands against such association, which shall be contracted, or which shall be, or shall become due during the time of their holding such stocks, for any labor or services done or performed for such company; but no stockholder shall be proceeded against, for the collection of any debt or demand against such company, until judgment thereon shall have been obtained against the association and an execution on such judgment, shall have been returned, unsatisfied, in whole or in part, or unless such association shall be dissolved.

HISTORY: CL 1871, 2741;—How. 3870;—CL 1897, 6746;—CL 1915, 8847;—CL 1929, 11782;—CL 1948, 485.126

485.127 Shares deemed personalty; transfer.

Sec. 27. The shares of any company formed under this act shall be deemed personal property, and may be transferred as shall be prescribed by the by-laws of such company.

HISTORY: CL 1871, 2742;—How. 3871;—CL 1897, 6747;—CL 1915, 8848;—CL 1929, 11783;—CL 1948, 485.127.

COMPILERS' NOTE: This section is probably superseded in part by the uniform stock transfer act, Act 106 of 1913, see now Compilers' § 440.8301 et seq.

Sec. 28.

HISTORY: CL 1871, 2743;—How. 3872;—CL 1897, 6748;—Rep. 1915, p. 480, Act 314, Eff. Jan. 1, 1916.

This section dealt with service of process.

485.129 Governing laws.

Sec. 29. All companies formed under this act shall at all times be subject to all general laws in force relative to corporations.

HISTORY: CL 1871, 2744;—How. 3873;—CL 1897, 6749;—CL 1915, 8849;—CL 1929, 11784;—CL 1948, 485.129.

GENERAL PROVISIONS: See Compilers' § 450.1 et seq.

Act 91, 1887, p. 98; Imd. Eff. Apr. 26.

AN ACT to authorize the formation of corporations for the purpose of improving rivers which form, in whole or part, the boundary between this and any adjoining state, and their tributaries, and for driving, sorting, holding and delivering logs thereon.

The People of the State of Michigan enact:

485.201 Corporations to improve state boundary rivers; incorporators.

Sec. 1. That any number of persons, not less than 5, may be formed into a corporation to improve any river and its tributaries which form, in whole or part, the boundary between this and any adjoining state, for the purpose of driving, sorting, holding and delivering logs thereon, and for such purpose only.

HISTORY: How. 3873a;—CL 1897, 6750;—CL 1915, 8850;—CL 1929, 11785;—CL 1948, 485.201.

RIVER IMPROVEMENT COMPANIES: Specifically excepted from the provisions of Act 84 of 1921, except as otherwise therein provided, see Sec. 8 of Ch. 1 of Pt. 1, being CL 1929, 9950. See also Compilers' § 450.3, as to exemption from corporation code.

REPORTS: See Compilers' § 450.82.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' § 450.301 et seq.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

EXAMINATION BY ATTORNEY GENERAL: See Compilers' § 450.525.

EXECUTIONS: For provisions as to executions against corporations authorized to receive toll, see Compilers' § 600.6017.

CHANGE IN NAME: See Compilers' § 450.1 et seq.

485.202 Corporations to improve state boundary rivers; certificate, acknowledgment, contents, recording, filing.

Sec. 2. Such persons, under their hands and seals, shall make a certificate, which shall specify:

First, The purpose for which the corporation is formed and the name of the rivers proposed to be improved;

Second, A statement of the amount of capital stock of such company and the number of shares into which the capital stock shall be divided;

Third, The names and residences of the stockholders and the number of shares held by each of them respectively;

Fourth, The amount of capital stock actually paid in;

Fifth, The names of the first directors, being not less than 3 nor more than 9;

Sixth, The place in this state where their office for the transaction of business is located;

Seventh, The term of existence of such corporation, which shall not exceed 30 years; which certificate shall be acknowledged as deeds are required to be acknowledged

and recorded in the office of the clerk of the county in which the office of said company for the transaction of business is located, and a duplicate thereof filed in the office of the secretary of state.

HISTORY: How. 3873b;—CL 1897, 6751;—CL 1915, 8851;—CL 1929, 11786;—CL 1948, 485.202.

485.203 Corporations to improve state boundary rivers; body corporate, powers.

Sec. 3. Upon complying with the provisions of the last preceding section, such company shall be a body corporate by the name designated in said certificate, and as such shall be capable of suing and being sued in all courts, and may have a common seal may elect in such manner as hereinafter provided all necessary officers, and determine their duties and make, from time to time, such by-laws, not inconsistent with the constitution and laws of this state, as a majority of the stockholders shall direct.

HISTORY: How. 3873c;—CL 1897, 6752;—CL 1915, 8852;—CL 1929, 11787;—CL 1948, 485.203.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

485.204 Annual report; contents, filing, inspection by stockholders.

Sec. 4. Every such corporation shall annually, in the month of January, make a report signed by its president and secretary, containing:

First, The amount of capital stock actually paid in;

Second, The amount invested in real and personal estate;

Third, The amount of their debts and credits, as near as may be;

Fourth, The name of each stockholder and the number of shares held by him at the date of such report; and every such report shall be verified by the oath of the officers signing the same, and shall be filed with the secretary of the association, and also in the office of the county clerk of the county in which the office of said association shall be located, and open at all reasonable times for the examination of any and all stockholders.

HISTORY: How. 3873d;—CL 1897, 6753;—CL 1915, 8853;—CL 1929, 11788;—CL 1948, 485.204.

See notes under Sec. 1 of this act.

485.205 Stock divided into shares; increase.

Sec. 5. The amount of the capital stock of every such corporation shall be fixed and limited by the stockholders in their articles of association and shall be divided into shares of 100 dollars each, 10 per cent of which shall be paid in. The capital stock and the number of shares may be increased at any meeting of the stockholders called for that purpose.

HISTORY: How. 3873e;—CL 1897, 6754;—CL 1915, 8854;—CL 1929, 11789;—CL 1948, 485.205.

485.206 First meeting; calling.

Sec. 6. When any corporation shall be formed under this act, any 2 of those associated may call the first meeting of the corporation at such time and place as they may appoint, by giving notice thereof by publishing the same in some newspaper published in the county where the office of such corporation is located, at least 15 days before the time appointed for such meeting, or by personal service of like notice upon each of the stockholders 10 days before the time fixed for said meeting.

HISTORY: How. 3873f;—CL 1897, 6755;—CL 1915, 8855;—CL 1929, 11790;—CL 1948, 485.206.

485.207 Directors; powers, election, term, officers, selection, term.

Sec. 7. The business and property of said company shall be managed by a board of directors of not less than 3 nor more than 9 directors, who, after the first year shall be elected annually as the by-laws of said company shall direct; and public notice shall be given of the time and place of holding such election as the by-laws of said company may direct. Such board of directors, when elected, shall choose from their number a president, secretary and treasurer, who shall hold their respective offices for the term

of 1 year, and such board of directors may appoint such other officers and agents as their articles of association or their by-laws may require, who shall hold their respective offices during the pleasure of the directors.

HISTORY: How. 3873g;—CL 1897, 6756;—CL 1915, 8856;—CL 1929, 11791;—CL 1948, 485.207.
ELECTIONS FOR DIRECTORS: See Compilers' § 485.5.

485.208 Directors; stockholders; quorum; voting.

Sec. 8. A majority of the directors of every such corporation convened according to the by-laws, shall constitute a quorum for the transaction of business, and those holding a majority of stock at any meeting of the stockholders shall be capable of transacting the business of the meeting, and at each meeting of the stockholders each share of stock shall be entitled to 1 vote. Stockholders may appear and vote in person or by proxy.

HISTORY: How. 3873h;—CL 1897, 6757;—CL 1915, 8857;—CL 1929, 11792;—CL 1948, 485.208.

485.209 Property; holding.

Sec. 9. Every such corporation shall, by their corporate name, have powers to acquire, use and hold all such works and improvements, and all such real and personal property as may be necessary or suitable for the purposes of such corporation, and to take or flow lands or property in the construction of the works or improvements hereby authorized.

HISTORY: How. 3873i;—CL 1897, 6758;—CL 1915, 8858;—CL 1929, 11793;—CL 1948, 485.209.

485.210 Condemnation.

Sec. 10. Whenever any such corporation shall desire to take or flow any lands or property in the construction of the works or improvements authorized by this act, when no agreement can be made with the owners thereof, the like proceedings shall be had and taken as is provided in an act entitled, "An act to provide for the formation of companies to construct plank roads, approved April 8, 1851, and the acts amendatory thereto."

HISTORY: How. 3873j;—CL 1897, 6759;—CL 1915, 8859;—CL 1929, 11794;—CL 1948, 485.210.

NOTE: The sections in Act 155 of 1851, above referred to, are CL 1915, 8691-8702, Rep. 1921, p. 186, Act 84, being CL 1929, 10134.

485.211 Improvement powers; repair duty; driving of logs; tolls and expenses, lien.

Sec. 11. Any such corporation formed for the improvement of any boundary river in whole or part and any of its tributaries, and for driving, sorting, holding and delivering logs thereon, which shall have taken prior possession of such boundary river for that purpose, shall have power to improve such river and its tributaries by clearing and straightening the channels thereof, closing sloughs, erecting sluiceways, booms of all kinds, side rolling and flooding dams, driving piles and erecting piers or otherwise, as may be necessary or suitable for the purpose aforesaid: Provided, That such sluiceways, booms, dams, piles and piers shall so far as practicable, be so constructed and used as to allow of the free passage of logs, timber and other floatables along such waters. Every corporation which shall so improve a boundary river or any of its tributaries for the purpose of driving logs thereon, and keep in repair and operate its works, may charge and collect reasonable and uniform tolls upon all logs, lumber and timber driven or floated on the same, and may take possession of all logs put into said stream, or upon rollways so as to impede the drive, when the owners thereof or their agents shall not have come upon the stream adequately provided with men, teams and tools for breaking rollways and driving such logs in season for making a through drive down such stream without hindering the main drive and shall also at the request of the owner of any logs and timber put into said stream, take charge of the same and drive the same down and out of such stream, and charge and collect therefor of the owner or party controlling said logs and timber reasonable charges and expenses for such

services, (and all charges for running, driving, booming, towing, rafting, sorting and delivering of logs, timber or lumber by such corporation shall be by the scale of such logs, timber or lumber per 1,000 feet board measure); and such corporation shall for all such tolls, costs and expenses, have a lien on the logs for which the same were incurred, and shall be entitled to maintain possession of such logs or timber, or so much thereof as may be necessary to satisfy the amount of such tolls, costs and all expenses for taking care of the same until the same shall be determined, satisfied and paid in the manner hereinafter prescribed.

HISTORY: How. 3873k;—Am. 1889, p. 49, Act 42, Eff. Oct. 2;—CL 1897, 6760;—CL 1915, 8860;—CL 1929, 11795;—CL 1948, 485.211.

485.212 Lien; enforcement.

Sec. 12. Any such corporation claiming any lien as provided for in the preceding section, may recover the amount of such lien in the manner provided in sections 17 and 18 of an act entitled "An act to authorize the formation of corporations for the running, booming and rafting of logs," approved February 4, 1864.

HISTORY: How. 3873-l;—CL 1897, 6716;—CL 1915, 8861;—CL 1929, 11796;—CL 1948, 485.212.

Secs. 17 and 18 of Act 16 of 1864, above referred to, are CL 1915, 8644-8645, Rep. 1921, p. 186, Act 84, being CL 1929, 10134.

485.213 Consolidation; procedure; powers of new corporation; articles or certified copy as evidence.

Sec. 13. Any corporation formed under this act and any corporation of an adjoining state created for any similar or kindred purpose upon the same river may consolidate their stock, property and franchises in the manner and upon the terms agreed upon by the respective corporations and such consolidated corporations shall possess and have authority to exercise all the rights, privileges and franchises granted by this act: Provided, That no such consolidation shall be made without the assent of the holders of 3/4 of the capital stock of the consolidating companies. And provided further, That in case of any consolidation of corporations under this act, such consolidated corporations shall have power to assume a name, fix their capital stock, which shall in no case exceed the joint capital of the corporations so consolidated, to fix the number of its directors, which shall be not less than 3 nor more than 9, to adopt a common seal and to fix its term of existence which shall not exceed 30 years from the date of such consolidation, and such articles of consolidation, when duly executed and filed in the office of the secretary of state or a certified copy thereof, shall be prima facie evidence in all courts of the existence of such consolidated company.

HISTORY: How. 3873m;—CL 1897, 6762;—CL 1915, 8862;—CL 1929, 11797;—CL 1948, 485.213.

SALE OF PROPERTY AND FRANCHISES: See Act 112 of 1889, being Compilers' §§ 450.631 and 450.632.

485.214 Delivery duties; liability for damages.

Sec. 14. It shall be the duty of said corporation to provide for the delivery of and to deliver to the respective owners and parties entitled to receive the same the logs and timber driven, boomed, or sorted by such corporation, with prompt and impartial diligence, and no owners and parties ready to receive their logs and timber shall be delayed in the sorting and delivery thereof because other owners or parties are not ready to receive the delivery of their logs and timber. And such corporation shall be liable to any owners of logs and timber and to any parties entitled to receive from such corporation any logs and timber, for all damages which they may suffer by reason of the failure of such corporation to comply with the provisions of this section.

HISTORY: Add. 1889, p. 50, Act 42, Eff. Oct. 2;—How. 3873n;—CL 1897, 6763;—CL 1915, 8863;—CL 1929, 11798;—CL 1948, 485.214.

Act 188, 1889, p. 218; Imd. Eff. Jun. 26.

AN ACT to provide for the organization and incorporation of companies for clearing out and improving rivers, and streams in this state for the purpose of driving, sorting, holding and delivering logs thereon.

The People of the State of Michigan enact:

485.301 Corporations to improve rivers for logging; incorporation, control of stream.

Sec. 1. That any corporation now in existence, or which may hereafter be organized under any law of this state, having as its object the clearing out and improving of any river or stream navigable only for the purpose of driving logs and floating timber within the state, for the purpose of driving, sorting, holding and delivering logs thereon, which has taken possession of such stream, and made permanent and valuable improvements thereon by clearing and straightening the channels thereof, closing sloughs, erecting sluiceways, or building dams, as may be required; or where individuals have made such improvements, with the intention of subsequently incorporating, such corporation or individuals shall have the right to control such stream, under such restrictions, and in the manner following: Provided, That in all cases where individuals have already made improvements upon any stream or streams they shall proceed to incorporate under the laws of this state, within 4 months from the passage of this act.

HISTORY: How. 3873o;—CL 1897, 6764;—CL 1915, 8864;—CL 1929, 11799;—CL 1948, 485.301.

CONSTITUTION: See Const. VII, 12.

RIVER IMPROVEMENT COMPANIES: Specifically excepted from the provisions of Act 84 of 1921, except as otherwise therein provided, see Sec. 8 of Ch. 1 of Pt. I, being CL 1929, 9950. See also Compilers' § 450.3, as to exemption from corporation code.

REPORTS: See Compilers' § 450.88.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

485.302 Procedure to come under act; forfeiture of rights.

Sec. 2. Every corporation and all individuals desiring to avail themselves of the provisions of this act, shall file with the board of control of the St. Mary's Falls ship canal company a map or plan of the section or sections of the stream or streams which have been so improved, accompanied by the affidavit of the secretary of any such corporation, or any 2 individuals intending to thus incorporate, setting forth fully the nature and value of said improvements, and also generally what further improvements if any, are contemplated and the estimated cost of the same, whereupon such corporation or individuals shall have the right to control said stream and collect tolls for running, rafting and driving logs, as hereinafter provided: Provided, however, That where individuals have improved any stream, upon failure to incorporate and file due proof of the same with the said board of control of the St. Mary's Falls ship canal company, within said period of 4 months, all their rights under this act shall be forfeited by mere operation of law without notice.

HISTORY: How. 3873p;—CL 1897, 6765;—CL 1915, 8865;—CL 1929, 11800;—CL 1948, 485.302.

BOARD OF CONTROL: See note to Compilers' § 485.101 relative to St. Mary's Falls Ship Canal.

485.303 Corporation; vested rights, restrictions.

Sec. 3. Upon complying with the foregoing provisions of this act, such corporation shall be vested with all the rights, powers and franchises now conferred upon corporations organized under chapter 111 of Howell's annotated statutes, and shall in every particular be governed thereafter by the provisions and restrictions of said chapter.

HISTORY: How. 3873q;—CL 1897, 6766;—CL 1915, 8866;—CL 1929, 11801;—CL 1948, 485.303.

NOTE: Chap. 111 of How., above referred to, is Compilers' §§ 485.101 to 485.129.

CHAPTER 486. WATER AND POWER COMPANIES

WATER AND WATER POWER COMPANIES

Act 232 of 1863

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Act 232, 1863, p. 399; Eff. Jun. 22.

AN ACT to provide for the incorporation of water power companies.

The People of the State of Michigan enact:

486.1 Water power companies; incorporators; notice of formation; articles of association, contents.

Sec. 1. That any number of persons, not less than 5, may be formed into a corporation, for the purpose of maintaining, repairing and improving, any canal with water-power appurtenant thereto, constructed and used for the transmission of water, and the creation of water-power thereby, for manufacturing uses, by complying with the following requirements: Notice shall be given in at least 1 newspaper printed in the county in which the said canal may be situated, and if there be no newspaper printed in said county, then such notice shall be printed in some newspaper of an adjoining county, having circulation in said county, of the time and place where all persons *desirous of forming such company may meet and subscribe articles of association, and elect directors of such company, in which articles of association shall be set forth, the name of the company, the number of years the same is to be continued, which shall not exceed 30 years from the date of said articles, the number and names of the directors who shall manage the concerns of the company for the first year, and shall hold their offices until others are elected, the canal on which the business of said company is intended to be done, and the place within the state where the office of said company shall be kept.

HISTORY: CL 1871, 2745;—How. 3874;—CL 1897, 6767;—CL 1915, 8867;—CL 1929, 11802;—CL 1948, 486.1.

*NOTE: It is evident the word "desirous" should be spelled "desirous".

WATER POWER AND WATER SUPPLYING COMPANIES: Specifically excepted from the provisions of Act 84 of 1921, except as otherwise therein provided, see Sec. 8 of Ch. 1 of Pt. I, being CL 1929, 9950. See also Compilers' § 450.3, as to exemption from corporation code.

REPORTS: See Compilers' § 450.82.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

SALE OF PROPERTY AND FRANCHISES: See Act 112 of 1889, being Compilers' §§ 450.631 and 450.632.

EXAMINATION BY ATTORNEY GENERAL: See Compilers' § 450.525.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.1 et seq.

EXTENSION OF CORPORATE LIFE: See Act 82 of 1901, being Compilers' §§ 486.401 and 486.402; also see Compilers' § 450.60 et seq.

486.2 Articles of association; signing, filing, evidence; body corporate, powers.

Sec. 2. Each subscriber to such articles of association shall subscribe thereto his name and place of residence: The said articles of association shall be filed in the office of the secretary of state, and thereupon the persons who have so subscribed, and all persons who from time to time shall associate with them, shall be a body corporate, by the name specified in such articles, and as such shall be capable of suing and being sued, in all courts, and in all manner of actions, and may have a common seal. A copy of any articles of association, filed in pursuance of this section, with a copy of an affidavit, made by at least 2 of the directors named therein, setting forth that all prior proceedings of said association, had been in strict conformity with all the provisions of this act endorsed thereon, or annexed thereto, and certified by the secretary of state, to be a true copy of the whole of such articles of association, and of such affidavit, shall be in all courts and places presumptive evidence of the incorporation of such company, and the facts therein stated.

HISTORY: CL 1871, 2746;—How. 3875;—CL 1897, 6768;—CL 1915, 8868;—CL 1929, 11803;—CL 1948, 486.2.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

486.3 Board of directors; annual election, notice; officers, treasurer's bond; vacancy.

Sec. 3. The business of said company shall be under the management and direction of a board of directors, composed of not less than 3 nor more than 7, who, after the first year, shall be elected annually, at such time and place, and after such notice of the election as the by-laws shall prescribe, not less than 30 days previous to said election, and who shall hold their offices until their successors are elected. The said board shall elect from their number a president, and appoint a treasurer, who shall give such bond as the board of directors may require, and a secretary; and in case any vacancy shall occur in said board, the remaining directors may elect any member of said company to fill such vacancy as director, for the remainder of the term, and until a successor is elected; and in case said annual election of directors, from any cause, shall not be held at the time appointed, it shall be proper to hold the same at any time thereafter, upon giving like notice.

HISTORY: CL 1871, 2747;—How. 3876;—CL 1897, 6769;—CL 1915, 8869;—CL 1929, 11804;—CL 1948, 486.3.

ELECTIONS FOR DIRECTORS: See Compilers' § 485.5.

486.4 Membership in association; procedure, rights.

Sec. 4. Any person owning any interest in the canal and water-power under the control of such association, may become a member thereof at any time by subscribing his name to the articles of association. And any person or persons who shall purchase an interest in said water-power of any member of this association shall become a member of said association without other act and shall succeed to all his grantor's rights and privileges in the same as a member thereof to the extent of the interest so purchased.

HISTORY: Am. 1871, p. 123, Act 90, Imd. Eff. April 12;—CL 1871, 2748;—How. 3877;—CL 1897, 6770;—CL 1915, 8870;—CL 1929, 11805;—CL 1948, 486.4.

486.5 Repairs; permanent improvements, approval of members; expense.

Sec. 5. When the canal or any of its appurtenances under the control of such association may need to be repaired or rebuilt, the directors of said association may cause the same to be done at the expense of the owners thereof: Provided, That in all cases of permanent improvements of the water-power or appurtenances thereto, as distinguished from repairs, the said directors shall not be authorized to make such improve-

ments, or incur any expense concerning the same, unless first authorized by a vote of the members of said association at a regular or annual meeting thereof, or at a meeting to be called for that purpose. And provided further, That the expense of permanent improvements which are not rendered necessary for the actual preservation or protection of said water-power or its appurtenances shall be assessed and collected in the manner hereinafter provided only upon the members of such association and such owners of water-power not members as shall have consented thereto previous to the making of such improvement.

HISTORY: Am. 1871, p. 123, Act 90, Imd. Eff. April 12;—CL 1871, 2749;—How. 3878;—CL 1897, 5771;—CL 1915, 8871;—CL 1929, 11806;—CL 1948, 486.5.

486.6 Repairs; statement, filing, contents.

Sec. 6. Whenever the board of directors shall make any repairs not authorized at any meeting of said association, it shall be their duty to file with the clerk of the said association a statement containing,

First. A description of the work done;

Second. The expense thereof;

Third. The amount paid and to whom paid;

Fourth. The amount unpaid, if any, and to whom due.

HISTORY: Am. 1871, p. 123, Act 90, Imd. Eff. April 12;—CL 1871, 2750;—How. 3879;—CL 1897, 6772;—CL 1915, 8872;—CL 1929, 11807;—CL 1948, 486.6.

486.7 Assessment for repairs or improvements.

Sec. 7. For the purpose of defraying the expenses of such repairing, rebuilding or permanent improvement, and such contingent expenses as may be incurred in the discharge of their duties as directors of such association, the said directors may make from time to time, as the work progresses, an assessment upon the owners of such water-power, assessing and apportioning to and upon each owner thereof, such portion of said expenses as the water-power used or owned by such persons bears to the whole water-power furnished by such canal and its appurtenances; and when a water-power afforded by such canal is owned by a firm or corporation, such firm or corporation shall be considered as an individual member, and such assessment may be made to and upon such firm or corporation.

HISTORY: Am. 1871, p. 124, Act 90, Imd. Eff. April 12;—CL 1871, 2751;—How. 3880;—CL 1897, 6773;—CL 1915, 8873;—CL 1929, 11808;—CL 1948, 486.7.

486.8 Assessment; collection; non-payment, use of water prohibited.

Sec. 8. The said assessment shall then be delivered to the treasurer of the association for collection, who shall proceed forthwith and shall demand payment from each person named in said assessment of the amount apportioned to him, and if any such person shall neglect or refuse to pay the amount within 5 days after such demand to the treasurer, the same may be sued for and recovered, as provided for in section 18 of this act. Or the board of directors of such water-power company, may, by resolution direct that no member of said company or occupant of such power, whose assessment has been due and unpaid for 30 days after notice in writing of such assessment, shall be permitted to draw water from the race of said water-power company until such assessment is paid, and such board of directors may, after the expiration of 30 days, after notice in writing as aforesaid, board up, or close the gate of flume of such delinquent member, or person, or owner, and keep the same closed until the assessments due as aforesaid have been paid.

HISTORY: Am. 1871, p. 124, Act 90, Imd. Eff. April 12;—CL 1871, 2752;—How. 3881;—Am. 1897, p. 33, Act 32, Eff. Aug. 30;—CL 1897, 6774;—CL 1915, 8874;—CL 1929, 11809;—CL 1948, 486.8.

486.9 Assessment; notice to non-resident.

Sec. 9. In case any person upon whom an assessment shall have been made, as is herein provided, shall be a non-resident of the county in which said water-power is lo-

cated, or absent, so that personal demand cannot be made upon him by the treasurer for the payment of such assessment, then in such case the treasurer shall give notice of such assessment by inserting a notice in some daily paper published in the town or city where such canal is located, in each issue, for 4 successive weeks, if a daily paper be published therein, if not, then in a weekly paper published in the county where said canal is located, once in each week for 4 successive weeks, specifying the fact of such assessment, and the name or description of the interest so assessed, and the amount of the assessment: Provided, That in case the directors shall so direct, it shall be lawful to include 1 or more assessments upon the same person or interest in 1 notice, and by a notice by mail directed to the owners' reputed place of residence, and the publication aforesaid, and the giving of notice by mail as aforesaid, shall be deemed equivalent to a personal demand in the cases specified in this section after the publication and mailing said notices as aforesaid.

HISTORY: Am. 1871, p. 124, Act 90, Imd. Eff. April 12;—CL 1871, 2753;—How. 3882;—CL 1897, 6775;—CL 1915, 5875;—CL 1925, 11810;—CL 1948, 486.9.

486.10 Assessment; mortgage lien; preference.

Sec. 10. All assessments made under the provisions of this act shall be and remain a mortgage-lien upon the interest so assessed, from and after the completion of the work for which such assessment was made, until paid, together with interest and the cost of publishing notice, if notice shall be published, and said mortgage-lien shall have preference over all incumbrances on said interest from and after the recording of a certificate, as is hereinafter provided, except incumbrances now existing thereon in good faith, and except taxes assessed or to be assessed thereon by any law of this state.

HISTORY: Am. 1871, p. 125, Act 90, Imd. Eff. April 12;—CL 1871, 2754;—How. 3883;—CL 1897, 6776;—CL 1915, 5876;—CL 1925, 11811;—CL 1948, 486.10.

486.11 Mortgage lien; certificate, contents, recording.

Sec. 11. After such mortgage-lien shall have attached to such interest in such canal and water-power, the secretary of such association shall make a certificate in writing, to be signed by him, and countersigned by the president, which certificate shall state

First. The amount of such assessment or assessments;

Second. That the work for which such assessment was made has been done;

Third. The time when the same became a lien;

Fourth. A description of the property or interest upon which such assessment was made;

Fifth. The amount due thereon, together with the costs made thereon, which certificate shall be verified by the affidavit of such secretary, or some member of the board of directors, and shall be recorded and indexed by the register of deeds of the county in which such water-power is situated, in the books for mortgage, the same as if it were a mortgage given by the owner of the interest so assessed, and such record, or a certified copy thereof, shall be notice and evidence to the same intent, extent, and for the same purpose as a mortgage so recorded.

HISTORY: Am. 1871, p. 125, Act 90, Imd. Eff. April 12;—CL 1871, 2755;—How. 3884;—CL 1897, 6777;—CL 1915, 5877;—CL 1925, 11812;—CL 1948, 486.11.

486.12 Mortgage lien; foreclosure.

Sec. 12. Such mortgage-lien created as aforesaid shall be in the nature of a mortgage on real estate, and may be foreclosed and collected the same as a mortgage is now enforced and collected in equity, and shall be subject to all laws of this state in relation to the foreclosure and satisfaction of mortgages in chancery, as near as may be: all suits commenced for the foreclosure, collection, and satisfaction of such mortgage-lien shall be in the corporate name of such association.

HISTORY: Am. 1871, p. 126, Act 90, Imd. Eff. April 12;—CL 1871, 2756;—How. 3885;—CL 1897, 6778;—CL 1915, 5878;—CL 1925, 11813;—CL 1948, 486.12.

FORECLOSURE: See (Jud. Act) Compilers' §§ 600.1605, 600.3101.

486.13 Mortgage lien; commencement of suit after sixty days.

Sec. 13. Suits may be commenced for the foreclosure of such mortgage-lien at the expiration of 60 days from the time the certificate shall be recorded as mentioned in section 11 of this act.

HISTORY: Am. 1871, p. 126, Act 90, Imd. Eff. April 12;—CL 1871, 2757;—How. 3886;—CL 1897, 6779;—CL 1915, 8879;—CL 1929, 11814;—CL 1948, 486.13.

486.14 Meetings of members of associations; notice, proof of service, filing.

Sec. 14. Meetings of the members of the association may be called by any director, and it shall be the duty of any director to call a meeting of the members of said association on the written application of 3 members thereof. In all cases other than the annual or regular meetings, notice of such meeting, and of the time and place thereof, shall be given by personal service thereof if practicable, otherwise by posting a notice of such meeting on the premises of each member not personally served, in a conspicuous place, at least 24 hours before the time of meeting, and proof of the time and manner of such service by affidavit of the person serving the same shall be made and filed with the secretary of the association.

HISTORY: Am. 1871, p. 126, Act 90, Imd. Eff. April 12;—CL 1871, 2758;—How. 3887;—CL 1897, 6780;—CL 1915, 8880;—CL 1929, 11815;—CL 1948, 486.14.

486.15 Watchman; appointment, duties, compensation.

Sec. 15. The board of directors are also authorized, in case they deem it expedient for the safety and well-being of the property under their control, to employ a competent watchman to watch during the night to see that the canal or its appurtenances receive no injury from breaks in embankments or other causes; and they may prescribe his duties and fix his compensation, and raise means to pay the same in the manner hereinbefore provided.

HISTORY: Am. 1869, p. 99, Act 51, Imd. Eff. March 22;—Am. 1871, p. 127, Act 90, Imd. Eff. April 12;—CL 1871, 2759;—How. 3888;—CL 1897, 6781;—CL 1915, 8881;—CL 1929, 11816;—CL 1948, 486.15.

486.16 Contracts made by board of directors.

Sec. 16. The said board of directors shall have power to make all necessary contracts in the name of the corporation to carry out the duties imposed upon them by this act, which contract shall be signed by the president of the board, if in writing, in the corporate name thereof.

HISTORY: Am. 1871, p. 127, Act 90, Imd. Eff. April 12;—CL 1871, 2760;—How. 3889;—CL 1897, 6782;—CL 1915, 8882;—CL 1929, 11817;—CL 1948, 486.16.

486.17 Treasurer; duties.

Sec. 17. The treasurer of said board shall receive all moneys paid to him on assessment, and hold the same, to be paid out on the order of the said board, certified to the president thereof.

HISTORY: Am. 1871, p. 127, Act 90, Imd. Eff. April 12;—CL 1871, 2761;—How. 3890;—CL 1897, 6783;—CL 1915, 8883;—CL 1929, 11818;—CL 1948, 486.17.

486.18 Assessment; recovery, interest.

Sec. 18. All sums due from any person upon any assessment authorized by this act may be recovered with interest in an action of assumpsit brought in the name of the corporation, in any court of competent jurisdiction, or as provided in section 12 of this act.

HISTORY: Am. 1871, p. 127, Act 90, Imd. Eff. April 12;—CL 1871, 2762;—How. 3891;—CL 1897, 6784;—CL 1915, 8884;—CL 1929, 11819;—CL 1948, 486.18.

486.19 Disposition of funds at annual meeting.

Sec. 19. At the annual meeting of the members of said association, held for the election of officers, pursuant to the by-laws thereof, the members representing the majority of interest in such water-power may by vote make disposition of all the funds shown by the report of the treasurer of the board of directors, to be made to said meeting, to be in his hands, and such funds shall be paid out as so voted by said treasurer upon the certificate of the president of said board.

HISTORY: Am. 1871, p. 127, Act 90, Imd. Eff. April 12;—CL 1871, 2763;—How. 3882;—CL 1897, 6785;—CL 1915, 8885;—CL 1929, 11820;—CL 1948, 486.19.

486.20 By-laws of association; regulations, promulgation, publishing, enforcement; meetings.

Sec. 20. Said association shall have power by its by-laws to regulate the use of the water transmitted through the canal under its control by the several owners thereof; to determine the absolute or average head of said water; for the measurement of the quantity to be used by the several owners thereof in proportion to their interest in the water-power furnished by said canal; and to provide for the construction and maintenance in good order of all flumes, gateways, and other structures built to draw water from said canal, and for the tightening, contracting, or enlarging of the same according to the various stages of water in said canal; and in said by-laws to provide for the manner in which the aforesaid regulations shall be made, published, and enforced; and to provide for regular meetings of the association and the time and place of holding the same.

HISTORY: Am. 1871, p. 127, Act 90, Imd. Eff. April 12;—CL 1871, 2764;—How. 3883;—CL 1897, 6786;—CL 1915, 8886;—CL 1929, 11821;—CL 1948, 486.20.

486.21 Stockholder's liability.

Sec. 21. The stockholders of all corporations or associations formed under the provisions of this act, shall be individually liable for all labor performed for such corporation or association.

HISTORY: CL 1871, 2765;—How. 3884;—CL 1897, 6787;—CL 1915, 8887;—CL 1929, 11822;—CL 1948, 486.21.

486.22 Tenants in common; consent for improvements and repairs, liability.

Sec. 22. All owners of water-power afforded by any canal or its appurtenances which is under the control of any association formed under this act, who are tenants in common of the water, water-power, or easements or canal and appurtenances with the members of said association formed under this act, or the act to which this act is amendatory, shall be deemed to have consented to the making of such repairs, and improvements as are proper or necessary for the protection and preservation of such canal and its appurtenances and such as render the same generally available to the owner thereof; and it shall not be necessary in any such case in any proceedings under this act, to allege or show a previous request made to them to join in making such repairs and improvements, but they shall be respectively liable to pay their just proportion at the time and in the manner in this act provided for.

HISTORY: Add. 1871, p. 128, Act 90, Imd. Eff. April 12;—CL 1871, 2766;—How. 3885;—CL 1897, 6788;—CL 1915, 8888;—CL 1929, 11823;—CL 1948, 486.22.

Act 39, 1883, p. 31; Imd. Eff. Apr. 21.

AN ACT to authorize the formation of corporations for the purpose of excavating, constructing and maintaining water courses with water power appurtenant thereto, for accumulating, storing, conducting, selling, furnishing and supplying, upon an agreed rental, water and water power for mining, milling, manufacturing, domestic, municipal and agricultural purposes.

The People of the State of Michigan enact:

486.51 Water power and supply corporations; incorporators; powers.

Sec. 1. That any number of persons not less than 5, may form themselves into a corporation for the purpose of excavating and constructing, maintaining, repairing and improving any canal already existing, or which they may wish to excavate and construct, with water power appurtenant thereto, and may own, use and control the same for the purpose of accumulating, storing, conducting, selling, furnishing and supplying, upon an agreed rental, water and water-power for mining, manufacturing, domestic, municipal and agricultural purposes, and may acquire, take, hold, lease and convey lands or water power, as may be necessary or convenient, for the purposes above specified, by complying with the following requirements:

HISTORY: How. 3895a;—CL 1897, 6789;—CL 1915, 8889;—CL 1929, 11824;—CL 1948, 486.51.

SIMILAR ACTS: See Act 202 of 1887, being Compilers' §§ 486.101 to 486.116.

For Upper Peninsula, see Act 283 of 1905, being Compilers' §§ 486.201 to 486.216.

WATER POWER AND WATER SUPPLYING COMPANIES: Specifically excepted from the provisions of Act 84 of 1921, except as otherwise therein provided, see Sec. 8 of Ch. 1 of Pt. 1, being CL 1929, 9650. See also Compilers' § 450.3, as to exemption from corporation code.

REPORTS: See Compilers' § 450.82.

FEES, TAXES, AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

SALE OF PROPERTY AND FRANCHISES: See Act 112 of 1889, being Compilers' §§ 450.831 to 450.832.

EXAMINATION BY ATTORNEY GENERAL: See Compilers' § 450.525.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.1 et seq.

486.52 Certificate; contents; recording and filing.

Sec. 2. Such persons under their hands and seals shall make a certificate which shall specify:

First, The name of the corporation;

Second, A statement of the amount of capital stock of such company, and the number of shares into which the capital stock shall be divided;

Third, The county and townships within this state in which such canal is to be excavated and constructed, and the operations of said company carried on;

Fourth, The business and object of said company in general terms;

Fifth, The names and places of residences of the stockholders, and the number of shares held by each of them respectively;

Sixth, The names of the first directors, being not more than 7, and not less than 5;

Seventh, The place in this state where their office for the transaction of business is located;

Eighth, The term of existence of such corporation, which certificate shall be acknowledged as deeds are required to be acknowledged and recorded, in the office of the clerk of the county in which the office of said company for the transaction of business is located, and a copy thereof filed in the office of the secretary of state.

HISTORY: How. 3895b;—CL 1897, 6790;—CL 1915, 8890;—CL 1929, 11825;—CL 1948, 486.52.

EXTENSION OF CORPORATE LIFE: See Act 82 of 1901, being Compilers' §§ 486.401 and 486.402.

486.53 Body corporate; governing laws.

Sec. 3. Upon complying with the provisions of the last preceding section such company shall be a body corporate by the name designated in said certificate, and shall be subject to and governed by all the general provisions relating to corporations embraced in chapter 130 of the Compiled Laws of the state of Michigan, now in force, so far as the same shall be applicable thereto.

HISTORY: How. 3895c;—CL 1897, 6791;—CL 1915, 8891;—CL 1929, 11826;—CL 1948, 486.53.

NOTE: Ch. 130 of CL 1871, above referred to, contained the following general provisions which have not been repealed or re-enacted: Compilers' §§ 450.504 to 450.525.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

486.54 Board of directors; members, election, qualification.

Sec. 4. The business and property of such company shall be managed and directed by a board of not less than 5 nor more than 7 directors, who shall be elected annually and at such time and place as said by-laws may direct. No person shall be a director unless he is a stockholder in the corporation.

HISTORY: How. 3895d;—CL 1897, 6792;—CL 1915, 8892;—CL 1929, 11827;—CL 1948, 486.54.
ELECTIONS FOR DIRECTORS: See Compilers' § 485.5.

486.55 Board of directors; election, notice.

Sec. 5. In case it shall happen that an election for directors shall not be held as provided, the said corporation shall not be for that reason dissolved, but such election shall be held on some future day to be fixed by the directors holding over, upon giving the notice therefor as in this act provided.

HISTORY: How. 3895e;—CL 1897, 6793;—CL 1915, 8893;—CL 1929, 11828;—CL 1948, 486.55.

486.56 Board of directors; majority control.

Sec. 6. A majority of the directors shall be a board for the transaction of business and the acts of a majority of the board shall bind the corporation.

HISTORY: How. 3895f;—CL 1897, 6794;—CL 1915, 8894;—CL 1929, 11829;—CL 1948, 486.56.

486.57 Capital stock; subscriptions; increase, procedure.

Sec. 7. The directors of any such company may at any time receive subscriptions to stock in said company until the whole amount mentioned in their articles of association shall be subscribed, and whenever, in the judgment of the directors, it shall be necessary to increase the capital stock of any such company for the extension or more perfect completion of such proposed work, or to provide lands and buildings needful for its use, it shall be competent for such directors, with the approval or ratification of the holders of a majority of the capital stock, at any lawful meeting of the stockholders, to provide for such increase, and in all cases where such capital stock is increased a certificate thereof shall be signed, certified and filed as hereinbefore required in the case of original articles of association.

HISTORY: How. 3895g;—CL 1897, 6795;—CL 1915, 8895;—CL 1929, 11830;—CL 1948, 486.57.

486.58 Capital stock; subscriptions, calling in; sale, procedure, proceeds; purchaser's rights.

Sec. 8. The directors may call in subscriptions to the capital stock of such corporation by installments, in such portions, and at such times and places as they shall think proper, by giving notice thereof as the by-laws shall prescribe; and in case any stockholder shall neglect or refuse payment of any such installment for the space of 60 days after the same shall become due and payable, and after he shall have been notified thereof, the stock of such delinquent stockholder may be sold by the directors, at public auction, at the office of the secretary of the corporation, giving at least 30 days' notice in some newspaper published in the county; Provided, That if said stockholder shall reside in this state the stock shall be sold at the business office of said corporation, in the county in which they are doing business, giving at least 30 days' notice thereof in some newspaper published in the county. If no newspaper be published in the county in which such corporation transacts their business, then it shall be published in the newspaper in the city of Detroit, which shall have at the time the largest circulation; and the proceeds of such sale shall be at first applied in payment of the installment called for, and the expenses on the same, and the residue shall be refunded to the owner thereof; and such sale shall entitle the purchaser to all the rights of a stockholder, to the extent of the shares so bought.

HISTORY: How. 3895h;—CL 1897, 6796;—CL 1915, 8896;—CL 1929, 11831;—CL 1948, 486.58.

486.59 Corporate powers; liabilities and restrictions.

Sec. 9. Every such corporation organized as hereinbefore prescribed, shall have the following powers and be subject to the liabilities and restrictions following, that is to say:

First, To cause such examination and surveys for the proposed improvements whether of dams, canals or digging or deepening of channels to be made, as may be necessary to prepare for the work to be done;

Second, To purchase and by voluntary grants and donations to receive, enter upon, take, hold and use, all such lands and real estate and other property as may be necessary for the construction, maintenance and operation of dry docks, canals and all other works proposed in the approved plans of such company, and to lease, mortgage or otherwise dispose of real or personal property;

Third, To divert into any canal excavated or constructed under the provisions of this act, water from Lake Superior or St. Mary's river to flood lands belonging to said company, subject to the consent of the board of supervisors of the proper county in which waters so diverted are situated, and to erect such docks in Lake Superior or St. Mary's river as may be necessary or convenient for the purpose of such company.

HISTORY: How. 3895i; — CL 1897, 6797; — Am. 1899, p. 362, Act 231, Eff. Sept. 23; — CL 1915, 8897; — CL 1929, 11832; — CL 1948, 486.59.

486.60 Power to construct railroads, telegraph and telephone lines; holding of realty.

Sec. 10. Said corporation may, in the exercise of its discretion erect along the line of its canal, or over different portions of its property, such railroads as may be necessary for connecting manufacturing establishments situated upon or connected with their premises or enjoying water privileges from them with any line of railroad or any harbor near them, and such telegraph lines or telephonic lines as may be reasonably necessary or convenient in connection therewith. Said corporation may purchase and hold such tracts of land along the line of its canal and water courses, as may reasonably be necessary or convenient for the conveying of water, storing it, and dispensing and dividing it among those who wish to purchase or lease it for any of the purposes mentioned in this act, or for the purpose of erecting manufactories or mills upon.

HISTORY: How. 3895i; — CL 1897, 6799; — CL 1915, 8899; — CL 1929, 11833; — CL 1948, 486.60.

486.61 Furnishing and use of water; rent, collection.

Sec. 11. Such company may furnish water to other persons or companies for mining, manufacturing, milling, domestic, municipal, or agricultural purposes, on such rent as shall be agreed upon by and between it and those desiring to obtain it, or it may use the same for such purposes itself in any class of manufacturing purposes. It is authorized to bring suit to enforce the payment of such rent in any proper court of the county where its principal office is located.

HISTORY: How. 3895i; — CL 1897, 6799; — CL 1915, 8899; — CL 1929, 11834; — CL 1948, 486.61.

486.62 Injury to stream or property; misdemeanor, penalty.

Sec. 12. If any person shall willfully obstruct any stream or waters improved under the provisions of this act or any part thereof, or shall willfully destroy or injure any buildings, piers, dams, fixtures, banks, or other constructions in use upon the same, belonging to said company, such person or persons so offending, shall for every offense, be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding 500 dollars, or by imprisonment in the county jail not more than 1 year, in the discretion of the court.

HISTORY: How. 3895i; — CL 1897, 6800; — CL 1915, 8900; — CL 1929, 11835; — CL 1948, 486.62.

486.63 Board of directors; annual report, contents.

Sec. 13. On or before the first Monday in July in each year it shall be the duty of the directors of every company formed under this act to report to the secretary of state, under the oath of the secretary and at least 2 of the directors, the length of the stream or waters so constructed or improved, the cost of such improvements, the amount of money expended, the amount of their capital, how much of the same is paid in, and how much is expended, the whole amount of tolls or earnings expended on such improvements, the amount of money received during the previous year for tolls, and from all other sources, stating each separately, the amount set apart for repairs, the amount of dividends made, and the amount of indebtedness of such company, specifying the object for which such indebtedness accrued.

HISTORY: How. 3895m;—CL 1897, 6901;—CL 1915, 8901;—CL 1929, 11838;—CL 1948, 486.63.

See notes under Sec. 1 to this act.

Sec. 14.

HISTORY: How. 3895n;—Am. 1887, p. 103, Act 93, Imd. Eff. May 3;—CL 1897, 6802;—Am. 1899, p. 363, Act 231, Eff. Sept. 23.—Rep. 1909, p. 350, Act 184, Eff. July 1, 1912.

This section in 1883 and again under the amendment of 1899 gave the company the option to pay a specific tax of 1 per cent on its authorized capital stock in lieu of general taxes.

486.65 Stockholder's liability; recovery prerequisites.

Sec. 15. The stockholders of every company organized in pursuance of this act shall be jointly and severally personally liable for the payment of all debts and demands against such association, which shall be contracted or which shall be or shall become due during the time of their holding such stocks for any labor or services done or performed for such company, but no stockholder shall be proceeded against for the collection of any debt or demand against such company until execution on judgment for such labor and services shall have been returned unsatisfied, or unless such association shall be dissolved.

HISTORY: How. 3895o;—CL 1897, 6803;—CL 1915, 8902;—CL 1929, 11837;—CL 1948, 486.65.

CONTRIBUTION: See Compilers' § 450.519.

486.66 Shares deemed personal property; transfer.

Sec. 16. The shares of any company formed under this act shall be deemed personal property and may be transferred as shall be prescribed by the by-laws of such company.

HISTORY: How. 3895p;—CL 1897, 6804;—CL 1915, 8903;—CL 1929, 11838;—CL 1948, 486.66.

UNIFORM STOCK TRANSFER ACT: See Compilers' § 440.8301 et seq.

Sec. 17.

HISTORY: How. 3895q;—CL 1897, 6805;—Rep. 1915, p. 480, Act 314, Eff. Jan. 1, 1916.

This section dealt with service of process.

Act 202, 1887, p. 219; Imd. Eff. Jun. 18.

AN ACT to authorize the formation of corporations for the purpose of damming, excavating, constructing and maintaining water courses with water power appurtenant thereto, for accumulating, storing, conducting, selling, furnishing and supplying upon an agreed rental, water and water power for mining, milling, manufacturing, domestic, municipal and agricultural purposes and for purposes of navigation.

The People of the State of Michigan enact:

486.101 Water power and supply corporations; incorporators; powers.

Sec. 1. That any number of persons not less than 5 may form themselves into a corporation for the purpose of damming any stream and of excavating and constructing, maintaining, repairing and improving any canal already existing or which they may wish to excavate and construct with water power appurtenant thereto and may own.

lease, use and control the same for the purpose of accumulating, storing, conducting, selling, furnishing and supplying upon an agreed rental water and water power, for mining, milling, manufacturing, domestic, municipal and agricultural purposes and for purposes of navigation, and may acquire, hold, lease and convey lands or water power as may be necessary or convenient for the purposes above specified by complying with the following requirements.

HISTORY: How. 3895r;—CL 1897, 6806;—CL 1915, 8904;—CL 1929, 11839;—CL 1948, 486.101.

SIMILAR ACT: See Act 39 of 1883, being Compilers' §§ 486.51 to 486.66.

For Upper Peninsula, see Act 283 of 1905, being Compilers' §§ 486.201 to 486.216.

WATER POWER AND WATER SUPPLYING COMPANIES: Specifically excepted from the provisions of Act 84 of 1921, except as otherwise therein provided, see Sec. 8 of Ch. 1 of Pt. 1, being CL 1929, 9950. See also Compilers' § 450.3, as to exemption from corporation code.

REPORTS: See Compilers' § 450.82.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

SALE OF PROPERTY AND FRANCHISES: See Act 112 of 1889, being Compilers' §§ 450.631 and 450.632.

EXAMINATION BY ATTORNEY GENERAL: See Compilers' § 450.525.

CHANGE IN NAME: See Compilers' § 450.1 et seq.

486.102 Certificate; contents; recording and filing.

Sec. 2. Such persons under their hands and seals, shall make a certificate which shall specify,

First, The name of the corporation;

Second, A statement of the amount of capital stock of such company, and the number of shares into which the capital stock shall be divided;

Third, The county and townships within this state in which such canal is to be excavated and constructed, and the operations of said company carried on;

Fourth, The business and object of said company in general terms;

Fifth, The names and places of residence of the stockholders, and the number of shares held by each of them respectively;

Sixth, The names of the first directors, being not more than 7, and not less than 5;

Seventh, The place in this state where their office for the transaction of business is located;

Eighth, The term of existence of such corporation, which certificate shall be acknowledged as deeds are required to be acknowledged, and recorded in the office of the clerk of the county in which the office of said company for the transaction of business is located, and a copy thereof filed in the office of the secretary of state.

HISTORY: How. 3895s;—CL 1897, 6807;—CL 1915, 8905;—CL 1929, 11840;—CL 1948, 486.102.

EXTENSION OF CORPORATE LIFE: See Act 82 of 1901, being Compilers' §§ 486.401 and 486.402.

486.103 Body corporate; governing laws.

Sec. 3. Upon complying with the provisions of the last preceding section such company shall be a body corporate by the name designated in said certificate, and shall be subject to and governed by all the general provisions relating to corporations embraced in chapter 130 of the Compiled Laws of the state of Michigan, now in force, so far as the same shall be applicable thereto.

HISTORY: How. 2895t;—CL 1897, 6808;—CL 1915, 8906;—CL 1929, 11841;—CL 1948, 486.103.

NOTE: Ch. 130 of CL 1871, above referred to, is Compilers' § 450.504 et seq.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

486.104 Board of directors; members, election, qualification.

Sec. 4. The business and property of such company shall be managed and directed by a board of not less than 5 nor more than 7 directors, who shall be elected annually, and at such time and place as said by-laws may direct. No person shall be a director unless he is a stockholder in the corporation.

HISTORY: How. 3895u;—CL 1897, 6809;—CL 1915, 8907;—CL 1929, 11842;—CL 1948, 486.104.

ELECTION FOR DIRECTORS: See Compilers' § 485.5.

486.105 Board of directors; election, notice.

Sec. 5. In case it shall happen that an election for directors shall not be held as provided, the said corporation shall not be for that reason dissolved, but such election shall be held on some future day to be fixed by the directors holding over, upon giving the notice therefor as in this act provided.

HISTORY: How. 3895v;—CL 1897, 6810;—CL 1915, 8906;—CL 1929, 11843;—CL 1948, 486.105.

486.106 Board of directors; majority control.

Sec. 6. A majority of the directors shall be a board for the transaction of business, and the acts of a majority of the board shall bind the corporation.

HISTORY: How. 3895w;—CL 1897, 6811;—CL 1915, 8909;—CL 1929, 11844;—CL 1948, 486.106.

486.107 Capital stock; subscriptions; increase; procedure.

Sec. 7. The directors of any such company may at any time receive subscriptions to stock in said company until the whole amount mentioned in their articles of association shall be subscribed, and whenever, in the judgment of the directors, it shall be necessary to increase the capital stock of any such company for the extension or more perfect completion of such proposed work, or to provide lands and buildings needful for its use, it shall be competent for such directors, with the approval or ratification of the holders of a majority of the capital stock, at any lawful meeting of the stockholders, to provide for such increase, and in all cases where such capital stock is increased, a certificate thereof shall be signed, certified, and filed as hereinbefore required in the case of original articles of association.

HISTORY: How. 3895x;—CL 1897, 6812;—CL 1915, 8910;—CL 1929, 11845;—CL 1948, 486.107.

486.108 Capital stock; subscriptions, calling in; sale, procedure, proceeds; purchaser's rights.

Sec. 8. The directors may call in subscriptions to the capital stock of such corporation by installments, in such portions, and at such times and places as they shall think proper, by giving notice thereof as the by-laws shall prescribe; and in case any stockholder shall neglect or refuse payment of any such installment for the space of 60 days after the same shall become due and payable, and after he shall have been notified thereof, the stock of such delinquent stockholder may be sold by the directors, at public auction, at the office of the secretary of the corporation, giving at least 30 days' notice in some newspaper published in the county: Provided, That if said stockholder shall reside in this state, the stock shall be sold at the business office of said corporation, in the county in which they are doing business, giving at least 30 days' notice thereof in some newspaper published in the county. If no newspaper be published in the county in which such corporation transacts their business, then it shall be published in the newspaper in the city of Detroit, which shall have at the time the largest circulation; and the proceeds of such sale shall be at first applied in payment of the installment called for, and the expenses on the same, and the residue shall be refunded to the owner thereof; and such sale shall entitle the purchaser to all the rights of a stockholder, to the extent of the shares so bought.

HISTORY: How. 3895y;—CL 1897, 6813;—CL 1915, 8911;—CL 1929, 11846;—CL 1948, 486.108.

486.109 Corporate powers, liabilities and restrictions.

Sec. 9. Every such corporation, organized as hereinbefore prescribed shall have the following powers and be subject to the liabilities and restrictions following, that is to say:

First, To cause such examinations and surveys for the proposed improvements whether dam-locks, canals or digging or deepening of channels to be made as may be necessary to prepare for the work to be done.

Second, To purchase and by voluntary grants and donations to receive, enter upon, take hold and use all such lands and real estate and other property as may be necessary for the construction and maintenance of the work proposed in the approved plans of such company.

Third, To divert into any canal excavated or constructed under the provisions of this act, waters from Lake Paw Paw or Paw Paw river or any tributary stream in Berrien county state of Michigan, to flood lands belonging to said company or subject to condemnation proceedings as provided by law, by constructing the necessary dams in said canal or in creeks or other water courses subject to the consent of the board of supervisors of the proper county in which said waters so diverted or dammed are situated.

Fourth, The acquisition of lands shall be under the same rules and forms as near as practicable as are provided in cases for the acquisition of lands for right of way of railway lines, when the railway company is unable to agree with the owners or legal representatives for the purchase of any real estate.

Fifth, To issue its construction bonds to an amount not exceeding 50 per centum of its capital stock bearing a rate of interest not above 7 per cent and payable at any such time as the board of directors may determine, on approval of a majority in interest of the stockholders voting at any regular or called meeting of their body.

Sixth, That in any case where the company is unable to agree with the owners of land needed for, or in the work of constructing a navigable waterway, as herein provided, or cannot agree with any highway commissioner, or other authority, as to the crossing or changing of roads, streets, or streams, then and in all such cases the same laws providing for the incorporation of railroad companies, and providing for the condemnation of lands to the public use in certain cases, shall govern and be the rule of action or procedure so far as practicable; and any company undertaking to construct a navigable waterway, with or without water power appurtenant thereto, and intending to do a transportation business upon such waterway, shall have the same rights and privileges for procuring right of way, needed lands, or real estate of any kind, or of crossing streams and highways, as the laws of Michigan allow railroad companies.

HISTORY: How. 3895z;—CL 1897, 6814;—CL 1915, 8912;—CL 1929, 11847;—CL 1948, 486.109.

486.110 Power to construct railroads, telegraph and telephone lines; holding of realty.

Sec. 10. Said corporation may, in the exercise of its discretion, erect along the line of its canal or over different portions of its property, such railroads as may be necessary for connecting manufacturing establishments situated upon or connected with their premises or enjoying water privileges from them with any line of railroad or any harbor near them, and such telegraph lines or telephonic lines as may be reasonably necessary or convenient in connection therewith. Said corporation may purchase and hold such tracts of land along the line of its canal and water courses, as may reasonably be necessary or convenient for the conveying of water, storing it and dispensing and dividing it among those who wish to purchase or lease it for any of the purposes mentioned in this act, or for the purpose of erecting manufactories or mills upon.

HISTORY: How. 3895z-1;—CL 1897, 6815;—CL 1915, 8913;—CL 1929, 11848;—CL 1948, 486.110.

486.111 Furnishing and use of water; rent, collection.

Sec. 11. Such company may furnish water to other persons or companies for mining, manufacturing, milling, domestic, municipal or agricultural purposes, on such rent as shall be agreed upon by and between it and those desiring to obtain it, or it may use the same for such purposes itself in any class of manufacturing purposes. It is authorized to bring suit to enforce the payment of such rent in any proper court of the county where its principal office is located.

HISTORY: How. 3895z-2;—CL 1897, 6816;—CL 1915, 8914;—CL 1929, 11849;—CL 1948, 486.111.

486.112 Injury to stream or property; misdemeanor, penalty.

Sec. 12. If any person shall willfully obstruct any stream or waters improved under the provisions of this act or any part thereof, or shall willfully destroy or injure any buildings, piers, dams, fixtures, banks, or other constructions in use upon the same, belonging to said company, such person or persons so offending, shall, for every offense, be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding 500 dollars, or by imprisonment in the county jail not more than 1 year, in the discretion of the court.

HISTORY: How. 3895z-3;—CL 1897, 6817;—CL 1915, 8915;—CL 1929, 11850;—CL 1948, 486.112.

486.113 Board of directors; annual report, contents.

Sec. 13. On or before the first Monday in July in each year it shall be the duty of the directors of every company formed under this act to report to the secretary of state, under the oath of the secretary and at least 2 of the directors, the length of the stream or waters so constructed or improved, the cost of such improvements, the amount of money expended, the amount of their capital, how much of the same is paid in, and how much is expended, the whole amount of tolls or earnings expended on such improvements, the amount of money received during the previous year for tolls, and from all other sources, stating each separately, the amount set apart for repairs, the amount of dividends made, and the amount of indebtedness of such company, specifying the object for which such indebtedness accrued.

HISTORY: How. 3895z-4;—CL 1897, 6818;—CL 1915, 8916;—CL 1929, 11851;—CL 1948, 486.113.

See notes under Sec. 1 of this act.

486.114 Realty; purchase, holding, disposal; limitations.

Sec. 14. Each and every company formed under this act shall have authority to purchase and hold land adjacent to or within convenient distance of any canal constructed under the provisions of this act, for the purpose of platting and selling to manufacturers, their operatives or to other persons, and shall have authority to lease, mortgage or otherwise dispose of real or personal property: Provided, That no land shall be held by said company for the purposes stated in this section for a longer period than 10 years from the time when the same shall have been acquired, nor exceeding in amount 2,000 acres.

HISTORY: How. 3895z-5;—CL 1897, 6819;—CL 1915, 8917;—CL 1929, 11852;—CL 1948, 486.114.

PLAT ACT: See Compilers' § § 560.101 to 560.293.

486.115 Stockholder's liability; recovery prerequisites.

Sec. 15. The stockholders of every company organized in pursuance of this act shall be jointly and severally personally liable for the payment of all debts and demands against such association, which shall be contracted, or which shall be or shall become due during the time of their holding such stocks, for any labor or services done or performed for such company, but no stockholder shall be proceeded against for the collection of any debt or demand against such company until execution or [on] judgment for such labor and services shall have been returned unsatisfied, or unless such association shall be dissolved.

HISTORY: How. 3895z-6;—CL 1897, 6820;—CL 1915, 8918;—CL 1929, 11853;—CL 1948, 486.115.

CONTRIBUTION: See Compilers' § 450.519.

486.116 Shares deemed personal property; transfer.

Sec. 16. The shares of any company formed under this act shall be deemed personal property, and may be transferred as shall be prescribed by the by-laws of such company.

HISTORY: How. 3895z-7;—CL 1897, 6821;—CL 1915, 8919;—CL 1929, 11854;—CL 1948, 486.116.

UNIFORM STOCK TRANSFER ACT: See Compilers' § 440.8301 et seq.

Sec. 17.

HISTORY: How. 3895z-8;—CL 1897, 6822;—Rep. 1915, p. 480, Act 314, Eff. Jan. 1, 1916.

This section dealt with service of process.

Act 283, 1905, p. 452; Eff. Sep. 16.

AN ACT to authorize the formation of corporations for the purpose of damming, excavating, constructing and maintaining water courses with water power appurtenant thereto, for accumulating, storing, manufacturing, conducting, using, selling, furnishing and supplying water and water power, electricity and electric power, and all and every kind of power for mining, milling, manufacturing, domestic, municipal and agricultural purposes, and for the purpose of transportation and for all other purposes in the upper peninsula of Michigan.

The People of the State of Michigan enact:

486.201 Water power and supply corporations in upper peninsula; incorporators; powers.

Sec. 1. That any number of persons may form themselves into a corporation for the purpose of damming any stream or streams, and of excavating and constructing, maintaining, repairing and improving any stream or canal already existing, or which they may wish to excavate and construct, with water power appurtenant thereto, and may own, lease, use and control the same for the purpose of accumulating, storing, manufacturing, conducting, using or selling, furnishing and supplying water and water power, electricity and electric power, and all and every kind of power for any and all purposes, and may acquire, hold, lease and convey lands or water power as may be necessary or convenient for the purposes above specified in the upper peninsula of Michigan, by complying with the following requirements.

HISTORY: CL 1915, 8920;—CL 1929, 11855;—CL 1948, 486.201.

WATER POWER AND WATER SUPPLYING COMPANIES: Specifically excepted from the provisions of Act 84 of 1921, except as otherwise therein provided, see Sec. 8 of Ch. 1 of Pt. 1, being CL 1929, 9950. See also Compilers' § 450.3, as to exemption from corporation code.

REPORTS: See Compilers' § 450.82.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

GENERAL CORPORATION PROVISIONS: See Compilers' § 450.1 et seq.

SALE OF PROPERTY AND FRANCHISES: See Act 112 of 1889, being Compilers' §§ 450.631 and 450.632.

RATES: See Compilers' §§ 460.4, 460.54, 460.57 and 460.58.

EXAMINATION BY ATTORNEY GENERAL: See Compilers' § 450.525.

CHANGE IN NAME: See Act 139 of 1895, being Compilers' § 450.1 et seq.

486.202 Certificate; contents; recording and filing.

Sec. 2. Such persons, under their hands and seals, shall make a certificate which shall specify:

First, The name of the corporation;

Second, A statement of the amount of capital stock of such company, and the number of shares into which the capital stock shall be divided;

Third, The county or counties within this state in the upper peninsula thereof, in which such canal is to be excavated and constructed, and the operations of said company carried on;

Fourth, The business and object of said company in general terms;

Fifth, The names and places of residence of the stockholders, and the number of shares held by each of them respectively;

Sixth, The names of the first directors, being not more than 7 and not less than 3;

Seventh, The place in this state where their office for the transaction of business is located;

Eighth, The term of existence of such corporation, which certificate shall be acknowledged as deeds are required to be acknowledged, and recorded in the office of

the clerk of the county in which the office of said company for the transaction of business is located, and a copy thereof filed in the office of the secretary of state.

HISTORY: CL 1915, 8921;—CL 1929, 11856;—CL 1948, 486.202.

EXTENSION OF CORPORATE LIFE: See Act 82 of 1901, being Compilers' §§ 486.401 and 486.402.

486.203 Body corporate; governing laws.

Sec. 3. Upon complying with the provisions of the last preceding section such company shall be a body corporate by the name designated in said certificate, and shall be subject to and governed by all the general provisions relating to corporations embraced in chapter 230 of the Compiled Laws of the state of Michigan, now in force, so far as the same shall be applicable thereto.

HISTORY: CL 1915, 8922;—CL 1929, 11857;—CL 1948, 486.203.

NOTE: Ch. 230 of CL 1897, above referred to, contained the following provisions which have not been repealed or re-enacted: Compilers' §§ 450.504-450.525, 450.601, 450.631 to 450.651, 548.151 and 548.152.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

486.204 Board of directors; members, election, qualifications.

Sec. 4. The business and property of such company shall be managed and directed by a board of not less than 3 nor more than 7 directors, who shall be elected annually, and at such time and place as the by-laws of said company may direct. No person shall be a director unless he is a stockholder in the corporation.

HISTORY: CL 1915, 8923;—CL 1929, 11858;—CL 1948, 486.204.

ELECTIONS FOR DIRECTORS: See Compilers' § 485.5.

486.205 Board of directors; election, notice.

Sec. 5. In case it shall happen that an election for directors shall not be held as provided, the said corporation shall not be for that reason dissolved, but such election shall be held on some future day to be fixed by the directors holding over, upon giving the notice therefor as in this act provided.

HISTORY: CL 1915, 8924;—CL 1929, 11859;—CL 1948, 486.205.

486.206 Board of directors; majority control.

Sec. 6. A majority of the directors shall be a board for the transaction of business, and the acts of a majority of the board shall bind the corporation.

HISTORY: CL 1915, 8925;—CL 1929, 11860;—CL 1948, 486.206.

486.207 Capital stock; subscriptions; increase, procedure.

Sec. 7. The directors of any such company may at any time receive subscriptions to stock in said company until the whole amount mentioned in their articles of association shall be subscribed, and whenever in the judgment of the directors, it shall be necessary to increase the capital stock of any such company for the extension or more perfect completion of such proposed work, or to provide lands and buildings needful for its use, it shall be competent for such directors, with the approval or ratification of the holders of a majority of the capital stock, at any lawful meeting of the stockholders to provide for such increase, and in all cases where such capital stock is increased, a certificate thereof shall be signed, certified and filed as hereinbefore required in the case of original articles of association.

HISTORY: CL 1915, 8926;—CL 1929, 11861;—CL 1948, 486.207.

486.208 Capital stock; subscriptions, calling in; sale, procedure, proceeds; purchaser's rights.

Sec. 8. The directors may call in subscriptions to the capital stock of such corporation by installments, in such portions, and at such times and places as they shall deem proper, by giving notice thereof as the by-laws shall prescribe; and in case any stockholder shall neglect or refuse payment of any such installment for the space of 60 days after the same shall become due and payable, and after he shall have been notified

thereof, the stock of such delinquent stockholder may be sold by the directors, at public auction, at the office of the secretary of the corporation, giving at least 30 days' notice in some newspaper published in the county: Provided, That if said stockholder shall reside in this state, the stock shall be sold at the business office of said corporation, in the county in which they are doing business, giving at least 30 days' notice thereof in some newspaper published in the county. If no newspaper be published in the county in which such corporation transacts their business, then it shall be published in the newspaper in the city of Detroit which shall have at the time the largest circulation; and the proceeds of such sale shall be at first applied in payment of the installment called for, and the expenses on the same, and the residue shall be refunded to the owner thereof; and such sale shall entitle the purchaser to all the rights of a stockholder to the extent of the shares so bought.

HISTORY: CL 1915, 8927;—CL 1929, 11862;—CL 1948, 486.208.

486.209 Corporate powers; liabilities and restrictions.

Sec. 9. Every such corporation, organized as hereinbefore prescribed, shall have the following powers and be subject to the liabilities and restrictions following, that is to say:

First, To cause such examinations and surveys for all proposed improvements, to be made as may be necessary to prepare for the work to be done;

Second, To acquire and by grants and donations to receive, enter upon, take, hold and use all such lands and real estate and other property as may be necessary in the business of such company;

Third, To flood lands belonging to said company by constructing the necessary dams in any canal, or in creeks, streams or other water courses;

Fourth, To issue its construction bonds to an amount not exceeding 50 per cent of its capital stock, bearing a rate of interest not above 6 per cent, and payable at any such time or times as the board of directors may determine on approval of a majority in interest of the stockholders voting at any regular or called meeting of their body.

HISTORY: CL 1915, 8928;—CL 1929, 11863;—CL 1948, 486.209.

486.210 Power to construct railroad, telegraph and telephone lines; holding of realty.

Sec. 10. Said corporation may, in the exercise of its discretion, erect, maintain and operate such railroads as may be necessary for connecting manufacturing establishments situated upon or connected with its premises, or enjoying power privileges from it with any line of railroad or any harbor, and such power lines, telegraph lines or telephonic lines as may be reasonably necessary or convenient in the business of said corporation. Said corporation may acquire and hold such tracts of land along the line of its canal and water courses as may be reasonably necessary or convenient for the conveying of water or electricity or other power and storing it and dispensing and dividing it among those who wish to purchase or lease it for any of the purposes mentioned in this act, or for the purpose of erecting manufactories or mills or other commercial establishments.

HISTORY: CL 1915, 8929;—CL 1929, 11864;—CL 1948, 486.210.

USE OF HIGHWAYS: See Compilers' §§ 460.551 to 460.605.

486.211 Furnishing and use of water or power; compensation; right to sue and be sued.

Sec. 11. Such company may furnish and sell water, water power, electricity or electric power, and any and all other forms of power to other persons or companies for any and all purposes on such terms as shall be agreed upon, or it may use the same for such purposes itself. Any person or corporation receiving, using or enjoying any benefit from the operations or improvements of any company organized under this act shall

pay to said company a reasonable compensation for all such benefits used or enjoyed. It is authorized to sue and be sued in any proper court in this state, the same as a natural person.

HISTORY: CL 1915, 8930;—CL 1929, 11865;—CL 1948, 486.211.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

486.212 Injury to stream or property; misdemeanor, penalty.

Sec. 12. If any person shall wilfully obstruct any stream or waters improved, or in use under the provisions of this act, or any part thereof, or shall wilfully destroy or injure any buildings, piers, dams, fixtures, banks, power lines or other constructions in use by and belonging to said company, such person or persons so offending shall, for every offense, be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding 500 dollars, or by imprisonment in the county jail not more than 1 year, in the discretion of the court.

HISTORY: CL 1915, 8931;—CL 1929, 11866;—CL 1948, 486.212.

486.213 Board of directors; annual report, contents.

Sec. 13. On or before the first Monday in July in each year it shall be the duty of the directors of every company formed under this act to report to the secretary of state, under the oath of the secretary and at least 2 of the directors, the improvements made by such company, the cost of such improvements, the amount of money expended, the amount of the capital of the company, how much of the same is paid in, and how much has been expended, the whole amount of tolls or earnings expended on such improvements, the amount of money received the previous year for tolls, and from all other sources, stating each separately, the amount set apart for repairs, the amount of dividends paid and the amount of indebtedness of such company, specifying the object for which such indebtedness accrued.

HISTORY: CL 1915, 8932;—CL 1929, 11867;—CL 1948, 486.213.

See notes under Sec. 1 of this act.

486.214 Realty; purchase, holding, disposal; personal property, disposal.

Sec. 14. Each and every corporation formed under this act shall have authority to purchase and hold land in amount not to exceed 3,000 acres adjacent to or within convenient distance of any canal, stream or dam, constructed under the provisions of this act, for the purpose of platting and selling the same to manufacturers, their operatives or to other persons, and shall have the authority to lease, mortgage, sell, or otherwise dispose of real or personal property.

HISTORY: CL 1915, 8933;—CL 1929, 11868;—CL 1948, 486.214.

PLAT ACT: See Compilers' §§ 580.101 to 580.293.

486.215 Stockholder's liability; recovery prerequisites.

Sec. 15. The stockholders of every company organized in pursuance of this act shall be jointly and severally personally liable for the payment of all debts and demands against such association which shall be contracted, or which shall be or shall become due during the time of their owning such stocks, for any labor or services done or performed for such company, but no stockholder shall be proceeded against for the collection of any debt or demand against such company until execution on judgment for such labor and services shall have been returned unsatisfied, unless such association shall be dissolved.

HISTORY: CL 1915, 8934;—CL 1929, 11869;—CL 1948, 486.215.

CONTRIBUTION: See Compilers' § 450.519.

486.216 Shares deemed personal property; transfer.

Sec. 16. The shares of any company formed under this act shall be deemed personal property, and may be transferred as shall be prescribed by the by-laws of such company.

HISTORY: CL 1915, 8935;—CL 1929, 11870;—CL 1948, 486.216.

COMPILERS' NOTE: This section is probably superseded by the uniform stock transfer act, Act 106 of 1913, now being Compilers' § 440.8301 et seq.

Sec. 17.

HISTORY: Rep. 1915, p. 481, Act 314, Eff. Jan. 1, 1916.

This section dealt with service of process.

Act 238, 1923, p. 381; Eff. Aug. 30.

AN ACT authorizing the formation of corporations for the purpose of generating, manufacturing, producing, gathering, storing, transmitting, distributing, transforming, selling and supplying electric energy or gas, either artificial or natural, or both electric energy and gas, to the public generally, or to public utilities or natural gas companies, and providing for and giving to such corporations and also to corporations heretofore lawfully organized, among other things, for such purposes; to corporations heretofore lawfully organized, or that may hereafter be lawfully organized and duly authorized to carry on the electric or gas business as a public utility in the state of Michigan; and to foreign corporations heretofore lawfully organized or that may hereafter be lawfully organized, among other things, for such purposes, and duly authorized to carry on business in the state of Michigan, the right to condemn private property for the uses provided for herein. Am. 1929, p. 614, Act 253, Eff. Aug. 28;—Am. 1931, p. 157, Act 98, Eff. Sep. 18;—Am. 1947, p. 672, Act 356, Eff. Oct. 11.

The People of the State of Michigan enact:

486.251 Electric and gas corporations; incorporators; powers.

Sec. 1. That any number of persons not less than 3 may form a corporation, for generating, manufacturing, producing, gathering, storing, transmitting, distributing, transforming, selling and supplying electric energy or gas, either artificial or natural, or both electric energy and gas, to the public generally, or to public utilities or natural gas companies, by executing under their hands and seals, articles of incorporation in manner and form as required as to certain other profit corporations by the provisions of sections 1 to 97, inclusive, of Act No. 327 of the Public Acts of 1931, of Michigan and amendments thereto, and thereupon such corporations shall have and enjoy all the powers and privileges of corporations for pecuniary profit organized under said sections 1 to 97, inclusive, of Act No. 327 of the Public Acts of 1931 of Michigan, and amendments thereto.

HISTORY: CL 1929, 11871;—Am. 1947, p. 672, Act 356, Eff. Oct. 11;—CL 1948, 486.251.

NOTE: Secs. 1-97, Act 327, 1931, above referred to, are Compilers' §§ 450.1-450.97.

WATER POWER AND WATER SUPPLYING COMPANIES: Specifically excepted from the provisions of Act 84 of 1921, except as otherwise therein provided, see Sec. 8 of Ch. 1 of Pt. I, being CL 1929, 9950. See also Compilers' § 450.3, as to exemption from corporation code.

REPORTS: See Compilers' § 450.82.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

486.252 Corporate powers.

Sec. 2. Every such corporation, organized as provided in section 1 of this act, shall also have the following powers:

Examination and survey for improvements.

First, To cause such examinations and surveys for all proposed improvements to be made, as may be necessary to prepare for the work to be done;

Property.

Second, To acquire by lease, purchase, grant and donation all such lands, easements, royalties, leaseholds, flowage rights, water power and other property, and any interest therein, as may be necessary to carry out its corporate purposes;

Dams; improvement of stream or canal.

Third, To dam any stream or streams, and to excavate, construct, maintain, repair and improve any existing stream or canal, or which it may excavate and construct, with water power appurtenant thereto;

Flooding.

Fourth, To flood, flow and submerge its land and property by constructing the necessary dams in any canal, or in creeks, streams or other water courses, natural or artificial;

Condemnation; exception as to certain mineral rights; generating, transmitting or transforming electric energy.

Fifth, To condemn all lands and any and all interests therein, easements, rights of way and other property other than lands lying within a known mineral zone of iron ore, copper or coal, which may be necessary to generate, transmit and transform electric energy for public use in, upon or across private property.

Same; gas pipe line rights of way, underground natural gas storage field; procedure; drilling through formation used for storage.

Sixth, To condemn all lands, easements, rights of way, gas royalties, dry natural gas leaseholds and other property and any and all interests therein, other than lands lying within a known mineral zone of iron ore, copper or coal, which may be necessary for pipe line rights of way or for an underground natural gas storage field or fields: Provided, however, That such right of condemnation hereby granted shall not extend to or include the right to condemn lands, easements, rights of way, gas royalties, dry natural gas leaseholds or other property or any interest therein, which are owned, leased or used by any public utility or natural gas company carrying on the business of producing, gathering, transmitting, storing, selling or supplying gas within the state of Michigan. The term "natural gas company" as used in this act is hereby defined as a corporation engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale: And provided further, That the condemnation of lands, dry natural gas leaseholds or other property or any interest therein for an underground natural gas storage field in any formation shall be without prejudice to the right of the owner or owners of such lands, dry natural gas leaseholds or other property or interest therein to drill through the formation or formations used or to be used for underground storage of natural gas provided adequate precautions are taken by such owner or owners to prevent the escape of gas stored in such formation or formations. Such condemnation proceedings in all cases shall be brought by petition addressed to the probate court for the county in which the land or any part thereof or interest therein to be condemned is located, and shall conform, as nearly as practicable, to the rules of pleading and practice governing probate court procedure. The petition shall set forth with reasonable certainty the description of each parcel of land and interest therein sought to be acquired, the name or names of the persons owning or having an interest in the land or parcels sought to be condemned insofar as disclosed by the records in the office of the register of deeds in the county in which said lands are situated and specifying generally the purpose and necessity of acquiring such lands and interests. Where a project involves more than 1 parcel of land located within a single county, all or any number of such parcels, irrespective of the number of persons owning or having interests therein, may be joined in 1 proceeding. Said petition shall request that all persons interested in the respective premises described, or any part

thereof, be required to appear and answer the petition, and show cause, if any they have, against the same, and shall pray for the appointment of 3 disinterested freeholders and residents of the county in which said land is situated, as commissioners to perform the duties assigned them as hereinafter provided. In any case where the petitioner seeks to exercise the rights conferred by the provisions of paragraph fifth of section 2 hereof, for the purpose of acquiring any property or interest therein for use as a water power project, the petitioner shall first have acquired and its petition shall contain the additional allegation that the petitioner has acquired, prior to the filing of such petition, by any means other than by condemnation, at least 90% of the property rights and interests including lands to be overflowed, required for such purpose, within the area proposed for such water power project. In any case where the petitioner seeks to exercise the rights conferred by the provisions of paragraph sixth of section 2 hereof, for the purpose of acquiring any property or interest therein for use as a natural gas storage field, the petitioner shall first have acquired and its petition shall contain the additional allegation that the petitioner has acquired, prior to the filing of such petition, by any means other than by condemnation, at least 75%, computed in respect to surface area, of the property rights and interests in the underground field required for storage purposes, and its petition shall also contain an accurate description of the surface area underlaid by the formation or formations to be used for natural gas storage.

HISTORY: Am. 1929, p. 615, Act 253, Eff. Aug. 28;—CL 1929, 11872;—Am. 1947, p. 673, Act 356, Eff. Oct. 11;—CL 1948, 486.252;—Am. 1957, p. 73, Act 67, Imd. Eff. May 21;—Am. 1961, p. 66, Act 69, Eff. Sept. 8.

CONDEMNATION: By railroads, see Compilers' § 464.15 et seq.

USE OF HIGHWAYS: See Compilers' §§ 460.551 to 460.605.

486.252a Condemnation proceedings; order for hearing, time, contents, service; guardian ad litem.

Sec. 2a. Upon the filing of the petition, the court shall make an order fixing a day for the hearing on such petition, which shall not be less than 15 days thereafter. Such order shall recite the names of the persons mentioned in the petition and the descriptions of each piece or parcel of property and shall state the purpose of the petition. A copy of such order shall be served at least 10 days before the day of hearing, upon each person named therein as being interested in the property to be taken, who is a resident of the county in which the property is located, and also upon the person or persons in possession of such property, if other than the owner. Such service may be made as provided in section 2j of this act. Service may also be made upon persons interested in the property who are non-residents of the county. In cases where a minor or an insane or incompetent person has an interest in such property, service of a copy of the order shall be made upon the guardian, if any, and if such person has no guardian, the petitioner may petition the court for the appointment of a guardian ad litem. Upon the filing of such petition the court shall appoint a guardian ad litem, who shall be a resident of the county and upon whom service of a copy of the said order shall be made.

HISTORY: Add. 1947, p. 674, Act 356, Eff. Oct. 11;—CL 1948, 486.252a.

486.252b Condemnation proceedings; order for appearance, affidavit, publication, proof of service; jurisdiction.

Sec. 2b. Upon, or at any time after the filing of such petition, the court shall make an order for the appearance of any persons interested in the property, or any part thereof on or before the day of hearing therein stated, upon proof by affidavit either:

- (a) That such person resides out of or is absent from the county, or his whereabouts are unknown; or
- (b) That it cannot be ascertained in what county, state or country such person resides.

Such order shall be published in some newspaper published and circulated in the county, or in such other paper as the court may direct, at least once in each week for 2 successive weeks immediately preceding the day set for the hearing, and a copy of such order shall be mailed to each absent or non-resident person having a last known postoffice address, by registered mail, and a return receipt demanded. Proof by affidavit shall be made of such mailing, and whether or not a return receipt was received, and if one was received, it shall be attached to said affidavit; but such publication and mailing shall not be necessary in any case in which a copy of such order has been served personally or by registered mail on each such absent or non-resident person. Proof of publication and service may be made by affidavit of any person having knowledge of the facts. Such proof shall be filed with the court on or before the day of hearing, and thereupon the court shall have jurisdiction of the subject matter involved in the proceedings and of the parties interested therein.

HISTORY: Add. 1947, p. 674, Act 356, Eff. Oct. 11;—CL 1948, 486.252b.

486.252c Condemnation proceedings; commissioners, appointment, qualification, duties, meetings, report.

Sec. 2c. Upon the hearing, if due notice of the pendency of said petition has been given and unless sufficient cause to the contrary be shown, the court shall appoint 3 disinterested freeholders, as commissioners, whose duty it shall be to ascertain and determine the necessity of the proposed public use, the necessity of using such property or of acquiring an interest or easement therein for the purposes named, and the just compensation to be paid therefor by the petitioner, which shall be paid to each of the owners and persons interested in the premises, as and for his, her or their just compensation for the land or interest therein sought to be taken. Such commissioners shall be residents of the county in which the property or any interest therein sought to be taken is situated. The court shall fix the time and place for the first meeting of such commissioners, and require their attendance. It may also authorize the commissioners to adjourn their meeting from time to time not later than a date to be named, and shall fix the time for filing their report.

HISTORY: Add. 1947, p. 675, Act 356, Eff. Oct. 11;—CL 1948, 486.252c.

486.252d Condemnation proceedings; commissioners, meeting, oath, adjournments, view of premises, determination, reports; witnesses.

Sec. 2d. The commissioners shall meet at the time and place ordered by the court and shall be sworn faithfully to discharge their duties. If all do not then appear, a less number may adjourn to a time certain, but no adjournment shall be made to a day later than the time allowed by the court. All adjournments shall be publicly announced. The court or the clerk thereof may issue writs of subpoena to compel the attendance of witnesses before the court or before the said commissioners. Any such commissioners may administer oaths to witnesses. The commissioners, at the time fixed by the court or at the time fixed by adjournment may view the premises described in the petition and shall hear the proofs and allegations of the parties. The commissioners shall ascertain and determine the necessity of the proposed public use, the necessity for taking the particular property described and the interests therein and the damages to be paid as just compensation to each person interested in such property and interests therein and shall report such decision in writing, signed by them or a majority of them, at or before the time fixed for that purpose and shall promptly file the same with the court, but it shall not be necessary for such commissioners to report on all such property and interests therein at one time. Upon the filing of such report the commissioners shall forthwith cause a copy of such report to be served upon the petitioner or upon the attorney appearing in said proceedings for said petitioner, and

also upon the respondent or respondents or the attorney appearing in said proceedings for him or them.

HISTORY: Add. 1947, p. 675, Act 356, Eff. Oct. 11;—CL 1948, 486.252d.

486.252e Condemnation proceedings; commissioners, report, setting aside, retrial, confirmation; vesting title, deposit of award, time, notice.

Sec. 2e. The court may at the time of the filing of the report or at such other time to which it may adjourn the proceedings, on motion of any interested party and notice to the opposing party or parties and after hearing, set aside the report and refer it back to such commissioners or appoint other commissioners to retry the questions involved, whereupon such proceedings shall be had as are hereinbefore provided for. On motion of any interested party the court may enter an order confirming the report of said commissioners and in said order shall define the estate or interest acquired by the petitioner, and upon the entry of said order the title and the right to possession of the property, property rights and interests described in said report shall vest in the petitioner: Provided, That the petitioner, within 20 days after the entry of said order, shall deposit in the court the amount found by the report of the commissioners, as the just compensation and damages to be paid to the owners and persons interested. If, within the time so prescribed, the petitioner shall cause to be deposited the sum so found, the court shall thereupon enter an order for and may issue any necessary writ of possession, commanding the sheriff of the county to deliver the possession of said land, or interests therein, to petitioner. Upon deposit in court of the amount of the compensation and damages, a certified copy of such order of confirmation shall also be recorded in the office of the register of deeds of the proper county as notice that such title has vested in petitioner.

HISTORY: Add. 1947, p. 676, Act 356, Eff. Oct. 11;—CL 1948, 486.252e.

486.252f Condemnation proceedings; amendments; commissioners, vacancies, removal; setting aside defective proceedings; division of award; adjournments.

Sec. 2f. The court may permit the amendment of any determination, petition, affidavit, order, report of proceeding filed or had in the premises in such manner as may be just and proper. It shall fill any vacancy that should occur among the commissioners by reason of death, resignation, removal, or inability to act. It may at any time, in its discretion, remove any or all of said commissioners and fill the vacancy or vacancies thereby created. It may permit a defective proceeding to be set aside and other proceedings in compliance with law to be had in place thereof. It may determine the division of any award among the several claimants thereto. It may adjourn such proceedings or any part thereof from time to time, and may make all such orders in the premises as may be just and proper to further and accomplish the purpose thereof.

HISTORY: Add. 1947, p. 676, Act 356, Eff. Oct. 11;—CL 1948, 486.252f.

486.252g Condemnation proceedings; owner's application for award, payment, receipt; failure to deposit award; expenses, attorney fees; evidence.

Sec. 2g. The persons owning and interested in said land, according to the report and finding aforesaid, shall be entitled, upon applying to the court, to be paid the amount or sum to which they are respectively entitled, according to such report or findings. For the sum received they shall respectively give the clerk or register of the court their receipt in writing. In case the petitioner does not, within the time so prescribed, deposit in court the amount of compensation and damages awarded, the court shall order the proceedings dismissed, and that the petitioner take nothing thereby. The expense of the proceeding shall be paid by the petitioner and as a part thereof the court shall allow, in addition to taxable costs, additional attorney fees as may seem just and reasonable by the court for attendance at the hearing. Any final determination or order

authorized or required by this act, or the record thereof, or a certified copy of any such final determination or order shall be prima facie evidence of the facts recited therein and of the title to the property and interests therein described and of the right to take the same for the purposes therein set forth, and shall be received in evidence as such in all courts and places.

HISTORY: Add. 1947, p. 676, Act 356, Eff. Oct. 11;—CL 1948, 486.252g;—Am. 1957, p. 312, Act 254, Eff. Sep. 27.

486.252h Condemnation proceedings; entry for survey, liability for damages; petitioner's occupancy, prerequisites, hearing.

Sec. 2h. Following the filing of any petition for condemnation of property hereunder, the petitioner may enter upon the land for the purpose of surveying and locating more accurately the premises or interests sought to be acquired. Such entry and survey shall not constitute a cause of action in favor of the owner, except for actual damages, if any, to the property resulting from such entry and survey, or for injuries resulting from negligence, wantonness or malice of petitioner, his employees, contractors or agents. If the necessity of taking has been determined by the commissioners in favor of petitioner, and the initiatory petition for condemnation has given notice, by appropriate allegation and the prayer thereof, that petitioner will in such event apply to the court for an order authorizing petitioner to occupy the premises sought, pending further proceedings therein, the court shall thereupon entertain proof by affidavit or otherwise as to the reason for requiring an immediate or speedy occupation. Upon the hearing of such issue, the commissioners shall make a preliminary determination or estimate of the amount of damages or just compensation likely to accrue from such condemnation, and the court shall grant or refuse an order authorizing petitioner to occupy the premises according to the merits of the case: Provided, however, That such order shall not be granted unless petitioner shall tender a cash amount into the custody of the court, or an indemnity bond to the owners, with sureties in a penal sum at not less than double the amount of damages estimated as likely to result from the condemnation, but such amount shall be determined only for the purpose of the order authorizing interim possession, and shall not be binding upon the commissioners, or admissible in evidence on the final hearing as to just compensation. In case such order is granted, the petitioner shall proceed with diligence to carry the proceedings to final decree.

HISTORY: Add. 1947, p. 677, Act 356, Eff. Oct. 11;—CL 1948, 486.252h.

486.252i Condemnation proceedings; appeals; petitioner's possession pending appeal, bond; perfected appeal, effect of withdrawal of final award.

Sec. 2i. Either party to the proceedings who considers himself aggrieved by any final order or determination thereof, may appeal therefrom to the circuit court for said county in the same manner as is now provided for appeals from probate courts to circuit courts. The right of appeal provided for herein shall be exclusive of other methods of review. No appeal shall prevent the petitioner from taking possession or continuing in possession if the petitioner shall have first filed a bond or deposit equal to twice the amount of the award: Provided, however, That the probate court in its discretion may require petitioner to deposit an additional and reasonable sum as indemnity for any further damages or costs which may be awarded as a result of such appeal. The defendant may, upon obtaining an order of the probate court or of the circuit or supreme court, if an appeal has been perfected, be authorized to withdraw the amount of the final award of just compensation paid into court for him, by filing a set-

isfaction of the judgment or a receipt therefor, and an abandonment of all defenses to the action except his claim to greater compensation based upon alleged errors of law in such proceedings.

HISTORY: Add. 1947, p. 677, Act 356, Eff. Oct. 11;—CL 1948, 486.252i.

486.252j Condemnation proceedings; service of notices and orders.

Sec. 2j. All notices and orders heretofore mentioned in this act, unless otherwise provided, shall be served as follows:

- (a) Personally; or
- (b) By leaving a copy at the residence of the person or persons interested with some person of suitable age and discretion residing therein; or
- (c) By mailing a copy thereof by registered mail at the last known post office address of each person or persons, so far as is known, and by publication in some newspaper printed or circulated in the county in which such lands are located at least 15 days prior to the date of hearing; or
- (d) Non-residents of the county may be served in any of the above methods or by posting copies thereof in 5 conspicuous places in the township, 1 of which shall be on the property.

HISTORY: Add. 1947, p. 677, Act 356, Eff. Oct. 11;—CL 1948, 486.252j.

486.253 Electricity or gas furnished to public; rates and conditions; books and records, examination; order of commission, review; certificate of necessity.

Sec. 3. Such corporation shall furnish and sell to the public generally such electric energy as it shall generate or transmit and such gas as it shall manufacture, produce, store or transmit, in the carrying on of its business, upon such reasonable terms, rates and conditions as shall be determined from time to time by the Michigan public service commission, and said commission may for that purpose, examine all books and records of such corporation and audit the same, and any order of said commission may be reviewed, set aside, modified or affirmed in the manner provided by law for the review of orders of said commission pertaining to steam railroad companies. In any case where either Act No. 9 or Act No. 69 of the Public Acts of 1929, as amended, requires a certificate of necessity to be obtained from the Michigan public service commission, then in such instance any such corporation shall, before commencing any condemnation proceedings, first make application to, and obtain from said commission such certificate as is now or may hereafter, by amendment, be required by the provisions of said acts, and shall, in all other respects, comply with the requirements of said acts.

HISTORY: CL 1929, 11873;—Am. 1947, p. 678, Act 356, Eff. Oct. 11;—CL 1948, 486.253.

NOTE: Act 9, 1929, above referred to is, Compilers' § 483.101 et seq.; Act 69, 1929, above referred to, is Compilers' § 460.501 et seq.

RATES: See Compilers' §§ 460.4, 460.54, 460.57 and 460.58.

REVIEW: See Compilers' §§ 460.59, 462.26 and 462.27.

REHEARING: See Compilers' §§ 460.351 and 460.352.

486.254 Existing corporations; right of condemnation.

Sec. 4. Corporations heretofore lawfully organized, among other things, for any of the purposes specified in section 1 hereof; corporations heretofore lawfully organized, or that may hereafter be lawfully organized and duly authorized to carry on the electric or gas business as a public utility in the state of Michigan; and foreign corporations heretofore lawfully organized or that may hereafter be lawfully organized, among other things, for any of the purposes specified in section 1 hereof, and duly authorized to carry on business in the state of Michigan shall have and are hereby given the right to condemn private property in accordance with the provisions of this act and subject to the same conditions and requirements as herein specified.

HISTORY: CL 1929, 11874;—Am. 1931, p. 157, Act 98, Eff. Sept. 18;—Am. 1947, p. 678, Act 356, Eff. Oct. 11;—CL 1948, 486.254.

NOTE: See notes under sec. 2.

Act 113, 1869, p. 188; Imd. Eff. Apr. 3.

AN ACT to authorize the formation of companies for the introduction of water into towns, cities and villages, in the state of Michigan.

The People of the State of Michigan enact:

486.301 Water-works in municipalities; incorporators; powers.

Sec. 1. That whenever the common council of any city or incorporated village, or the municipal authority of any town in this state shall, by resolution, declare that it is expedient to have constructed works for the purpose of supplying such city, village or town, and the inhabitants thereof with water, but that it is inexpedient for such city, town or village, under the power granted in its charter, to build such works, it shall be lawful for any number of persons, not less than 5, to organize a company for the construction of such water-works, or for any company previously organized to construct such water-works under the provisions of this act, and such corporation shall have all the powers and privileges prescribed in the act in regard to corporations, being Chapter 55, of Revised Statutes of 1846, and Chapter 73, of the Compiled Laws. They shall be capable of suing and being sued in any court of this state; may have a common seal, and alter and amend the same, at pleasure; may elect, in such a manner as they may determine, all necessary officers; may fix their compensation and determine their duties, and make, from time to time, such by-laws, not inconsistent with the constitution and laws of this state, as a majority of the stockholders shall choose.

HISTORY: CL 1871, 3355;—How. 3110;—CL 1897, 8500;—CL 1915, 11282;—CL 1929, 11875;—CL 1948, 486.301.

NOTE: Ch. 55, above referred to, is Compilers' § 450.504 et seq.

WATER POWER AND WATER SUPPLYING COMPANIES: Specifically excepted from the provisions of Act 84 of 1921, except as otherwise therein provided, see Sec. 8 of Ch. 1 of Pt. 1, being CL 1929, 9950. See also Compilers' § 450.3, as to exemption from corporation code.

REPORTS: See Compilers' § 450.82.

FEES, TAXES AND CHARGES: See Act 85 of 1921, being Compilers' §§ 450.301 to 450.309.

SALE OF PROPERTY AND FRANCHISES: See Act 112 of 1889, being Compilers' §§ 450.631 to 450.632.

WATER WORKS SYSTEMS: Supervision, see Compilers' § 325.201 et seq.

EXAMINATION BY ATTORNEY GENERAL: See Compilers' § 450.525.

SERVICE OF PROCESS: See (Jud. Act) Compilers' §§ 600.1920, 600.1923 and GCR 105.

CHANGE IN NAME: See Act 328 of 1905, being Compilers' § 450.1 et seq.

486.302 Certificate; contents, filing and recording; body corporate, name.

Sec. 2. Any number of persons not less than 5, who shall associate according to the provisions of this act, under any name assumed by them, to form a company for the purpose of supplying any city, town or village, or the inhabitants thereof, with water for any and all purposes, shall under their hands and seals, make and acknowledge before some person authorized by the laws of this state to take acknowledgments of deeds, a certificate which shall specify

First. The name by which such company shall be known;

Second. The object for which such company shall be formed;

Third. The amount of capital stock of such company, and the number of shares into which the same is divided;

Fourth. The amount of capital stock actually paid in;

Fifth. The names of the stockholders, their respective residences, and the number of shares held by each;

Sixth. The name of the city, town or village, and county in which the operations of the company are to be carried on, and the place in this state where the office for the transaction of business is located;

Seventh. The term of years the corporation is to exist, not exceeding 30;

And shall cause the same to be filed with the secretary of state of this state, and recorded in the county clerk's office of the county or counties in which such company shall conduct its business, they shall become incorporated under the name and style

provided in such certificate, and are hereby authorized to carry on the operations named in such certificate of incorporation, and shall with their successors and assigns be deemed a body politic and corporate in fact and in name, under any name assumed by them in their articles of association.

HISTORY: CL 1871, 3356;—How. 3111;—CL 1897, 8501;—CL 1915, 11283;—CL 1929, 11876;—CL 1948, 486.302.
EXTENSION OF CORPORATE LIFE: See Act 82 of 1901, being Compilers' §§ 486.401 and 486.402.

486.303 Corporate power to hold property.

Sec. 3. Every such corporation, shall, by their name, have power to acquire and hold all such real and personal estate as shall be necessary for carrying on the business of said corporation.

HISTORY: CL 1871, 3357;—How. 3112;—CL 1897, 8502;—CL 1915, 11284;—CL 1929, 11877;—CL 1948, 486.303.

486.304 Capital stock; fixed amount, increase.

Sec. 4. The amount of capital stock in every such corporation shall be fixed by the stockholders in their articles of association, but shall in no case be less than 10,000 dollars; said stock may be increased from time to time as may be directed by the stockholders; and when the same is so increased, the same record shall be made of the fact, with the name of the stockholders; as required by section 2 of this act; and all the stock of said company shall be divided into shares of 50 dollars each.

HISTORY: CL 1871, 3358;—How. 3113;—CL 1897, 8503;—CL 1915, 11285;—CL 1929, 11878;—CL 1948, 486.304.

486.305 Officers; election, term, powers; quorum of stockholders; right to vote.

Sec. 5. The officers shall be elected by the stockholders, when 50 per cent of the stock shall be subscribed, and 10 per cent, of the amount subscribed paid in, and after a notice of at least 2 weeks has been given in some newspaper printed in the place where the said business is to be located, said notice to be signed by at least 3 stockholders; and the officers elected shall hold their office 1 year, and until their successors are elected; said officers shall have the general superintendence of the affairs of the company, and the management of the business and may call special meetings of the stockholders, and a majority of the stockholders shall constitute a quorum at all meetings and at all meetings each share shall be entitled to 1 vote either in person or by proxy.

HISTORY: CL 1871, 3359;—How. 3114;—CL 1897, 8504;—CL 1915, 11286;—CL 1929, 11879;—CL 1948, 486.305.

486.306 Corporate powers.

Sec. 6. Any corporation formed under this act shall have power to introduce water into any town, city or village in the state named in their articles of incorporation, and where the said corporation is located, for public or private buildings or for other purposes; and for that purpose they are authorized and empowered to acquire and hold real estate in such town, city or village, or contiguous thereto, if necessary, and to erect and maintain all necessary and convenient buildings, fixtures, machinery, and other appurtenances, incident or necessary, and to lay water pipes in and through the streets, avenues, lanes, alleys or squares of said city, town or village, with the consent of the municipal authorities of the city, town or village, under such reasonable regulations as they may prescribe; and to make all ordinances and by-laws necessary and proper to carry into effect the foregoing powers; said corporation by their directors, agents, servants, or other persons employed, may enter upon the lands of any person or persons which may be necessary for said purposes, and may take the water from any springs, ponds, rivers, fountains or streams and divert and conduct the same to said city, and may lay and construct any pipes, conduits, aqueducts, wells, reservoirs or other works or machinery necessary or proper, and authorized for said purposes, upon any lands or property entered upon, purchased, taken or held. Said corporation may, as aforesaid, enter upon any lands, streets, highways, lanes, alleys, public squares

through which they deem it proper to carry water from said springs, ponds, rivers, fountains, streams, and reservoirs, and lay and construct any pipes, conduits, aqueducts and other works for said purposes, leaving said lands, streets, highways, lanes or public squares in the same condition, as nearly as may be, as they were before said entry; but the said company shall not, within the bounds of such city, town or village, lay and construct said pipes, conduits, aqueducts and other works through any private garden, courtyard or building-lot, without the written consent of the owner thereof.

HISTORY: CL 1871, 3360;—How. 3115;—CL 1897, 8505;—CL 1915, 11287;—CL 1929, 11880;—CL 1948, 486.306.

486.307 Acquisition and use of lands for purposes of act; survey and map, signing, filing; right of entry.

Sec. 7. Before entering, taking or using any lands for the purposes of this act, the directors of the company shall cause a survey and map to be made of the lands intended to be taken, or entered upon for any of said purposes, and by which the lands of said owners or occupants intended to be taken or used shall be designated, and which map shall be signed, by the surveyor or engineer making the same, and by the president of said company, and be filed in the office of the clerk of the county. The company, by any 2 of its officers, agents or servants, may enter upon any lands for the purpose of making any examination and for the purpose of making said survey and map.

HISTORY: CL 1871, 3361;—How. 3118;—CL 1897, 8508;—CL 1915, 11288;—CL 1929, 11881;—CL 1948, 486.307.

486.308 Condemnation proceedings.

Sec. 8. In case said company cannot agree with the owners or occupants of any lands or water, intended to be taken or used as aforesaid, for the purchase thereof, said company may, for the purpose of acquiring the necessary title and right to said lands or water, present a petition to the circuit court of the county where the company is located, at any term thereof, or during the vacation of the term, to any judge of a court or record, praying for the appointment of 3 commissioners; and such proceedings shall be had upon said petition as are prescribed in the act to provide for the incorporation of railroad companies, being chapter 67 of the Compiled Laws, for the purpose of acquiring such title or right, except that the said circuit court or judge shall appoint disinterested and competent freeholders residing in the township or municipality where the said premises are situated.

HISTORY: CL 1871, 3362;—How. 3117;—CL 1897, 8507;—CL 1915, 11289;—CL 1929, 11882;—CL 1948, 486.308.

NOTE: Ch. 67, above referred to, is Act 82 of 1855, which was repealed and superseded by Act 196 of 1873. See Compilers' § 464.15 et seq.

486.309 Stock deemed personal property; certificates of stock, transfer; report to assessing officer.

Sec. 9. The stock of every such corporation shall be deemed personal property, and certificates of stock shall be issued to each stockholder on the full amount of his subscription being paid in; the said certificates of stock may be transferable, but the transfer shall not be valid unless a record shall be made of the same in the books of the company, in such form as the directors shall prescribe; and it shall be the duty of the directors to make out a written statement of all the stockholders, and the amount of stock held by each, when legally called upon by the proper assessing officer.

HISTORY: CL 1871, 3363;—How. 3118;—CL 1897, 8508;—CL 1915, 11290;—CL 1929, 11883;—CL 1948, 486.309.

UNIFORM STOCK TRANSFER ACT: See Compilers' § 440.8301 et seq.

486.310 Capital stock; subscriptions, calling in; sale, procedure, proceeds; rights of purchaser.

Sec. 10. The directors may call in subscriptions to the capital stock of such corporation, by installment, in such portions as they deem best, by giving notice thereof as provided by the by-laws; and in case any stockholder refuses or neglects to pay any such installment for the space of 60 days after the same shall have become due and payable, and after he shall have been notified thereof, the stock of any such delin-

quent stockholder may be sold, by order of the directors, at public auction at the office of said company, after 30 days' notice, published in some newspaper in the county where the corporation is located; and the proceeds of said sale shall be first applied in the payment of the installment called for, and the expense on the same, and the residue shall be refunded to the former owner thereof, and such sale shall entitle the purchaser to all the privileges of a stockholder to the extent of the share so bought.

HISTORY: CL 1871, 3364;—How. 3119;—CL 1897, 8509;—CL 1915, 11291;—CL 1929, 11884;—CL 1948, 486.310.

486.311 Stockholder's liability; recovery prerequisites; contribution to creditor.

Sec. 11. The stockholders of all corporations organized under this act shall be individually liable for any labor or services done or performed for said company, and they shall also be liable, as aforesaid, for the payment of all other debts or obligations contracted or incurred by said corporation during the time that they were stockholders, to the amount of all unpaid installments of stock held by them respectively, which liability may be enforced against any stockholder founded on this statute at any time after an execution shall be returned not satisfied against said company: Provided, always, That if any stockholder shall be compelled by any such action to pay the debts of any creditor or any part thereof, he shall have the right to call upon all the stockholders to contribute their part of the sum so paid by him as aforesaid, and may sue them jointly or severally, or any number of them, and recover in such action the ratable amount due from the person or persons so sued.

HISTORY: CL 1871, 3365;—How. 3120;—Am. 1883, p. 5, Act 8, Eff. March 13;—Am. 1887, p. 62, Act 54, Eff. Sept. 28;—CL 1897, 8510;—CL 1915, 11292;—CL 1929, 11885;—CL 1948, 486.311.

486.312 Contract between municipality and company; obligations.

Sec. 12. It shall and may be lawful for the municipal authorities of any city, village or town in which any company is or shall be formed for the purpose of supplying such city, village or town and the inhabitants thereof with water, to contract and agree with such company for the supply of water for public, municipal or other purposes, and for the time and mode of payment, and may issue their obligations therefor.

HISTORY: CL 1871, 3366;—Am. 1873, p. 2, Act 2, Imd. Eff. Jan. 22;—How. 3121;—CL 1897, 8511;—CL 1915, 11293;—CL 1929, 11886;—CL 1948, 486.312.

486.313 Stockholders; annual and special meetings.

Sec. 13. There shall be an annual meeting of the stockholders at such time and place as the by-laws of the corporation shall designate, for the election of directors and the transaction of business of the corporation; special meetings of the stockholders may be called by the directors.

HISTORY: CL 1871, 3367;—How. 3122;—CL 1897, 8512;—CL 1915, 11294;—CL 1929, 11887;—CL 1948, 486.313.

486.314 Officers of company; designation, election, bonding.

Sec. 14. The officers of such company shall be a president, who also shall be a director, a secretary, a treasurer, and such other officers, agents and servants, as the board of directors shall deem necessary for the transaction of the business of the company; such officers shall be elected annually, by the directors, and may be required to give bonds, with penalty and sureties, to the approval of the board of directors.

HISTORY: CL 1871, 3368;—How. 3123;—CL 1897, 8513;—CL 1915, 11295;—CL 1929, 11888;—CL 1948, 486.314.

486.315 Ordinances of common council; granting use of public property; rates of compensation.

Sec. 15. Whenever any such company, shall have been duly organized, it shall be the duty of the common council of any such city or village or the proper authorities of any such town, by ordinance, to grant to such company such right to the use of the streets, alleys, wharves (if any) and public grounds of said city, village or town as shall be necessary to enable such company to construct the proper works for the supply [sup-

ply] of water for the use of such city, village or town and its inhabitants; and the said common council may, in such ordinance, prescribe such just and reasonable terms, restrictions and limitations upon such company, in reference to the manner of using streets, alleys, wharves and public grounds, to the charging and collecting of tolls, water rents or other compensation for the supply of water, to be furnished by such company, to such city, town or village and its inhabitants, as it may deem proper, to guard against the improper use of such streets, alleys, wharves and public grounds, and to protect said city, town or village, and its inhabitants from the imposition of undue or excessive rates or charges for the supply of water; but no such restriction shall be imposed which will prevent such company realizing upon its capital stock and annual income or dividend of 10 per cent, after paying the cost of all necessary repairs and expenses, interest on all moneys borrowed and 5 per cent. per annum, into sinking funds, for the extinguishment of funded debts.

HISTORY: CL 1871, 3369;—How. 3124;—CL 1897, 8514;—CL 1915, 11296;—CL 1929, 11889;—CL 1948, 486.315.

486.316 Purchase of corporate rights and property by municipality; arbitration.

Sec. 16. From and after the expiration of 25 years from the time of the organization of such company, the common council of the city, town or village, for which the said company may have erected its works, shall have the right and privilege of purchasing, from such company, all its buildings, reservoirs, fixtures, apparatus and property of such company, with all its corporate rights and privileges, at such price as may be agreed upon; and in case of disagreement between the parties, the price to be ascertained and determined by 5 disinterested persons, not residents of said city or village, 2 of whom shall be chosen by said common council, 2 by the board of directors of such company, and the fifth by the 4 so chosen, who when thus chosen and assembled shall have power to determine finally and conclusively, the amount which such town, city or village shall pay for the rights, property and franchises [sic] of such company, as aforesaid.

HISTORY: CL 1871, 3370;—How. 3125;—CL 1897, 8515;—CL 1915, 11297;—CL 1929, 11890;—CL 1948, 486.316.

486.317 Municipality as stockholder; issuance of bonds, interest rate limit, tax levy; certain corporations as stockholders.

Sec. 17. Any such city, town or village may become a stockholder in any such company whenever the common council shall so direct, by resolution duly entered upon its minutes, after the question of so doing shall have been first submitted to the electors of said city, town or village, in such manner as the common council may have prescribed, and the said electors shall have voted in favor thereof. Such resolution shall specify the number of shares to be taken, and shall require the mayor, president or other municipal officer to carry out the directions by subscribing for the number of shares indicated upon the books of the company. Any railroad, gas, manufacturing or other corporation organized under any law of this state, and any insurance company organized under the laws of any state or country doing business in this state, may subscribe for and own stock in such company, and be entitled to all the rights and privileges, and shall be subject to all the liabilities of stockholders. It shall be lawful for any such city, town or village to issue bonds, payable at such time as the common council shall direct, and bearing interest at a rate not exceeding 8 per cent. per annum, and to negotiate the same upon the best terms they can obtain. Such cities, towns and villages shall have power in addition to that given by their charters, to levy taxes not exceeding 2 per cent. on the assessed valuation per annum, sufficient to meet the principal and interest falling due on such bonds.

HISTORY: CL 1871, 3371;—How. 3126;—CL 1897, 8516;—CL 1915, 11298;—CL 1929, 11891;—CL 1948, 486.317.

486.318 Company fully organized; qualification, powers, financial arrangements.

Sec. 18. Any such company shall be deemed to be fully organized whenever half the capital stock named in its articles of association shall have been in good faith subscribed and 10 per cent. thereof paid in and may thereupon enter on the work of construction; and in order to raise moneys for that purpose, it shall have power to borrow money, to issue bonds or other evidences of indebtedness, to execute mortgages or trust deeds, as may be deemed necessary for that purpose, and it may also issue a preferred stock, if a majority of the stockholders of the company shall vote that it is advisable so to do; but in the case that such city, town or village is a stockholder, no such mortgage, trust deed, or issue of preferred stock shall be valid without the assent thereto of the common council of said city or village or the municipal authorities of such town and in such case it shall be deemed a misdemeanor for the directors of said company to contract debts to any amount in excess of the means provided for, by subscriptions to stock, and the estimated net receipts of the company from its rates for 1 year, in advance, except they shall have first obtained the assent thereto of the said common council.

HISTORY: CL 1871, 3372;—How. 3127;—CL 1897, 8517;—CL 1915, 11299;—CL 1929, 11892;—CL 1948, 486.318.

MISDEMEANOR: See Compilers' § 750.504.

Act 86, 1893, p. 92; Eff. Aug. 28.

AN ACT to authorize certain water supply companies, now or hereafter organized, to also operate electrical plants in connection with their waterworks systems.

The People of the State of Michigan enact:

486.351 Water supply companies; right to purchase and operate electrical plants.

Sec. 1. That any company or corporation hereafter organized for the purpose of supplying water to any city, town or village in this state, the population whereof does not exceed 25,000 inhabitants according to the last official census thereof preceding the organization of such company or corporation, shall, by specifying the same in its articles of association, have the right to also produce and supply any such city, town or village, and the inhabitants thereof, with electricity for lighting, heating and motive purposes and any other purpose for which the same is, or may become, of practical use. And to that end shall also have the right to purchase from any individual, copartnership or corporation owning or operating any electricity producing plant, its said plant, together with any or all of the property franchises and rights connected therewith, to be operated in the city, town or village in which such company is to be located and operating.

HISTORY: CL 1897, 8518;—CL 1915, 11302;—CL 1929, 11893;—CL 1948, 486.351.

USE OF HIGHWAYS: See Compilers' §§ 480.551 to 480.605.

486.352 Water supply companies; amendment of articles to show right to purchase and operate electrical plants.

Sec. 2. Any company or corporation heretofore organized and doing business under and by virtue of the general laws of this state, and operating a waterworks system in any city, town or village in this state, the population whereof shall not exceed 25,000 inhabitants, according to the last official census preceding the filing of its amended ar-

titles of association so as to show the added purpose, have the right to erect, purchase, own and operate a plant or plants, in addition to its waterworks system and plant, to produce and supply electricity as mentioned in section 1 hereof.

HISTORY: CL 1897, 8519;—CL 1915, 11303;—CL 1929, 11894;—CL 1948, 486.352.

486.353 Company or corporate powers.

Sec. 3. Every such company or corporation shall have the right to acquire and hold all such real and personal property as shall be necessary, in addition to that provided for by the general laws of this state under which it is organized, for the carrying on of the business so added by virtue of the provisions of this act, and shall have full power to produce, generate, furnish and sell electricity for lighting, heating, motive and such other purposes, as the same may be desired by any city, town or village within which such company carries on its business, or by the inhabitants thereof. And such company or corporation shall have the power to lay, construct and maintain conductors and poles, and stretch wires for the conducting of electricity through the streets, alleys, lands and squares of any such city, town or village, with the consent of the municipal authorities thereof, under such reasonable regulations as they may prescribe; and such company or corporation may make and enforce all such contracts, by-laws and rules as may be deemed necessary and proper to carry into effect the foregoing powers.

HISTORY: CL 1897, 8520;—CL 1915, 11304;—CL 1929, 11895;—CL 1948, 486.353.

USE OF HIGHWAYS: See Compilers' §§ 460.551 to 460.605.

Act 82, 1901, p. 118; Imd. Eff. Apr. 23.

AN ACT to provide for renewing the incorporation of companies organized for the purpose of the introduction of water into towns, cities and villages.

The People of the State of Michigan enact:

486.401 Municipal water supply companies; continuance of corporate life, procedure; prima facie evidence.

Sec. 1. It shall be lawful for any corporation heretofore or hereafter organized under the laws of this state for the purpose of the introduction of water into towns, cities and villages, whose corporate existence is about to terminate by limitation of law, at its annual meeting next preceding, or at a special meeting called for that purpose, to be held within 1 year immediately preceding the date of such termination, by a vote of 2/3 of its capital stock, to direct the continuance of its corporate existence for such further term, not exceeding 30 years, as may be expressed in a resolution passed for that purpose. Upon the adoption of such resolution by the stockholders, at such meeting, it shall be the duty of the president and secretary of the corporation to make, sign and acknowledge duplicate articles of association, as in case of a new corporation, to which shall be appended a copy of the proceedings of such stockholders' meeting, certified by the secretary and verified by his oath, which articles of association shall be filed with the secretary of state and with the county clerk of the county where the corporation carries on its business, and be by them recorded in their respective offices at the expense of said corporation, and the copies so filed, the record thereof, or a certified copy of either of such records, shall be prima facie evidence of the facts therein recited.

HISTORY: CL 1915, 11300;—CL 1929, 11896;—CL 1948, 486.401.

486.402 Renewed corporation; rights and duties.

Sec. 2. The renewed term of such corporation shall begin from the expiration of the former term thereof, and the corporation thus renewed shall hold and own all the property held and owned by the corporation before renewal, and shall be liable to all

its debts, liabilities and obligations, and entitled to all its rights, privileges and franchises, as fully as if the former corporate term had not expired; and the directors and officers, who were such in fact at the time of the meeting, shall hold and continue in their offices until their successors shall be elected and shall qualify: Provided, nevertheless, That if the call for the meeting to extend the corporate term shall embrace a notice that a number of the directors will be elected at such meeting, such election may be then held accordingly, and the directors then elected shall, when they shall qualify, become and be the directors of such renewed corporation: Provided further, That nothing herein contained shall be construed as extending any franchise granted by any municipality for a period of years longer than the original grant.

HISTORY: CL 1915, 11301;—CL 1929, 11897;—CL 1948, 486.402.

Act 6, 1956 (Ex. Ses.), p. 10; Imd. Eff. Jul. 31.

AN ACT authorizing the formation of corporations for the purpose of supplying to, distributing and selling water to a township or townships and giving to such corporations rights to take water from the Great Lakes, Lake St. Clair, and the bays thereof; authorizing a township or townships to contract with such corporations for the purchase of water by said township or townships and authorizing any township to purchase waterworks, systems, installations and real and personal property of such corporations, and authorizing such township or townships to pass ordinances with respect thereto.

The People of the State of Michigan enact:

486.501 Corporations to supply water to townships; incorporators.

Sec. 1. Whenever the township board of a township or the township boards of 2 or more townships shall, by resolution, declare that it is expedient to have constructed a works, plant or system for the supplying of water to such township or townships or the inhabitants thereof, but that it is inexpedient for such township or townships to build such works, plant and system, or either of the same, or some part or parts thereof, it shall be lawful for one or more persons to form a corporation to construct such waterworks, plant and system or some part or parts thereof under the provisions of this act, and any corporation so formed may incorporate under the provisions of, be subject to all of the provisions of, and carry on its business pursuant to the provisions of, the general corporation laws of this state pertaining to corporations for pecuniary profit.

HISTORY: New 1956, Ex. Ses., p. 10, Act 6, Imd. Eff. Jul. 31.

486.502 Contracts; corporate powers; written consent for use of street, highway or alley to lay pipe or main.

Sec. 2. Any corporation so formed under this act shall have the power to contract with any township or townships for the sale of water to said township or townships; and for that purpose it is authorized and empowered to buy, hold and sell real and personal property and to erect and maintain all necessary and convenient buildings, fixtures, machinery and other appurtenances, and, subject to the provisions of this act, to lay water pipes or mains in, across and through the public streets, highways or alleys in said township or townships: Provided, however, That before laying any pipe or main in, across or through any public street, highway or alley such corporation shall first procure the written consent of the state highway commissioner if such street,

highway or alley be under his control and jurisdiction, or of the board of county road commissioners if such street, alley or highway be under the control and jurisdiction of such board, or of the township board of the township if the street, highway or alley be under the control and jurisdiction of such township board.

HISTORY: New 1956, Ex. Ses., p. 10, Act 6, Imd. Eff. Jul. 31.

486.503 Great Lakes waters; construction of works.

Sec. 3. Such corporation may take water from any of the Great Lakes and from Lake St. Clair, or any of the bays thereof and divert and conduct such water to any such township or townships. Such corporation shall have the right to construct and maintain such intakes, cribs and other machinery, and works on or in said waters as may be necessary to divert said water, and may lay and construct any pipes, conduits, aqueducts, wells or reservoirs or other works and machinery necessary for or incident to said purposes.

HISTORY: New 1956, Ex. Ses., p. 10, Act 6, Imd. Eff. Jul. 31.

486.504 Townships contracting for purchase of water; resolution, hearing; ordinances, publication; petitions.

Sec. 4. It shall be lawful for the township board of any township for and on behalf of that township to contract with any such corporation for the purchase of water for public, municipal or other purposes and to provide in said contract for the time and manner of payment and any and all other matters incident thereto. Such contract may further provide for the acquisition of all or some of the physical properties of any such corporation at such time or times, upon such terms and in such manner as to the township board shall seem just and proper. The township board of any township, before entering into any such contract as hereinbefore provided, shall pass a resolution declaring its intent to proceed under the provisions of this act and to enter into 1 or more contracts as in this act contemplated. Such resolution shall set forth substantially the terms and provisions of such contract and shall provide for a public hearing upon all matters pertaining thereto. Such contract shall be effective for a period of not to exceed 50 years. Such public hearing shall be held within 20 days after the passage of such resolution. Notice of the time and place of such public hearing shall be given at least 10 days prior thereto by publication of such notice in a newspaper of general circulation in such township and by posting such notice in 3 public places within such township. After such public hearing the township board by the affirmative vote of a 2/3 majority of its members-elect may pass an ordinance adopting the provisions of this act and may by such ordinance authorize 2 or more of its members on behalf of the township to enter into such contract with such corporation. Any ordinance adopted hereunder, together with a notice or certificate of its adoption, shall be published in a newspaper having general circulation within such township within 15 days following its passage and such ordinance shall become effective within 30 days next following the date of its publication: Provided, however, That if within 30 days from the publication of such ordinance, a petition signed by not less than 10% of the registered electors residing within the limits of such township shall have been filed with the township clerk requesting a referendum upon the effectiveness of such ordinance, then such ordinance shall not become effective until approved by vote of a majority of the electors of such township qualified to vote and voting thereon, at a general or special election. Signatures on any such petition shall be verified by some person or persons under oaths as the actual signatures of persons whose names are signed thereto, and the township clerk shall have the same power to reject signatures and petitions as city clerks possess by law. The number of registered electors in such township shall be determined by the township registration books.

HISTORY: New 1956, Ex. Ses., p. 11, Act 6, Imd. Eff. Jul. 31.

486.505 Townships contracting for purchase of water; ordinance effective; contract execution.

Sec. 5. As soon as any such ordinance becomes effective the township board may authorize the execution of any such contract as is herein contemplated on behalf of the township by any 2 or more of its officers, and when such contract has been properly executed by such corporation the same shall constitute a binding agreement and obligation on the part of the township and upon the part of the said corporation.

HISTORY: New 1956, Ex. Ses., p. 11, Act 6, Imd. Eff. Jul. 31.

486.506 Townships contracting for purchase of water; renewal, extension or amendment of contract.

Sec. 6. After any such contract has once been entered into, the same may be renewed, extended or amended, but any renewal, extension or amendment must be done and made in full compliance with all of the provisions of this act the same as though a new contract was being entered into in the beginning.

HISTORY: New 1956, Ex. Ses., p. 11, Act 6, Imd. Eff. Jul. 31.

486.507 Purchase of waterworks; procedure.

Sec. 7. At any time after the construction of a waterworks by a corporation in furtherance of its contract between the corporation and a township for the sale of water by the corporation to the township, any township so contracting with the corporation may, upon an affirmative vote of a majority of the electors of such township qualified to vote and voting thereon, at a general or special election, enter into a contract with the corporation for the purchase of all the waterworks, real and personal property and machinery of the corporation at such price and upon such terms as may be agreed upon. The purchase of the waterworks, goods and chattels and real and personal property of the corporation by any township shall be in accordance with the provisions of Act No. 116 of the Public Acts of 1923, as amended, being sections 41.411 to 41.414, inclusive, of the Compiled Laws of 1948, or any other act or acts which may be applicable and appropriate thereto.

HISTORY: New 1956, Ex. Ses., p. 11, Act 6, Imd. Eff. Jul. 31.

486.508 Township water system act of 1956; short title.

Sec. 8. This act shall be known and may be cited as the "township water system act of 1956".

HISTORY: New 1956, Ex. Ses., p. 12, Act 6, Imd. Eff. Jul. 31.

Act 19, 1967, p. 26; Imd. Eff. Jun. 2.

AN ACT to regulate water companies and the sale and distribution of water within the state; to provide a method of review of public service commission orders relating thereto; and to prescribe penalties for the violation hereof.

The People of the State of Michigan enact:

486.551 Water companies; definitions.

Sec. 1. As used in this act:

(a) "Water company" means any person, firm, association, cooperative association or corporation having 175 customers or more, except cities, villages, townships, counties and other governmental entities, which now owns or may hereafter own, operate, manage or control any equipment or facilities for the production, transmission, delivery or furnishing of water for compensation.

(b) "Commission" means the public service commission.

HISTORY: New 1967, p. 26, Act 19, Imd. Eff. Jun. 2.

486.552 Public service commission; powers and jurisdiction.

Sec. 2. The commission is vested with power and jurisdiction to supervise and regulate every water company within the state and to do all things necessary and convenient in the exercise of such power and jurisdiction.

HISTORY: New 1967, p. 26, Act 19, Imd. Eff. Jun. 2.

486.553 Certificate of public convenience and necessity; construction of system; commencement or discontinuance of operations.

Sec. 3. No water company shall hereafter begin the construction or operation of any plant or system for the production, transmission, delivery or furnishing of water, nor shall it render any service for the purpose of transacting or carrying on a local business either directly or indirectly by serving any other utility or agency so engaged in such local business in any locality not previously served by the water company until the water company obtains from the commission a certificate that public convenience and necessity require or will require the construction, operation, service or extension. No service to any area of the state, or facilities used in the providing of the service, shall be discontinued or abandoned by any water company, until the water company obtains from the commission a certificate that public convenience and necessity permit the discontinuance or abandonment.

HISTORY: New 1967, p. 26, Act 19, Imd. Eff. Jun. 2.

486.554 Public service commission; regulation of service, facilities and rates.

Sec. 4. All water companies shall furnish reasonably adequate service and facilities. All rates and charges by water companies shall be just and reasonable, and every unjust or unreasonable rate or charge is prohibited and declared to be unlawful. The commission shall have power to make, alter, amend or abolish any rate or charge for any service, and may regulate by rules or orders any service or facility.

HISTORY: New 1967, p. 26, Act 19, Imd. Eff. Jun. 2.

486.555 Schedule of rates, charges and rules; effective date; filing changes, application, notice and approval.

Sec. 5. Within 60 days after the effective date of this act, all water companies which have not heretofore filed with the commission a schedule of rates and charges and rules relating to the rendering of water service shall file a schedule of rates and charges and rules, which shall be the rates and charges and rules in effect on the effective date of this act. Thereafter, no rates, charges or rules shall be changed by any water company without application to the commission, notice thereof to the municipalities affected by the change and approval of the commission.

HISTORY: New 1967, p. 26, Act 19, Imd. Eff. Jun. 2.

486.556 Rate or charge increase; hearing.

Sec. 6. No rate or charge shall be increased without a hearing having been had thereon as provided in section 6a of Act No. 3 of the Public Acts of 1939, as amended, being section 460.6a of the Compiled Laws of 1948.

HISTORY: New 1967, p. 27, Act 19, Imd. Eff. Jun. 2.

486.557 Preference prohibited.

Sec. 7. It shall be unlawful for any water company to make or give any preference or advantage to any person, copartnership, corporation or locality, or subject any person, copartnership, corporation or locality, to any prejudice or disadvantage in any respect whatever.

HISTORY: New 1967, p. 27, Act 19, Imd. Eff. Jun. 2.

486.558 Variance from filed rate schedule.

Sec. 8. It shall be unlawful for any water company to directly or indirectly charge, demand, collect or receive a greater or less compensation for any service rendered, furnished or performed than that prescribed by and contained in its schedules on file with and approved by the commission.

HISTORY: New 1967, p. 27, Act 19, Imd. Eff. Jun. 2.

486.559 Public service commission; investigations, hearings, findings, orders.

Sec. 9. Upon the commission's own motion or upon written complaint of any person, firm, association, corporation or municipality, that any practice, rate, charge or service rendered or facility furnished is unreasonable, unjust, unduly discriminatory, inadequate or unlawful, or that any service is being withheld or refused to be rendered, furnished or performed, the commission may proceed to investigate the same, and may hold such hearings and make such findings and orders as is prescribed in section 22 of Act No. 300 of the Public Acts of 1909, being section 462.22 of the Compiled Laws of 1948.

HISTORY: New 1967, p. 27, Act 19, Imd. Eff. Jun. 2.

486.560 Burden of proof to show rate just.

Sec. 10. Whenever a rate of any water company is sought to be changed upon complaint or investigation, or upon the commission's own motion, the burden of proof shall be upon the water company to show that its existing rate is just and reasonable. Upon application of any water company for a change in existing rates, charges or rules, the burden of proof shall be on such water company to show that the rates, charges or rules resulting from the change would be just and reasonable.

HISTORY: New 1967, p. 27, Act 19, Imd. Eff. Jun. 2.

486.561 Interim rate changes; bonds.

Sec. 11. In any case in which a change in any existing rate or charge is sought by any person, water company or the commission, before conclusion of the proofs and arguments or before final decision, the commission may authorize such interim change as it deems just and reasonable, and may require as a condition of the change that a bond with or without sureties be given to insure refunds pursuant to the final order entered in the proceedings.

HISTORY: New 1967, p. 27, Act 19, Imd. Eff. Jun. 2.

486.562 Orders of public service commission; effective date.

Sec. 12. All orders of the commission shall become effective 20 days after notice thereof to the water company affected thereby, unless a different effective date is specified in the order. Any order may be made effective as of a date prior to the issuance of the order, but no order shall be made effective as of a date prior to the filing of the application or complaint, or service upon the water company of the notice of investigation upon the commission's own motion, upon which the order is based.

HISTORY: New 1967, p. 27, Act 19, Imd. Eff. Jun. 2.

486.563 Orders; legality and enforceability; violation of orders, penalty.

Sec. 13. Every order of the commission relating to water companies shall be *prima facie* lawful, and may be enforced by any person, firm or corporation or any municipality, or the commission, by suit for injunction, mandamus or other appropriate remedy. Any person, firm or corporation or water company who violates any order, rule or regulation of the commission or this act is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 and 90 days in jail for each violation. Each day that a violation continues is a separate offense.

HISTORY: New 1967, p. 27, Act 19, Imd. Eff. Jun. 2.

486.564 Violations of laws, rules or orders; inquiries, cease and desist orders.

Sec. 14. Upon complaint, or upon its own motion, the commission may inquire into any violation of the laws of this state or of commission rules or orders by any water company or any person, firm, corporation, association or cooperative which in the commission's opinion may be a water company. If the commission finds that a violation has been or is about to be committed by a water company or by any person, firm, corporation, association or cooperative found to be a water company, it may order the water company to cease and desist from the violation.

HISTORY: New 1967, p. 28, Act 19, Imd. Eff. Jun. 2.

486.565 Orders; rehearings, reopenings, reconsiderations; notice, application, review.

Sec. 15. The commission may grant rehearing, reopening or reconsideration of any order upon application therefor within 30 days after notice to the water company affected by the order of the issuance of such order. The filing of the application for rehearing, reopening or reconsideration shall suspend the running of the period in which an action may be brought to review such order until such time as the commission shall deny the application. Thereupon the time allowed by law for the bringing of an action to review the order of the commission shall continue running. Any order issued by the commission upon application for rehearing, reopening or reconsideration shall be reviewable in the same manner as original orders of the commission.

HISTORY: New 1967, p. 28, Act 19, Imd. Eff. Jun. 2.

486.566 Orders; amendment, modification, or revocation.

Sec. 16. Any order of the commission may be amended, modified or revoked at any time either upon the commission's own motion, or upon the application of any person, for good and sufficient cause.

HISTORY: New 1967, p. 28, Act 19, Imd. Eff. Jun. 2.

486.567 Rules and regulations; regulating business of water companies; procedure before commission.

Sec. 17. The commission may adopt rules and regulations for the regulation of the business of water companies and for regulating procedure before the commission.

HISTORY: New 1967, p. 28, Act 19, Imd. Eff. Jun. 2.

486.568 Rules and regulations; ratification, confirmation.

Sec. 18. All rules and regulations and orders of the commission heretofore adopted or issued, relating to water companies or the business thereof, are ratified and confirmed.

HISTORY: New 1967, p. 28, Act 19, Imd. Eff. Jun. 2.

486.569 Audits and investigations of companies' records and facilities; expense, deposition to general fund.

Sec. 19. The commission or its employees may make such audits and investigations of the books, records and facilities of water companies as the commission deems necessary, and the expense thereof shall be paid by the water company audited or investigated, after notice and opportunity to be heard on the amount of the expense. All moneys paid by water companies pursuant to this section shall be paid to the state treasurer and credited to the general fund of the state.

HISTORY: New 1967, p. 28, Act 19, Imd. Eff. Jun. 2.

486.570 Action to vacate order of commission; time, grounds, procedure; injunction; evidence; judgments; burden of proof.

Sec. 20. (1) Any water company or other party in interest, being dissatisfied with any order of the commission fixing any rate or rates, charges, classifications, regula-

tions, practices or services, within 30 days from the issuance of such order and notice thereof to the water company may commence an action in the circuit court for the county of Ingham against the commission to vacate and set aside any order on the ground that the rate or rates, charges or classifications fixed are unlawful or unreasonable or that any regulation, practice or service fixed in the order is unlawful or unreasonable. In this action the commission shall be served with a summons and a copy of the complaint. The commission shall file its answer, and on leave of court, any interested party may file an answer to the complaint. Upon the filing of the answer of the commission, the action shall be at issue and stand ready for hearing upon 10 days' notice by either party. All actions brought under this section shall have precedence over any civil complaint of a different nature pending in such court, and the circuit court shall be deemed always open for the hearing thereof, and it shall proceed, be tried and determined as other civil actions. The circuit court is given jurisdiction of the actions and empowered to affirm, vacate or set aside the order of the commission in whole or in part, or to remand the order to the commission for the making of such different order as shall be in accordance with law.

Injunctions, issuance; notice, hearing; bond.

(2) No injunction shall issue suspending or staying any order of the commission, except upon application to the circuit court or to the judge thereof, notice to the commission having been given and hearing having been had thereon. No preliminary injunction shall issue suspending or staying any order of the commission without a bond first being filed with the court, with good and sufficient sureties, payable to the commission for the benefit of persons who may be injured should it ultimately be determined that such injunction should not have issued.

Scope of review; modification or rescission of rates or charges; burden of proof.

(3) Upon the trial of the action, no evidence shall be introduced, other than the transcript of testimony offered to the commission, and other than such evidence as could not have been brought before the commission in the original proceeding, or upon an application for rehearing of the order sought to be reviewed. Any new or additional evidence introduced in the circuit court, unless the parties in the action stipulate in writing to the contrary, shall be transmitted to the commission. Upon receipt of the evidence, the commission shall consider it, and may alter, modify, amend or rescind its order relating to the rates, charges, classifications, regulations, practices or service complained of in the action, and shall report its action thereon to the court within 15 days from the receipt of the evidence. If the commission rescinds its order complained of, the action shall be dismissed; if it alters, modifies or amends it, the altered, modified or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order is not rescinded or changed by the commission, judgment shall be rendered upon the original order. In all actions under this section the burden of proof shall be upon the complainant to show by clear and satisfactory evidence that the order of the commission complained of is unlawful or unreasonable.

HISTORY: New 1967, p. 28, Act 19, Imd. Eff. Jun. 2.

486.571 Construction of act as to authority or duties of department of public health.

Sec. 21. Nothing contained in this act shall be construed to supersede, remove or change any specific authority or duties heretofore granted to the department of public health as such may pertain to water companies.

HISTORY: New 1967, p. 29, Act 19, Imd. Eff. Jun. 2.

CHAPTER 487. FINANCIAL INSTITUTIONS

FINANCIAL INSTITUTIONS ACT

Act 341 of 1937

487.1-487.292 Repealed.

BANKING CODE OF 1969

Act 319 of 1969

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- 487.621 Repealed.

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- 487.641 Repealed.

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- 487.681, 487.682 Repealed.

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		487.914	Investigation by state banking commissioner; additional reports; cost audit by certified public accountant.
		487.915	Violation of act; penalty, separate offense.
		487.916	Effective date of act.

487.1-487.292 Repealed. 1962, p. 317, Act 174, Eff. Jan. 1, 1964;—1969, p. 727, Act 319, Imd. Eff. Aug. 20.

Sections related to financial institutions act of 1937.

Act 319, 1969, p. 678; Imd. Eff. Aug. 20.

AN ACT to revise and codify the laws relating to banks, industrial banks, trust companies and safe and collateral deposit companies; to provide for their incorporation, regulation and supervision; to create, within the department of commerce, a financial institutions bureau and to prescribe its powers and duties; to prescribe penalties for violations of this act; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

CHAPTER 1

SHORT TITLE, PURPOSE AND DEFINITIONS

487.301 Banking code of 1969; short title.

Sec. 1. This act shall be known and may be cited as the "banking code of 1969".

HISTORY: New 1969, p. 678, Act 319, Imd. Eff. Aug. 20.

487.302 Banking code of 1969; state policy.

Sec. 2. It is the policy of this state that the business of all banking organizations shall be supervised and regulated in such manner as to insure the safe and sound conduct of such business, to conserve their assets and to eliminate unsound and destructive competition among such banking organizations and thus to maintain public confidence in such business and protect the public interest and the interests of depositors, creditors and shareholders.

HISTORY: New 1969, p. 678, Act 319, Imd. Eff. Aug. 20.

487.305 Banking code of 1969; definitions.

Sec. 5. As used in this act:

(a) "Articles" means articles of incorporation, all amendments thereto and agreements of consolidation and merger.

(b) "Affiliate" means any corporation, business trust, association, or similar organization (i) of which an institution, directly or indirectly, owns or controls either a majority of the voting shares or more than 50% of the number of shares voted for the election of its directors, trustees or other persons exercising similar functions at the preceding election, or controls in any manner the election of a majority of its directors, trustees or other persons exercising similar functions; or (ii) of which control is held, directly or indirectly, through stock ownership or in any other manner, by the shareholders of an institution who own or control either a majority of the shares of such institution or more than 50% of the number of shares voted for the election of directors of such institution at the preceding election, or by trustees for the benefit of the shareholders of any such institution; or (iii) of which a majority of its directors, trustees or other persons exercising similar functions are directors of any one institution, or (iv) which owns or controls, directly or indirectly, either a majority of the shares of capital stock of an institution or more than 50% of the number of shares voted for the election of directors of an institution at the preceding election, or controls in any manner the election of a majority of the directors of an institution, or for the benefit of whose shareholders or members all or substantially all the capital stock of an institution is held by trustees.

(c) "Bank" means a state banking corporation organized or reorganized under the provisions of this act or organized under the provisions of any law of this state enacted prior to the effective date of this act.

(d) "Branch" means any branch bank, branch office, branch agency, additional office or any branch place of business at which deposits are received or checks paid or money lent. The acceptance of deposits in furtherance of a school thrift or savings plan by an officer, employee or agent of a bank at any school shall not be construed as the establishment or operation of a branch or branch facility if the school is located within the geographical area imposed by section 171 for the operation of a branch or branches by such bank.

(e) "Bureau" means the financial institutions bureau created by this act.

(f) "Capital" or "capital stock" means the amount of unimpaired common stock is-

sued and outstanding, plus the amount of unimpaired preferred stock issued and outstanding.

(g) "Commissioner" means the commissioner of the financial institutions bureau.

(h) "Consolidate", "consolidated", "consolidating" and "consolidation" shall mean and include, respectively, consolidate or merge, consolidated or merged, consolidating or merging and consolidation or merger.

(i) "Federal reserve act" means the federal reserve act, approved December 23, 1913, as now or hereafter amended or supplemented.

(j) "Incorporator" means a signer of the original articles of incorporation.

(k) "Institution" means any bank, industrial bank, trust company or safe and collateral deposit company operating or organized or reorganized under the provisions of this act or operating or organized under the provisions of any law of this state enacted prior to the effective date of this act.

(l) "Publication" and "published", wherever it is provided in this act that any notice or statement shall be published, means publication in a newspaper printed in the English language and published and circulated in the county where the institution is located, or if there is no newspaper published and circulated in the county where the institution is located, in any newspaper having general circulation in the county.

(m) "Shareholder" means the registered owner of any share or shares of capital stock of an institution.

HISTORY: New 1969, p. 678, Act 319, Imd. Eff. Aug. 20.

487.308 Industrial banks; distinction abolished; delegated actions; new industrial bank; renewal or extension.

Sec. 8. (1) Except as hereafter provided, the distinction heretofore existing between banks and industrial banks is abolished and all of the provisions of this act shall be applicable to any industrial bank heretofore incorporated under the laws of this state, which shall be deemed to be a bank under all sections of this act except that until any presently existing industrial bank sells its assets to, consolidates with or converts into a bank in the manner provided in this act for the sale of assets, consolidation or conversion of banks, it shall not receive deposits payable on demand or exercise trust powers.

(2) Wherever provision is made in this act for action by the cashier or assistant cashier of a bank, such action may be taken by a secretary, assistant secretary, treasurer or assistant treasurer of an existing industrial bank.

(3) A new industrial bank shall not be created after the effective date of this act but nothing in this section shall prohibit the renewal or extension of the corporate life of any existing industrial bank.

HISTORY: New 1969, p. 679, Act 319, Imd. Eff. Aug. 20.

487.309 Trust companies; distinction abolished, exceptions; delegated actions; new trust company; renewal or extension.

Sec. 9. (1) Except as hereafter provided, the distinction heretofore existing between banks and trust companies is abolished and all of the provisions of this act shall be applicable to any trust company heretofore incorporated under the laws of this state which shall be deemed to be a bank under all sections of this act except that until any presently existing trust company sells its assets to, consolidates with or converts into a bank in the manner provided in this act for the sale of assets, consolidation or conversion of banks, it shall have no power to receive deposits.

(2) Wherever provision is made in this act for action by the cashier or assistant cashier of a bank, such action may be taken by a secretary, assistant secretary, treasurer or assistant treasurer of an existing trust company.

(3) A new trust company shall not be created after the effective date of this act but nothing in this section shall prohibit the renewal or extension of the corporate life of any existing trust company.

HISTORY: New 1969, p. 680, Act 319, Imd. Eff. Aug. 20.

CHAPTER 2

ADMINISTRATION

487.311 Financial institutions bureau; creation, powers; commissioner, appointment, oath.

Sec. 11. (1) A financial institutions bureau is created, within the department of commerce, which bureau shall have jurisdiction over and shall execute the laws relating to institutions transacting business under the laws of this state.

(2) The head of the financial institutions bureau is the commissioner of the financial institutions bureau who shall be appointed by the governor, by and with the advice and consent of the senate, to serve at the pleasure of the governor.

(3) Before entering upon the duties of his office the commissioner shall take and subscribe the constitutional oath of office and file it in the office of the secretary of state.

HISTORY: New 1969, p. 680, Act 319, Imd. Eff. Aug. 20.

487.312 State banking department; transfer of powers and duties to financial institutions bureau; transfer of property; saving clause.

Sec. 12. (1) The powers and duties now vested by law in the state banking department, are transferred to and vested in the bureau. Any hearing or other proceeding pending before the state banking department shall not abate but is transferred to the bureau and shall be conducted and determined by the bureau in accordance with the provisions of the law governing such hearing or proceeding.

(2) All property, credits, books, correspondence, funds, appropriations, records, files and other papers belonging to the state banking department are transferred to the financial institutions bureau. All orders and rules which have been issued pursuant to law by the commissioner of the banking department and which are in effect, shall continue in effect until modified, suspended, revoked or repealed by the commissioner.

HISTORY: New 1969, p. 680, Act 319, Imd. Eff. Aug. 20.

487.313 Commissioner; deputies, appointment, powers and duties, oath.

Sec. 13. The commissioner shall appoint a first deputy and such other deputies as he sees fit and may revoke such appointments at his pleasure. The first deputy shall possess the powers and perform the duties of the commissioner during a vacancy or during the absence or inability of the commissioner to act. The commissioner shall designate the order in which the deputies shall become acting commissioner in the absence of the commissioner and the first deputy. Before entering upon the duties of their offices, the first deputy and other deputies shall take and subscribe the constitutional oath of office and file it in the office of the secretary of state.

HISTORY: New 1969, p. 680, Act 319, Imd. Eff. Aug. 20.

487.314 Examiners and other employees; appointment; compensation and expenses.

Sec. 14. The commissioner may appoint examiners and other employees for the carrying out of the provisions of this act. The compensation, travel and other expenses of the commissioner, deputy commissioners, examiners and employees shall be paid in the manner provided by law for other state officers and employees, within the appropriations made therefor by the legislature.

HISTORY: New 1969, p. 680, Act 319, Imd. Eff. Aug. 20.

487.315 Commissioner, deputies and examiners; conflicts of interest prohibited.

Sec. 15. (1) During his term of office or employment, neither the commissioner nor any deputy commissioner or examiner of the bureau shall be a shareholder, either directly or indirectly, of any institution subject to the provisions of this act or of any national bank, or of any affiliate or subsidiary thereof.

(2) During his term of office or employment, neither the commissioner nor any deputy commissioner or examiner of the bureau shall be an officer, director or employee of any institution subject to the provisions of this act or of any national bank, or of any affiliate or subsidiary thereof or receive, either directly or indirectly, any fee, perquisite, reward, emolument or other compensation therefrom.

(3) Neither the commissioner nor any deputy commissioner or examiner shall borrow money, directly or indirectly, from any institution, except for a mortgage loan upon the mortgagor's own home or upon installment debt transferred to an institution in the regular course of business by a seller of consumer goods. The above sentence shall not apply to loans made prior to their respective terms of office. If the commissioner, any deputy commissioner or examiner of the bureau, borrows from, is or becomes indebted to any institution subject to the provisions of this act or any national banking association, he shall make a written report to the bureau, or to the governor in the case of the commissioner, stating the date and amount of such loan or indebtedness, the security therefor and the purpose for which the proceeds have been or are to be used.

HISTORY: New 1969, p. 681, Act 319, Imd. Eff. Aug. 20.

487.316 Officers and employees; civil liability.

Sec. 16. The commissioner, any deputy commissioner, examiner or other employee of the bureau shall not be liable in any civil action for damages for any act done or omitted in good faith in performing the functions of his office.

HISTORY: New 1969, p. 681, Act 319, Imd. Eff. Aug. 20.

487.317 Employees; bonds.

Sec. 17. Employees of the bureau handling money or securities in the course of their duties shall be bonded in such form and amount as the director of the department of commerce may determine.

HISTORY: New 1969, p. 681, Act 319, Imd. Eff. Aug. 20.

487.318 Seal.

Sec. 18. The commissioner shall devise a seal for the use of the bureau, a description of which, with an impression thereof, shall be filed in the office of the secretary of state.

HISTORY: New 1969, p. 681, Act 319, Imd. Eff. Aug. 20.

487.319 Commissioner; promulgation of rules.

Sec. 19. The commissioner shall promulgate rules in addition to those specifically provided for by this act as he may deem necessary to effectuate the purposes and to execute and enforce the provisions of this act in accordance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

HISTORY: New 1969, p. 681, Act 319, Imd. Eff. Aug. 20.

487.320 Commissioner; annual report, contents.

Sec. 20. For each calendar year the commissioner shall compile and publish an annual report in such form and containing such information as the commissioner may de-

termine necessary to reasonably summarize the operations of the bureau during such year.

HISTORY: New 1969, p. 681, Act 319, Imd. Eff. Aug. 20.

487.323 Examinations of commissioner; number; scope; federal examinations.

Sec. 23. (1) Every institution together with its subsidiaries shall be subject to examination of the commissioner. The commissioner or his duly authorized agents shall examine without prior notice 1 or more times in each calendar year the condition and affairs of each institution. One examination shall be known as the annual examination. The commissioner shall examine any institution under his jurisdiction when requested by its board of directors. In connection with any examination, the commissioner or his duly authorized agents may examine on oath any of the directors, officers, agents, employees or shareholders concerning the affairs and business of the institution. The commissioner shall ascertain whether the institution transacts its business in the manner prescribed by law and the rules issued thereunder. The commissioner or his duly authorized agents shall have the power to make such examinations of affiliates as shall be necessary to disclose fully the relations between an institution and its affiliates and the effect of such relations upon the institutions.

(2) If an institution is a member of the federal reserve system or if its deposits are insured by the federal deposit insurance corporation, the commissioner may utilize examinations made pursuant to the federal reserve act or the federal deposit insurance act. The commissioner may require the institutions to furnish copies of any reports required by the federal agencies.

(3) Examinations required by this section shall include all fiduciary activities of the institution.

HISTORY: New 1969, p. 681, Act 319, Imd. Eff. Aug. 20.

487.325 Annual examinations; fees, refunds.

Sec. 25. (1) For the annual examination required by section 23, each bank shall pay a fee of not less than 7 ½ cents nor more than 25 cents for each \$1,000.00 of the gross amount of the assets of the bank, which fee shall be determined by the commissioner. No such examination fee for any bank shall be less than \$500.00. The commissioner may assess a supplementary fee on a bank, when in his judgment the records of the bank are such that they necessitate examination procedures by the examiners over and above normal examination procedures. The supplementary fee shall be based on the excess time over and above normal examination time, as determined by the commissioner, spent on examining the bank but in no case shall the sum total of the supplementary fee and the normal examination fees exceed 25 cents for each \$1,000.00 of the gross amount of the assets of the bank. During each calendar year the rate of the examination fee shall be the same for all annual examinations. The fee shall be computed on the basis of the statement of condition of each bank as of December 31 of each year and shall be invoiced as of the succeeding July 1 and payable promptly upon receipt of invoice. If a bank has paid an examination fee but is not examined by the commissioner during the calendar year the bank shall receive a credit in the amount of such fee against its next succeeding annual examination fees and any credit balance shall be refunded at such time as it is clear that no further annual examinations of the bank will be made by the commissioner.

Trust department, annual examination.

(2) For the annual examination of the trust department, each bank with a trust department and each trust company shall pay a fee of \$125.00 per day for the services of the examiner in charge, plus \$75.00 per day for each assistant examiner. The minimum fee for the examination of a trust department shall be \$25.00.

Examination by request.

(3) For an examination of any bank made at the request of its board of directors or for any examination deemed necessary by the commissioner in addition to the annual examination, each bank shall pay an examination fee of \$125.00 per day for the services of the examiner in charge plus \$75.00 per day for each assistant examiner.

Subsidiaries and affiliates, examination.

(4) For the examination of subsidiaries and affiliates, each bank shall pay an examination fee of \$125.00 per day for the services of the examiner in charge plus \$75.00 per day for each assistant examiner.

Commissioner's fees.

(5) The following fees shall be charged by the commissioner:

(a) For filing, examining and processing an application for the organization of a new bank, \$1,500.00.

(b) For filing, examining and processing an application for a merger, consolidation or purchase of assets, \$1,000.00 for each participating bank.

(c) For an application for a new branch office, \$200.00 plus an examining and processing fee of \$125.00 per day for the examiner in charge plus \$75.00 per day for each additional examiner.

(d) For all other applications, including a request for a conversion under section 133, \$100.00 plus an examining and processing fee of \$125.00 per day for the examiner in charge plus \$75.00 per day for each additional examiner.

Documents.

(6) Reasonable fees shall be determined and charged by the commissioner for furnishing and certifying copies of documents filed in the bureau and any publication expenses incurred by the bureau in the publication or serving of notices required by this act shall be charged by the commissioner.

Unpaid fees, collection.

(7) If any fees or expenses provided for in this section are not paid after due notice, the commissioner may maintain an action against the delinquent institution for the recovery thereof with interest and costs.

Disposition; refunds.

(8) All fees and expenses provided for in this section shall be paid into the state treasury to the credit of the general fund. No fees or expenses shall be refundable except as provided in subsection (1).

HISTORY: New 1969, p. 682, Act 319, Imd. Eff. Aug. 20.

487.327 Subpoenas; petition; refusal to obey, contempt.

Sec. 27. The commissioner may petition the circuit court within the jurisdiction of which the examination is being carried on to issue a subpoena on behalf of the bureau requiring any person to appear before the bureau and be examined under oath with reference to any matter within the scope of an examination of an institution as provided for in section 23, and to produce books, records or papers. Any failure to obey the subpoena of the court may be punished by the court as a contempt thereof.

HISTORY: New 1969, p. 683, Act 319, Imd. Eff. Aug. 20.

487.328 Self-incrimination; immunity.

Sec. 28. No person shall be excused from testifying or from producing any books, papers, records or memoranda in any examination when ordered to do so by the commissioner, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate him or subject him to a criminal penalty; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed

his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution or punishment for perjury committed in so testifying.

HISTORY: New 1969, p. 683, Act 319, Imd. Eff. Aug. 20.

487.329 Confidentiality of information obtained by commissioner and other employees of bureau; exception.

Sec. 29. The commissioner and all deputies, agents and employees of the bureau shall be bound by oath to keep secret all facts and information obtained in the course of their duties, except insofar as such person is required, pursuant to law, to report upon or take official action or testify in any proceedings regarding the affairs of any institution. Notwithstanding the foregoing with respect to matters as to which official action is required, the commissioner may make such disclosure and to such persons and at such times as is in the public interest within the purposes of this act. The provisions of this section shall not be applicable to or prohibit the furnishing of information or documents to the federal bank regulatory agencies, nor to disclosures, made to interested parties by the commissioner, at his discretion, with respect to applications for the chartering of new banks, applications for new branch offices or applications for the moving of banking offices.

HISTORY: New 1969, p. 683, Act 319, Imd. Eff. Aug. 20.

487.330 Orders; reconsideration; hearings, notice.

Sec. 30. (1) Except with respect to rules promulgated pursuant to section 19 and cease and desist orders made pursuant to sections 35 to 46 any institution or officer or director thereof or any party of interest therein being dissatisfied with any order, demand, ruling or finding, hereinafter in this section referred to as an order, made by the commissioner, may request reconsideration of the order. Within 30 days of the receipt of the written request for reconsideration the commissioner shall set the matter down for a formal hearing. At the commissioner's discretion he also shall have the right to conduct such a formal hearing prior to the issuance of any order. He shall conduct such a formal hearing prior to the issuance of any order required to be made on applications seeking approval of the commissioner pursuant to sections 53, 121, 125, 157, 171 and 173, unless no interested party contests the issuance of the order by notice in writing to the commissioner within 10 days following the issuance of notice of hearing as provided for in subsection (2) of this section. It is the express intent of this section, except where specifically excepted herein, that no action be brought against the commissioner in circuit court without a formal hearing preceding such an action.

(2) If a hearing is requested by an interested party or ordered by the commissioner, the commissioner shall notify all interested parties, which notice shall state the time, place and issues involved, and opportunity shall be afforded all interested parties to present evidence and argument with respect thereto. At the conclusion of the hearing the commissioner shall issue such order, including an order modifying or vacating a previous order, as he shall deem appropriate upon the basis of the hearing.

(3) Any action under this section shall be conducted in accordance with the provisions of Act No. 197 of the Public Acts of 1952, as amended.

HISTORY: New 1969, p. 683, Act 319, Imd. Eff. Aug. 20.

487.335 Cease and desist orders; notice, contents; hearings; issuance; effective date.

Sec. 35. (1) If, in the opinion of the commissioner, any institution is engaging, or has engaged or the commissioner has reasonable cause to believe that the bank is about to engage, in an unsafe or unsound practice in conducting the business of such bank or is violating, has violated or the commissioner has reasonable cause to believe that the bank is about to violate, a law or rule, the commissioner may issue and serve upon the

institution a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged unsafe or unsound practice or violation, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the institution. The hearing shall be not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the commissioner at the request of the institution. Unless the institution appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease and desist order. In the event of such consent, or if upon the record made at any such hearing, the commissioner finds that any unsafe or unsound practice or violation specified in the notice of charges has been established, the commissioner may issue and serve upon the institution an order to cease and desist from any such practice or violation. By provisions which may be mandatory or otherwise, the order may require the institution and its directors, officers, employees and agents to cease and desist from the same and to take affirmative action to correct the conditions resulting from any such practice or violation.

(2) A cease and desist order shall become effective at the expiration of 30 days after the service of the order upon the institution, except in the case of an order issued upon consent which shall become effective at the time specified therein, and shall remain effective and enforceable as provided therein, except to the extent it is stayed, modified, terminated or set aside by action of the commissioner or a reviewing court.

HISTORY: New 1969, p. 684, Act 319, Imd. Eff. Aug. 20.

487.336 Temporary order to cease and desist; effective period; injunction to set aside.

Sec. 36. (1) Whenever the commissioner determines that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the institution pursuant to subsection (1) of section 35, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the institution, or is likely to otherwise seriously prejudice the interests of its depositors, the commissioner may issue a temporary order requiring the institution to cease and desist from any such violation or practice. Such order shall become effective upon service upon the institution and, unless set aside, limited or suspended by a court in proceedings authorized by subsection (2), shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the commissioner shall dismiss the charges specified in such notice or if a cease and desist order is issued against the institution, until the effective date of such order.

(2) Within 10 days after the institution has been served with a temporary cease and desist order, the institution may apply to the circuit court for the county in which the home office of the institution is located for an injunction setting aside, limiting or suspending the enforcement, operation or effectiveness of the order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the institution under subsection (1) of section 35 and the court shall have jurisdiction to issue the injunction.

HISTORY: New 1969, p. 684, Act 319, Imd. Eff. Aug. 20.

487.337 Director or officers; removal or suspension; notice, contents; hearing.

Sec. 37. (1) Whenever, in the opinion of the commissioner, any director or officer of an institution has committed any violation of law or rule or of a cease and desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the institution, or has committed or engaged in any act, omission or practice which constitutes a breach of his fiduciary duty as a director or officer

and the commissioner determines that the institution has suffered or will probably suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of the violation or practice or breach of fiduciary duty, the commissioner may serve upon the director or officer a written notice of his intention to remove him from office.

(2) Whenever, in the opinion of the commissioner, any director or officer of any institution, by conduct or practice with respect to another institution or other business organization which resulted in substantial financial loss or other damage, has evidenced his personal unfitness to continue as a director or officer and, whenever, in the opinion of the commissioner, any other person participating in the conduct of the affairs of any institution, by conduct or practice with respect to such institution or other business organization which resulted in substantial financial loss or other damage, has evidenced his personal unfitness to participate in the conduct of the affairs of such institution, the commissioner may serve upon the director, officer or other person a written notice of his intention to remove him from office or to prohibit his further participation in any manner in the conduct of the affairs of the institution.

(3) In respect to any director or officer of any institution or any other person to whom notice is sent pursuant to subsection (1) or (2) of this section, if the commissioner deems it necessary for the protection of the institution or the interests of its depositors that the director, officer or other person be suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the institution, the commissioner may serve upon such director, officer or other person, a written notice suspending him from office or prohibiting him from further participation in any manner in the conduct of affairs of the institution. The suspension or prohibition shall become effective upon service of the notice and, unless stayed by a court in proceedings authorized by section 38, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under subsections (1) or (2) and until such time as the commissioner shall dismiss the charges specified in such notice or, if an order of removal or prohibition is issued against the director, officer or other person, until the effective date of such order. Copies of the notice shall also be served upon the institution of which he is a director or officer or in the conduct of whose affairs he has participated.

(4) A notice of intention to remove a director, officer or other person from office or to prohibit his participation in the conduct of the affairs of any institution shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. The hearing shall be held not earlier than 30 days nor later than 60 days after the date of service of the notice, unless an earlier or a later date is set by the commissioner at the request of the director, officer or other person and for good cause shown. Unless the director, officer or other person appears at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of removal or prohibition. In the event of consent, or if upon the record made at the hearing the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the institution, as he deems appropriate. The order shall become effective at the expiration of 30 days after service upon the institution and the director, officer or other person concerned except in the case of an order issued upon consent, which shall become effective at the time specified therein. The order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated or set aside by action of the commissioner or a reviewing court.

HISTORY: New 1969, p. 685, Act 319, Imd. Eff. Aug. 20.

487.338 Director or officers; stay of suspension or prohibition.

Sec. 38. Within 10 days after any director, officer or other person has been suspended from office or prohibited from participation in the conduct of the affairs of any institution under subsection (3) of section 37, the director, officer or other person may apply to the circuit court for the county in which the home office of the institution is located for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon the director, officer or other person under subsections (1) or (2) of section 37 and the court shall have jurisdiction to stay the suspension or prohibition.

HISTORY: New 1969, p. 696, Act 319, Imd. Eff. Aug. 20.

487.339 Director or officers; criminal charges; suspension, effective period.

Sec. 39. Whenever any director or officer of any institution or other person participating in the conduct of the affairs of an institution is charged in any information, indictment, warrant or complaint authorized by a county, state or United States authority with the commission of, or participation in, a felony involving dishonesty or breach of trust, the commissioner, by written notice served upon the director, officer or other person may suspend him from office or prohibit him from further participation in any manner in the conduct of the affairs of the institution. A copy of the notice shall also be served upon the institution. The suspension or prohibition shall remain in effect until the information, indictment, warrant or complaint is finally disposed of or until terminated by the commissioner. If a judgment of conviction with respect to the offense is entered against the director, officer or other person, and at such time as the judgment is not subject to further appellate review, the commissioner may issue and serve upon the director, officer or other person an order removing him from office or prohibiting him from further participation in any manner in the conduct of the affairs of the institution except with the consent of the commissioner. A copy of the order shall also be served upon the institution, whereupon the director or officer shall cease to be a director or officer of the institution. A finding of not guilty or other disposition of the charge shall not preclude the commissioner from thereafter instituting proceedings to suspend or remove the director, officer or other person from office or to prohibit further participation in institution affairs, pursuant to subsections (1), (2) or (3) of section 37.

HISTORY: New 1969, p. 696, Act 319, Imd. Eff. Aug. 20.

487.340 Director; suspension; temporary directors; operation of board.

Sec. 40. If at any time, because of the suspension or removal of 1 or more directors pursuant to this section, the board of directors of an institution has less than a quorum of directors not so suspended or removed, all powers and functions vested in or exercisable by the board shall vest in and be exercisable by the directors on the board not so suspended or removed, until such time as there is a quorum of the board of directors. If all of the directors of an institution are suspended or removed pursuant to this section, the commissioner shall appoint persons to serve temporarily as directors pending the termination of the suspensions or removals, or until such time as their successors are duly elected and take office.

HISTORY: New 1969, p. 696, Act 319, Imd. Eff. Aug. 20.

487.341 Hearings; private, public; petition, review.

Sec. 41. (1) Any hearing provided for in sections 35 to 46 shall be conducted in accordance with the provisions of Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.313 of the Compiled Laws of 1948. The hearing shall be private, unless the commissioner, after fully considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest. After the hearing and within 90 days after the commissioner has notified the parties that the

case has been submitted to him for final decision, he shall render his decision which shall include findings of fact upon which his decision is predicated and shall issue and serve upon each party to the proceeding an order consistent with the provisions of this section.

(2) Any party to the proceeding, or any person required by an order issued under sections 35 to 46 to cease and desist from any of the violations or practices stated therein or to be suspended, removed or prohibited from participation in the conduct of the affairs of any institution, may obtain a review of any order served pursuant to subsection (1) of this section, other than a consent order, which review shall be exclusively as provided in Act No. 306 of the Public Acts of 1969. Unless a petition for review is timely filed as provided in that act, the commissioner, at any time, upon such notice and in such manner as he deems proper, may modify, terminate or set aside the order. Upon the timely filing of a petition for review, the commissioner may modify, terminate or set aside the order with the permission of the court.

(3) Unless specifically ordered by the court, the commencement of proceedings for judicial review under subsection (2) of this section shall not operate as a stay of any order issued by the commissioner.

HISTORY: New 1969, p. 687, Act 319, Imd. Eff. Aug. 20;—Am. 1970, p. 482, Act 148, Imd. Eff. Aug. 1.

487.342 Judicial enforcement of notice or order.

Sec. 42. The commissioner may apply to the circuit court of the county in which the home office of the institution is located, or in the circuit court for Ingham county, for the enforcement of any effective and outstanding notice or order issued under sections 35 to 46 including any temporary cease and desist order issued pursuant to subsection (1) of section 36, and the court shall have jurisdiction and power to order and require compliance therewith; but except as otherwise provided in this section no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under sections 35 to 46, or to review, modify, suspend, terminate or set aside any such notice or order.

HISTORY: New 1969, p. 687, Act 319, Imd. Eff. Aug. 20;—Am. 1970, p. 483, Act 148, Imd. Eff. Aug. 1.

487.343 Director or officers; violation of order, penalty.

Sec. 43. Any director or officer or former director or officer of any institution or any other person, against whom there is outstanding and effective any notice or final order served upon the director, officer or other person under subsections (1), (2) or (3) of section 37, or of section 39, who (i) participates in any manner in the conduct of the affairs of the institution involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such institution, or (ii) without the prior written approval of the commissioner, votes for a director, serves or acts as a director, officer or employee of any institution, shall be fined not more than \$5,000.00 or imprisoned for not more than 1 year, or both.

HISTORY: New 1969, p. 687, Act 319, Imd. Eff. Aug. 20.

487.344 Final cease and desist order; violation; definitions.

Sec. 44. As used in sections 35 to 46:

(a) "Cease and desist order which has become final" and "order which has become final" means a cease and desist order or an order issued by the commissioner with the consent of the institution or the director or officer or other person concerned or with respect to which no petition for review of the action of the commissioner has been filed and perfected in a circuit court as specified in subsection (2) of section 41, or with respect to which the action of the court in which the petition is filed is not subject to further review by the courts of the state.

(b) "Violation" includes, without limitation, any action, alone or with others, for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

HISTORY: New 1969, p. 687, Act 319, Imd. Eff. Aug. 20.

487.345 Service of process; notice to governor.

Sec. 45. Any service required or authorized to be made by the commissioner under sections 35 to 46 may be made by registered or certified mail, or in such other manner reasonably calculated to give actual notice as the commissioner by rule or otherwise may provide. Copies of any notice or order served by the commissioner upon any institution or any director or officer thereof or other person participating in the conduct of its affairs, pursuant to the provisions of sections 35 to 46, shall also be sent to the appropriate federal supervisory authorities.

In connection with the issuance of any cease and desist order under this act, the commissioner must inform the governor of his intent to issue such an order and, failure to do so shall render such an order invalid.

HISTORY: New 1969, p. 688, Act 319, Imd. Eff. Aug. 20.

487.346 Notice to federal supervising authority; grounds for attacking validity of notice or order.

Sec. 46. In connection with any proceeding under section 35, subsection (1) of section 36 or section 37, the commissioner shall provide the appropriate federal supervisory authorities with notice of intent to institute such a proceeding and the grounds therefor. No institution or other party who is the subject of any notice or order issued by the commissioner under sections 35 to 46 shall have standing to raise the requirements of section 45 or this section with respect to notifying federal supervisory authorities as ground for attacking the validity of any notice or order.

HISTORY: New 1969, p. 688, Act 319, Imd. Eff. Aug. 20.

CHAPTER 3

CORPORATE STRUCTURE

487.351 Bankers and fiduciaries; qualifications.

Sec. 51. (1) No person may engage in the business of banking except an incorporated bank having its principal place of business located in this state and engaged in the business of banking on the effective date of this act pursuant to the authority of the national banking act or Act No. 341 of the Public Acts of 1937, as amended, and a bank having its principal place of business located in this state and incorporated under the provisions of this act or of the national banking act.

(2) No person other than an individual or a corporation may act as fiduciary, other than as an escrow agent. No corporation may act as fiduciary, other than as an escrow agent except:

(a) A trust company or a bank with trust powers having its principal place of business located in this state and engaged in the trust business on the effective date of this act pursuant to the authority of the national banking act or Act No. 341 of the Public Acts of 1937, as amended.

(b) A bank whether now or hereafter incorporated having its principal place of business located in this state and which obtains trust powers under the provisions of this act or of the national banking act.

(c) A nonbanking corporation to the extent that it may be specifically authorized to act as fiduciary in this state by another statute of this state.

HISTORY: New 1969, p. 688, Act 319, Imd. Eff. Aug. 20.

487.352 Banking business; incorporators.

Sec. 52. Any number of natural persons, not less than 5, a majority of whom are residents of this state and citizens of the United States or its territories or possessions, may incorporate to carry on the business of banking under this act.

HISTORY: New 1969, p. 688, Act 319, Imd. Eff. Aug. 20.

487.353 Organization of bank; application by incorporators, contents, notice; examination and investigation; disapproval, appeal.

Sec. 53. (1) Such persons shall apply to the commissioner for permission to organize a bank under this act, which application shall be on forms prescribed by the commissioner and shall set forth such information as the commissioner may require in addition to the following:

- (a) Their names and addresses.
- (b) Their present principal business occupations.
- (c) Such information respecting their financial responsibilities as the commissioner may require.

(d) The nature and extent of their present or prior relationships, directly or indirectly, with banks, trust companies or other financial organizations.

(2) The incorporators, after making such application, shall publish notice twice and in consecutive weeks that the application has been made. The notice shall set forth the names and addresses of the incorporators and the proposed name and location of the bank to be organized. Proof of such notice shall be furnished to the commissioner within 30 days after the date of the application. The commissioner may waive the publication requirements, if in his opinion, such waiver is necessary or appropriate in the public interest.

(3) The commissioner shall examine the information and statements contained in the application as well as make any other or further investigation as to the persons, conditions and circumstances surrounding or in any manner affecting or pertaining to the organization of such bank, and he shall make a careful investigation sufficient to satisfy him as to:

(a) Whether the character, responsibility and fitness of the incorporators and of the proposed directors and officers, and their motives in seeking to organize the bank are such as to command the confidence of the community and to warrant the belief that the business of the proposed bank will be honestly and efficiently conducted.

(b) Whether the convenience and needs of the public will be served by the proposed bank.

(c) The likelihood of successful operation of the proposed bank, giving consideration to, but not by way of limitation:

- (i) Population density.
- (ii) Economic characteristics of the area primarily to be served.
- (iii) The competition offered by existing banks and other financial institutions.
- (d) Whether the capital structure of the proposed bank meets the requirements of section 71.

(e) Whether there has been or will be any violation of section 55.

(4) The commissioner shall approve or disapprove the application in writing within 90 days of the receipt of the application or the last amendment or supplement thereto. If the commissioner disapproves the application, within 30 days after the receipt of written notice of disapproval the applicants may appeal to the circuit court in the manner provided in section 30.

HISTORY: New 1969, p. 689, Act 319, Imd. Eff. Aug. 20.

487.355 Organization expense fund; subscribers, payments; expenditures.

Sec. 55. In addition to paid-in capital and surplus requirements as set forth in section 71, each subscriber at the time he subscribes to the stock of a proposed bank shall pay in cash a sum at least equal to 5% but not more than 10% of the par value of such stock into a fund to be used to defray the expenses of organization. No organization expense shall be paid out of any other funds of the bank. If the application is approved, any unexpended balance shall be transferred to undivided profits. If the application has been finally denied, any unexpended balance shall be distributed among the contributors in proportion to their respective payments. The commissioner may require an account of disbursements from the fund and may order the incorporators to restore any sum which has been expended for other than proper organizational expenses. Not more than 75% of the organization expense fund shall be expended for obtaining subscriptions to stock.

HISTORY: New 1969, p. 689, Act 319, Imd. Eff. Aug. 20.

487.358 Articles of incorporation; execution, approval, filing; deposit insurance.

Sec. 58. (1) Upon approval of the application by the commissioner, at least 4 original articles of incorporation, executed by a majority of the applicants and acknowledged before any officer authorized by the laws of this state to take and certify acknowledgments, shall be submitted to the commissioner. If the commissioner finds that the articles conform to law and that all fees and charges have been paid as required by law, he shall approve and file 1 of the original articles in his office, certify and forward 1 of the original articles to the county clerk of the county in which the bank is located, 1 of the original articles to the corporation division of the department of treasury, and 1 of the original articles to the incorporators.

(2) As a condition precedent to approving, certifying and distributing the articles of incorporation, the incorporators shall furnish evidence that a firm commitment to insure deposit accounts up to the maximum permitted by federal law has been issued by the federal deposit insurance corporation, unless the commissioner, for good cause shown, waives such requirement.

HISTORY: New 1969, p. 690, Act 319, Imd. Eff. Aug. 20.

487.361 Articles of incorporation; contents.

Sec. 61. The articles of incorporation shall specify:

- (a) The name of the bank which shall not resemble the name of any other bank transacting business in this state so closely as to be likely to cause confusion.
- (b) The county and the city, incorporated village or township where the principal office of the bank is to be located and to conduct its business.
- (c) The purpose or purposes of incorporation as provided in this act.
- (d) The authorized amount of its capital stock, and:
 - (i) If the bank is to be authorized to issue only 1 class of stock, the total number of shares of stock which the bank may issue and the par value of each of such shares.
 - (ii) If the bank is to be authorized to issue more than 1 class of stock, a statement of the total number of shares of all classes of stock which the bank may issue, the number of shares of each class thereof, the par value of each share of each class and a statement of all or any of the designations, powers, preferences and rights, and the qualifications, limitations and restrictions thereof.
- (e) The names, places of residence and addresses of the incorporators and the number of shares subscribed for by each.
- (f) The period for which the bank is organized, which may be in perpetuity.

(g) Any other provisions consistent with the laws of this state for regulating the business of banking and for the conduct of the affairs of the bank.

HISTORY: New 1969, p. 690, Act 319, Imd. Eff. Aug. 20.

487.364 Articles and documents; filing, purpose; constructive notice.

Sec. 64. The filing of the articles or any other papers pursuant to the provisions of this act is required for the purpose of affording all persons the opportunity of acquiring knowledge of the contents thereof but a person dealing with the corporation shall not be charged with or be entitled to assert constructive notice of the contents of any articles or papers by reason of the filing except shareholders, officers and directors of the corporation.

HISTORY: New 1969, p. 690, Act 319, Imd. Eff. Aug. 20.

487.366 Body corporate; preliminary powers.

Sec. 66. When the commissioner approves and files the articles of incorporation as required by this act, the bank shall become a body corporate. A bank shall not transact any business, except such as is incidental and necessarily preliminary to its organization, until it has been authorized by the commissioner to commence the business of banking.

HISTORY: New 1969, p. 690, Act 319, Imd. Eff. Aug. 20.

487.367 Commencement of business; time period; notice, examination, certificate showing authorization.

Sec. 67. (1) Within 30 days after the approval and filing of its articles of incorporation, or such later time not to exceed 1 year as approved by the commissioner, the bank shall notify the commissioner that all of its capital and surplus has been fully paid in and that it has complied with all the provisions of this act required to be complied with before a bank shall be authorized to commence the business of banking.

(2) The commissioner shall make such examinations as he deems necessary to verify the same and if it appears that the bank is lawfully entitled to commence business, the commissioner, within 30 days after receiving the notice provided for in this section, shall give to the bank a certificate under the official seal of the bureau that the bank has complied with all of the required provisions and is authorized to commence business.

(3) The application shall be deemed abandoned and of no further effect if the bank fails to furnish the notice provided for in this section within the specified time or fails to comply with the required provisions within such period of time as the commissioner determines.

HISTORY: New 1969, p. 690, Act 319, Imd. Eff. Aug. 20.

487.369 First meeting of bank incorporators; notice, contents, service, waiver.

Sec. 69. The first meeting of every bank shall be called by a notice signed by any incorporator designating the time and place of the meeting and stating the purpose for which such meeting is called. The notice shall be served personally on all the incorporators at least 5 days before the date set for the meeting. If all the incorporators are present at the meeting or in writing waive notice and fix a time and place of meeting, then no notice shall be required for the first meeting.

HISTORY: New 1969, p. 691, Act 319, Imd. Eff. Aug. 20.

487.371 Capital and surplus requirements.

Sec. 71. (1) A bank hereafter organized shall have capital in such an amount as the commissioner deems adequate on the basis of the population of the area to be served and the anticipated nature of the institution's business but in no event less than \$100,000.00.

(2) A bank shall not be authorized to commence business until it shall have surplus at least equal to 20% of its capital.

(3) After organization each bank shall maintain an adequate capital structure appropriate for the conduct of its business and the protection of its depositors. The capital adequacy of a bank shall be analyzed and appraised in relation to the character of its management, the liquidity of assets, history of earnings and of the retention thereof, the potential volatility of the deposit structure and with due regard to the bank's capacity to furnish the broadest service to the public.

(4) At all times a bank shall maintain surplus in an amount which is equal to at least the amount of its capital, except as provided in subsection (2) as to the initial surplus and except as provided in section 85, and shall not reduce surplus without the approval of the commissioner.

HISTORY: New 1969, p. 691, Act 319, Imd. Eff. Aug. 20.

487.373 Capital notes, debentures and other evidences of indebtedness; procedure to issue.

Sec. 73. Any bank, with the approval of shareholders owning 2/3 of the stock of the bank entitled to vote, may issue capital notes, debentures, and any other instrument of indebtedness, with or without warrants for preferred and/or common stock, convertible and nonconvertible, subordinated on insolvency, liquidation, or dissolution to all obligations except obligations to shareholders as such, in such amounts and under such terms and conditions as are approved by the commissioner on the basis of normal business considerations. In connection with the issuance of convertible capital notes, debentures or any other instrument of indebtedness, the commissioner may grant approval for the bank to reserve such number of authorized and unissued shares of capital stock as shall be required for issuance in exchange for capital notes and debentures with respect to which conversion privileges exist. If capital notes, debentures or any other instrument of indebtedness are converted into shares of common or preferred stock, a verified certificate executed by the president of the bank stating the amount of such conversion, and such other information with respect thereto as the commissioner may require, shall be filed in the office of the commissioner. Outstanding capital notes, debentures and any other instrument of indebtedness issued pursuant to this section shall be added to "capital" and "capital stock" as such terms are used in sections 188, 189, 194, 196 to 198 and 233 for the purpose of computing the limitations contained in those sections based on amounts of capital and capital stock.

HISTORY: New 1969, p. 691, Act 319, Imd. Eff. Aug. 20.

487.375 Vote of shareholders; application.

Sec. 75. Whenever a vote of the holders of shares of stock is required in this act, such provisions shall apply only to the voting stock in the institution, voting by classes.

HISTORY: New 1969, p. 692, Act 319, Imd. Eff. Aug. 20.

487.377 Shares of stock; certificates of stock; transfers, validity.

Sec. 77. (1) There shall be issued to every shareholder in a bank certificates of stock which shall be transferable on the books of the bank in such manner as may be prescribed in the bylaws or articles of incorporation. A transfer of stock shall not be valid against the bank, except with the consent of the board of directors, so long as the registered holder thereof is liable as principal debtor, surety or otherwise to the bank for any debt which is due and unpaid.

Sale of shares to pay indebtedness.

(2) Whenever the registered holder of stock of a bank is liable to it as principal debtor, surety or otherwise for any debt which is due and unpaid, the directors of the bank may sell a sufficient amount of the stock of the delinquent shareholder in the same manner and with the same effect as provided in section 201 in the case of an un-

paid assessment on the stock of the bank. Nothing contained in this section shall prevent the bank from bringing proceedings to recover the entire amount of the indebtedness at any time before any such sale or to recover the balance of the debt and costs after the proceeds of sale have been applied against the debt and costs or to recover the balance of the debt after the cancellation of the stock.

Pledge or sale prior to maturity.

(3) The rights of any bank in its stock under this section shall be subject to any pledge, sale or other transfer of the stock which is made prior to the maturity of any indebtedness of the registered holder thereof to the bank and of which the bank has knowledge prior to the maturity, whether or not the stock was transferred on the books of the bank. Any stock of a bank which is pledged, sold or otherwise transferred prior to the maturity of any indebtedness of the registered holder thereof to the bank and of which pledge, sale or other transfer the bank has knowledge prior to the maturity, may be transferred on the books of the bank after the maturity without the consent of the board of directors of the bank. The rights of any bank in its stock under this section, including the limitation on transferability if the registered holder is liable to the bank for any debt which is due and unpaid, shall not be applicable with respect to any stock duly listed on any stock exchange.

Certificates; contents, signing.

(4) Certificates hereafter issued shall state (a) the name and location of the bank, (b) the name of the holder of record of the stock represented thereby, (c) the number, par value and class of shares which the certificates represent, (d) if the bank issues stock of more than 1 class, the respective rights, preferences, privileges, voting rights, powers, restrictions, limitations and qualifications of each class of stock issued shall be stated in full or in summary upon the front or back of the certificates or shall be incorporated by a reference to the articles of incorporation set forth on the front of the certificates and (e) if the stock is not listed, that no transfer thereof shall be valid against the bank so long as the registered holder is liable as principal debtor, surety or otherwise to the bank, except with the approval of the board of directors or except as otherwise provided in this act. Every certificate hereafter issued shall be signed by the president or vice president and cashier or assistant cashier of the bank or by such other officers as the bylaws of the bank shall provide and shall be sealed with the seal of the bank.

Facsimile signature or seal.

(5) Notwithstanding any law to the contrary, where any share certificate is signed by a transfer agent or by a transfer agent and a registrar, the signature of any officers of the bank required thereon or the seal of the bank may be a facsimile. If any officer who has signed share certificates or whose facsimile signature has been used thereon ceases to be such officer, whether because of death, resignation or otherwise, before the certificate has been delivered by the bank, the certificate nevertheless, may, be adopted by the bank and delivered as though the person who signed it or whose facsimile signature has been used thereon had not ceased to be such officer.

HISTORY: New 1969, p. 692, Act 319, Imd. Eff. Aug. 20.

487.379 Capital stock; increase, procedure; employee stock options.

Sec. 79. (1) With the approval of the commissioner, and by a vote of shareholders owning 2/3 of each class of the stock entitled to vote, a bank may increase its capital stock to any sum approved by the commissioner, either by an increase in the par value of the existing stock or by the issuance of new stock, including preferred stock. An increase in capital shall not be valid until the whole amount of the increase is paid in and notice thereof, duly acknowledged before a notary public by the president, vice president, cashier or assistant cashier of the bank, has been transmitted to the commissioner and his certificate obtained specifying the amount of the increase in capital

stock and that it has been duly paid in as a part of the capital of the bank. The certificate shall be conclusive evidence that the stock has been duly and validly issued. In the case of the issuance of new stock, in voting upon the increase of capital stock, the shareholders entitled to vote shall have power, by the same statutory majority, to fix the value of, and the price at which the increase of the capital stock shall be subscribed and paid for by the shareholders, but not less than par, as well as the time and manner of the subscription and payment; and by the same vote to authorize the directors of the bank to sell, at not less than the price so fixed, any part of the increase not subscribed by the shareholders, after they have had a reasonable opportunity to make subscription of their proportionate shares thereof.

(2) Notwithstanding the provisions of this section, any bank, with the approval of the commissioner and by a vote of shareholders owning $\frac{2}{3}$ of each class of the stock entitled to vote, for the stated purpose of providing stock options for 1 or more employees, may increase its capital stock in an aggregate par value amount not to exceed at any one time 5% of the par value of its then outstanding common capital stock. The additional capital stock, when duly authorized, may be issued by the bank from time to time for such purpose but for no other purpose, as options are exercised and payment for the stock is received, free from any preemptive rights to subscribe for stock.

HISTORY: New 1969, p. 693, Act 319, Imd. Eff. Aug. 20.

487.381 Capital stock; reduction, procedure.

Sec. 81. (1) By a vote of shareholders owning $\frac{2}{3}$ of the stock entitled to vote of such bank, a bank may reduce its capital stock to an amount not less than that required by this act to authorize the formation of such a bank. The reduction may be accomplished by a reduction in the par value of the existing stock or by a reduction in the number of the shares of such stock. A reduction shall not be made until the amount of the proposed reduction has been reported to the commissioner and has been approved by him.

(2) The approval of the commissioner shall be based upon a finding by him that the security of existing creditors of the bank will not be impaired by the proposed reduction. Nothing herein contained shall operate in any way to discharge any bank which may decrease its capital stock from any obligation or demand that may be due from the bank.

(3) Retirement of preferred stock in accordance with the provisions of the articles of incorporation shall not be deemed to be a reduction of capital under the provisions of this section.

(4) A shareholder shall not be entitled to any distribution of cash or other assets by reason of any reduction of the common capital of any bank unless the distribution has been approved by the commissioner and by the affirmative vote of at least $\frac{2}{3}$ of the shares of each class of stock outstanding, voting as classes.

HISTORY: New 1969, p. 693, Act 319, Imd. Eff. Aug. 20.

487.385 Payment of dividends; restrictions.

Sec. 85. (1) From time to time, the board of directors of a bank may declare and pay dividends on the common stock of the bank subject to the following restrictions:

(a) A cash dividend or dividend in kind shall not be declared or paid unless the bank will have a surplus amounting to not less than 20% of its capital after the payment of the dividend.

(b) A cash dividend or dividend in kind shall not be declared by any bank except out of net profits then on hand after deducting therefrom its losses and bad debts. All debts due the bank on which interest is past due and unpaid for a period of 6 months, unless the debts are well secured and in process of collection or the debts constitute

claims against solvent estates in probate, shall be considered bad debts within the meaning of this section.

(c) A cash dividend or dividend in kind shall not be declared or paid until the cumulative dividends on preferred stock, if any, have been paid in full.

(d) If at any time the surplus of a bank is less than the amount of its capital, before the declaration of a cash dividend or dividend in kind, it shall transfer to surplus not less than 10% of its net profits of the preceding half-year in the case of quarterly or semiannual dividends, or not less than 10% of its net profits of the preceding 2 consecutive half-year periods in the case of annual dividends. For the purpose of this section, any amounts transferred to a reserve account for the retirement of any preferred stock of any bank out of its net profits for such periods shall be deemed to be additions to its surplus, if, upon the retirement of the preferred stock, the amounts so credited into the retirement reserve may then properly be carried to surplus. In any such case the bank shall be obligated to credit to surplus the amounts transferred into the retirement reserve on account of the preferred stock as such stock is retired.

(e) For the purpose of this section the term "net profits" means the remainder of all earnings from operations plus actual recoveries on loans and investments and other assets, after deducting from the total thereof all operating expenses, actual losses, accrued dividends on preferred stock, if any, and all taxes.

(f) Without regard to the foregoing limitations of this section, any bank, with the approval of the commissioner, and by vote of shareholders owning 2/3 of the stock entitled to vote, may increase its capital stock by declaration of a stock dividend on such capital stock. After the increase the surplus of the bank shall be at least equal to 20% of the capital stock as increased. No such increase shall be effective until a certificate of such declaration of dividend, signed by the president, vice president, cashier or assistant cashier of the bank and duly acknowledged before a notary public, shall have been transmitted to the commissioner and his certificate obtained specifying the amount of the increase of capital stock by stock dividend and his approval thereof.

(2) Any bank may pay dividends on its preferred stock at such rate as may be applicable without regard to any of the limitations of this section.

HISTORY: New 1969, p. 694, Act 319, Imd. Eff. Aug. 20.

487.391 Shareholders' meetings; voting rights; fiduciaries; pledges.

Sec. 91. (1) The annual meeting of the shareholders of every bank shall be held on the day in each year that is provided in the bylaws of the bank. Special meetings of shareholders shall be called and held as provided in the bylaws of the bank. At any meeting, each shareholder entitled to vote shall be entitled to 1 vote for each share held by him. A shareholder may vote at any meeting of the bank by proxy in writing signed by him.

(2) Persons holding shares of the capital stock of a bank in a fiduciary capacity shall be entitled to vote the shares so held, unless the trust instrument shall contain a provision to the contrary. Persons whose shares are pledged shall be entitled to vote unless in the transfer by the pledgor on the books of the bank he has expressly empowered the pledgee to vote thereon, in which case only the pledgee or his proxy may vote the shares.

(3) A shareholder shall not vote his stock in any manner except in person or by proxy. This prohibition shall not be construed to apply to any voting trust agreement of shareholders with respect to the voting of stock, which agreement has been approved by the commissioner.

HISTORY: New 1969, p. 694, Act 319, Imd. Eff. Aug. 20.

487.393 Shareholders' meetings called by commissioner; notice.

Sec. 93. The commissioner, whenever he deems it expedient, may call a meeting of the shareholders of any bank, for any purpose, by giving a notice of the time, place and purposes thereof at least 3 days prior to said meeting to the shareholders either by personal service, by registered or certified mail sent to their last known addresses as shown by the books of the bank or by publication thereof at least once in each week for 4 consecutive weeks prior to the meeting.

HISTORY: New 1969, p. 695, Act 319, Imd. Eff. Aug. 20.

487.394 Stock ledger contents; transfer agent; registrar of shares; commissioners' demand for list of shareholders.

Sec. 94. (1) Each bank shall keep and maintain a stock ledger in which shall be correctly entered the name and address of each shareholder of the bank, the number of shares held by each, the date when such shareholder acquired the shares and the name of the transferor. In lieu of the foregoing requirements the board of directors of any bank may designate any corporation authorized by law to act as transfer agent or registrar of shares of corporations, to act as transfer agent or transfer agent and registrar of the shares of the bank; but the same corporation shall not be designated to act in both capacities at the same time.

(2) Within 2 calendar weeks of any demand therefor made by the commissioner, a bank shall file with the commissioner a list containing the name and address of each shareholder of the bank together with the number of shares held by each according to its records as of the close of business on the date of issuance of the demand. Within 2 calendar weeks of any demand therefor made for proper cause by any shareholder being the record owner of at least 5% of the issued shares of the bank or on the demand for proper cause of any person representing any group who are the record owners of at least 5% of the issued shares of the bank, the bank shall prepare and furnish the requestor a list containing the name and address of each shareholder of the bank together with the number of shares held by each according to its records as of the close of business on the date of receipt of such demand.

HISTORY: New 1969, p. 695, Act 319, Imd. Eff. Aug. 20.

487.396 Board of directors; number, election, vacancies; meetings, minutes; meeting called by commissioner, notice.

Sec. 96. (1) The affairs of a bank shall be managed by a board of not less than 5 nor more than 25 directors who shall be elected in the first instance by the incorporators at a meeting held before the bank is authorized to commence business and afterwards at the annual meeting of the shareholders, or, if for any reason an election is not held at that meeting or at an adjournment thereof, then at any subsequent meeting called for that purpose of which notice is given as provided in the bylaws of the bank. The board of directors may fill any vacancy which occurs in the board by death, resignation or otherwise for the current year. Subject to limitations as to numbers, the shareholders may elect not to exceed 2 less than the full board and the resulting unfilled directorships shall be considered as vacancies and may be filled thereafter by the board of directors. Directors shall hold office until their successors are elected and have qualified.

(2) The board of directors shall meet at least once each month for the purpose of carrying out their duties under this section. It shall cause to be spread upon the records of the bank, in the record book which shall be kept for that purpose, the minutes of each meeting and all its actions thereat. The minutes shall be signed by the presiding officer and the secretary of the meeting. A majority of the board of directors constitutes a quorum for the transaction of business.

(3) Whenever the commissioner deems it expedient, he may call a meeting of the board of directors of any bank, for any purpose, by giving a notice of the time, place and purpose thereof at least 3 days prior to the meeting to the directors either by personal service, by registered or certified mail sent to their last known addresses as shown by the books of the bank or by publication thereof at least once in each week for 4 consecutive weeks prior to the meeting.

HISTORY: New 1969, p. 695, Act 319, Imd. Eff. Aug. 20.

487.397 Directors; oath, filing.

Sec. 97. Every director when elected or appointed shall take and subscribe an oath that he will diligently and honestly perform his duties in such office and will not knowingly violate, or permit to be violated, any provisions of this act. The oath shall be transmitted to the commissioner for filing.

HISTORY: New 1969, p. 696, Act 319, Imd. Eff. Aug. 20.

487.399 Directors; purchase from or sales to; disclosure.

Sec. 99. (1) A bank may contract for, or purchase from, any of its directors, or from any firm of which any of its directors is a member, any securities or other property, only when such purchase is made in the regular course of business upon terms not less favorable to the bank than those offered by others, or when such purchase is authorized by a majority of the board of directors not interested in the sale of such securities or property, which authority shall be evidenced by the affirmative vote or written assent of such directors. When any director, or firm of which any director is a member, acting for or on behalf of others, sells securities or other property to a bank, the commissioner by rule may require a full disclosure to be made, in any or all cases, on forms prescribed by him, of all commissions or other considerations received. Whenever a director or firm, acting in his or its own behalf, sells securities or other property to the bank, the commissioner, by rule, may require a full disclosure of all profits realized from such sale.

(2) A bank may sell securities or other property to any of its directors, or to a firm of which any of its directors is a member, in the regular course of business on terms not more favorable to the director or firm than those offered to others, when the sale is authorized by a majority of the board of directors of a bank evidenced by their affirmative vote or written assent. Nothing in this section shall be construed as authorizing banks to purchase or sell securities or other property which banks are not otherwise authorized by law to purchase or sell.

HISTORY: New 1969, p. 696, Act 319, Imd. Eff. Aug. 20.

487.401 Directors, officers and employees; indemnification and reimbursement for expense arising out of action, suit or proceeding.

Sec. 101. Any person may be indemnified and reimbursed by any bank for expenses reasonably incurred by him and liabilities imposed upon him in connection with or arising out of any action, suit or proceeding, civil or criminal, or threat thereof, in which he may be involved by reason of his being or having been a director, officer or employee of the bank or of any firm, corporation or organization which he served in any capacity at the request of the bank. No person shall be so indemnified or reimbursed (a) in relation to any matter in such action, suit or proceeding as to which he shall finally be adjudged to have been guilty of breach of duty as a director, officer or employee of the bank or (b) in relation to any matter in such action, suit or proceeding, or threat thereof, which has been made the subject of a compromise settlement; unless in either such case such person acted in good faith for a purpose which he reasonably believed to be in the best interests of the bank, and, in a criminal action or proceeding, in addition, had no reasonable cause to believe that his conduct was unlawful. The determination whether the conduct of such person met the standard re-

quired in order to justify indemnification and reimbursement in relation to any matter described in (a) or (b) of the preceding sentence may only be made by the holders of record of a majority of the outstanding shares of the bank or by a court of competent jurisdiction. No adjudication of liability or guilt as to such person shall in itself create a conclusive presumption that he did not meet the standard of conduct required in order to justify indemnification and reimbursement. The foregoing right of indemnification and reimbursement shall not be exclusive of other rights to which such person may be entitled as a matter of law and shall inure to the benefit of his heirs, executors and administrators.

HISTORY: New 1969, p. 696, Act 319, Imd. Eff. Aug. 20.

487.405 Articles of incorporation; amendments.

Sec. 105. With the approval of the commissioner, and by vote of shareholders owning 2/3 of the stock of the bank entitled to vote, a bank may amend its articles of incorporation in any manner not inconsistent with the provisions of this act. An amendment shall be operative when certified copies thereof, in such form as the commissioner may require, signed in the name of the bank by the president or a vice-president and the cashier or an assistant cashier, and acknowledged before a notary public by the president or vice-president signing the same, have been submitted to the commissioner and have been approved and filed by him as in the case of original articles of incorporation.

HISTORY: New 1969, p. 696, Act 319, Imd. Eff. Aug. 20.

487.411 Voluntary liquidation; certificate of termination; examination; notice.

Sec. 111. (1) A solvent bank may go into liquidation and be closed upon expiration of its corporate charter or by the vote of its shareholders owning 2/3 of its stock entitled to vote. In the event of such termination, the last board of directors immediately upon expiration of its corporate charter or adoption of the resolution by the shareholders shall notify the commissioner of such action by filing with him in quadruplicate a certificate of termination signed by a majority of the remaining members of the board of directors, which certificate shall be in such form as the commissioner may prescribe.

(2) The shareholders shall designate 1 or more persons to act as a liquidating agent or committee and the agent or committee shall conduct the liquidation in accordance with law and under the supervision of the commissioner and the board of directors. The agent or committee shall furnish to the bank a bond satisfactory to the commissioner in form and amount. The liquidating agent or committee shall render to the commissioner reports in such form and at such times as he may require. The liquidating agent or committee shall make periodic reports not less frequently than annually to the shareholders. At any lawfully convened meeting, by vote of the majority of the stock entitled to vote, the shareholders may remove the liquidating agent or committee and appoint a new agent or a new committee.

(3) The commissioner may examine into the affairs of the bank so liquidating at any time for the purpose of determining that the rights of the depositors and creditors are being properly served. The expenses of the examination shall be paid by the bank but shall not exceed \$100.00 per day for each examiner and actual expenses incurred while making the examination, to be credited to the general fund.

(4) The liquidating agent or committee shall publish a notice once each week for 5 consecutive weeks informing depositors and creditors to present their claims against the bank for payment and proof of the publication shall be made to the commissioner by the liquidating agent or committee. The provisions of this section with respect to publication of notice shall not apply to any bank in voluntary liquidation which de-

poses of sufficient of its assets to a state or national bank to pay its depositors and creditors in full or if all of its liabilities are assumed by such state or national bank.

(5) When the commissioner finds that a liquidation has been completed in conformity to law and when all fees and charges have been paid as required by law, he shall file 1 copy of the certificate of termination in the office of the bureau and shall certify and forward by mail 1 copy to the corporation division, department of treasury, 1 copy to the county clerk in the county in which the bank is located and 1 copy to the liquidating agent or committee, and the existence of the bank shall thereupon cease, subject to the provisions of section 113.

HISTORY: New 1969, p. 697, Act 319, Imd. Eff. Aug. 20.

487.413 Voluntary liquidation; extension of body corporate life; actions, suits or proceedings, effect.

Sec. 113. (1) A bank which commences voluntary liquidation proceedings as provided in section 111 shall continue to be a body corporate for the further term of 3 years from the commencement of the proceedings for the purpose of prosecuting and defending actions for or against it and of enabling it gradually to settle and close its affairs; to dispose of and convey its property; and to divide its assets; but not for the purpose of continuing the business for which it was organized.

(2) With respect to any action, suit or proceeding begun or commenced by or against the bank prior to the commencement of voluntary liquidation proceedings, and with respect to any action, suit or proceeding begun or commenced by the bank within 3 years after the commencement of voluntary liquidation proceedings, the bank shall be continued as a body corporate beyond the 3-year period and until any judgments, orders or decrees therein are fully executed.

(3) Whenever the number of directors of a bank which has commenced voluntary liquidation proceedings is less than the full number of directors required or authorized by statute or by the bylaws of the bank for any reason, a majority of the remaining surviving directors or the sole surviving director, during the period of 3 years, shall possess the same powers in acting for the bank under this section as the duly authorized board of directors of the bank possessed before the commencement of voluntary liquidation proceedings or during the term of 3 years.

(4) A bank in liquidation under the laws of this state may continue to be a body corporate for further terms upon application to the commissioner, which extensions shall be from year to year at the discretion of the commissioner until the liquidation is completed.

HISTORY: New 1969, p. 697, Act 319, Imd. Eff. Aug. 20.

487.415 Corporate term; extension prior to expiration.

Sec. 115. A bank whose term will expire by limitation, at any time preceding the expiration of such term, by amendment of its articles, may extend its corporate term for a limited period of time or in perpetuity.

HISTORY: New 1969, p. 698, Act 319, Imd. Eff. Aug. 20.

487.416 Corporate term; renewal after expiration.

Sec. 116. A bank whose term has expired, but which has not been wound up or dissolved and which has nevertheless inadvertently continued its active business beyond such term, may renew its corporate existence by amendment of its articles with the consent of the holders of at least 4/5 of its capital stock. The officers and directors de facto shall do and perform all things required of officers and directors de jure as respects calling a special meeting of the shareholders and submitting to them the question of renewing the corporate existence. No bank de facto shall be permitted to renew its corporate life unless the action is taken within 3 years after its term has

expired and renewal shall not relieve the bank from any penalties that may have accrued against it under any law of this state.

HISTORY: New 1969, p. 698, Act 319, Imd. Eff. Aug. 20.

487.418 Effect of extension or renewal.

Sec. 118. A bank whose term has been extended or renewed shall be the same bank and shall have the same shareholders, directors and officers, shall have and enjoy all the rights, privileges, immunities and powers and be subject to all the liabilities which it respectively possessed and was subject to before the extension or renewal of its existence.

HISTORY: New 1969, p. 698, Act 319, Imd. Eff. Aug. 20.

487.421 Purchase and sale of assets.

Sec. 121. (1) With the approval of the commissioner and upon the affirmative vote of 2/3 of the members of its board of directors and of the holders of 2/3 of its stock entitled to vote, a bank may sell all or substantially all of its assets of every kind, character and description, including, but not by way of limitation, its goodwill and corporate franchises, to any bank or national banking association.

(2) With the approval of the commissioner and upon the affirmative vote of 2/3 of the members of its board of directors and of the holders of 2/3 of its stock entitled to vote, a bank may purchase all or substantially all of the assets and assume the liabilities of any bank or national banking association.

(3) The consideration for any purchase and sale may include shares of stock of the purchasing bank or association. No purchase and sale shall be made to defeat or defraud any of the creditors of either bank.

(4) The approval of the commissioner shall be based on examination of either the buying or selling organization, or both.

(5) Certified copies of all shareholders' and directors' proceedings under the provisions of this section shall be filed with the commissioner and with the county clerk of the county in which each of the organizations is located and shall contain in detail the particulars relating to the sale and purchase, including a copy of the agreement of sale and purchase.

HISTORY: New 1969, p. 698, Act 319, Imd. Eff. Aug. 20.

487.425 Consolidation; approval; examination by commissioner; agreement; meeting, notice; adoption.

Sec. 125. (1) With the approval of the commissioner, 2 or more banks may consolidate into a single bank which may be any one of the consolidating banks. A bank may consolidate with a national banking association under the charter of the national banking association. With the approval of the commissioner, any national banking association may consolidate with a bank under the charter of the bank.

(2) The approval of the commissioner shall be based on an examination of each of the organizations and of the agreement of consolidation. No consolidation shall be made to defeat or defraud any of the creditors of either of such organizations.

(3) The directors, or a majority of them, of each organization proposing to consolidate, may enter into an agreement signed by them and under the seals of the respective organizations, prescribing the terms and conditions of consolidation, the mode of carrying the same into effect and stating such other facts required or permitted by the provisions of this act and the national banking laws to be set out in articles, as can be stated in the case of a consolidation, to be stated in such altered form as the circumstances of the case require, as well as the manner of converting the shares of each of the consolidating organizations, into shares of the consolidated organization, with such other details and provisions as are deemed necessary.

(4) The agreement shall be submitted to the shareholders of each consolidating organization, at a meeting thereof called by the directors thereof separately for the purpose of considering the agreement. Notice of the time, place and purpose of the meeting shall be given by publication at least once a week for 4 consecutive weeks next preceding the date of the meeting. A copy of the notice shall be mailed to each shareholder of each organization at his last known postoffice address as appears from the stock records of the organizations, by registered or certified mail, at least 10 days prior to the date of the meeting. No notice by publication or otherwise shall be required if it is waived. At the meeting the agreement shall be considered and a vote by ballot, in person or by proxy, taken for the adoption or rejection of it. At the meeting each share of stock shall entitle the holder thereof to 1 vote. If the votes of shareholders of each organization representing 2/3 of the total number of shares of each class of its outstanding capital stock are cast for the adoption of the agreement, that fact shall be certified on the agreement by the cashier or assistant cashier, secretary or assistant secretary of each of the organizations under the seal thereof. After the agreement is adopted and certified, it shall be signed by the president or a vice-president, and the cashier or an assistant cashier, secretary or assistant secretary of each of the organizations, under the respective organization seals and acknowledged by the president or a vice-president of each of the organizations, before any officer authorized to take acknowledgment of deeds, to be the respective act, deed and agreement of each of the organizations. The agreement shall be filed with the commissioner in such number of duplicate originals as the commissioner directs and shall be the agreement and act of consolidation of said organizations. The national banking association, if there is one, shall furnish a certified copy of consent or approval of the comptroller of the currency to the consolidation if such consent or approval is required by the national bank laws. One of the original agreements shall be filed in the office of the bureau and the commissioner shall certify and forward 1 of the original agreements to the county clerk of the county in which each of the organizations is located and 1 to the corporation division, department of treasury. The commissioner shall certify upon the agreement filed with the bureau, and the county clerk shall certify upon the agreement filed with him, the date when the agreement was filed. The agreement and act, or a copy thereof, certified by the commissioner or the county clerk, is evidence of the agreement and act of consolidation of the organizations and the observance and performance of all necessary acts and conditions precedent to such consolidation.

(5) In effecting the consolidation, stock of the consolidated bank may be issued as provided by the terms of the consolidation agreement free from any preemptive rights of the shareholders of the respective consolidating banks.

HISTORY: New 1969, p. 696, Act 319, Imd. Eff. Aug. 20.

487.426 Consolidation; effect on rights, property and liabilities.

Sec. 126. When the agreement of consolidation is filed with the commissioner and, if required by the provisions of this act, the consolidation is approved by the commissioner and, if required by the national bank laws, by the comptroller of the currency, the corporate existence of each consolidating organization shall be merged into and continued in the consolidated organization which shall be deemed to be the same corporation as each of the consolidating organizations, possessing all the rights, interests, privileges, powers and franchises and being subject to all the restrictions, disabilities and duties of each of the consolidating organizations. All and singular the rights, interests, privileges and franchises of each of the consolidating organizations and all property, real, personal and mixed, and all debts due to any of the consolidating organizations on whatever account, shall be transferred to and vested in the consolidated organization without any deed or other transfer and without any order or other action

on the part of any court or otherwise; and all property, rights, privileges, powers, franchises and interests and each and every other interest shall be thereafter as effectually the property of the consolidated organization as they were of each of the consolidating organizations. The title to any real estate, whether by deed or otherwise, under the laws of this state vested in either of the consolidating organizations, shall not revert or be in any way impaired by reason of this act. The consolidated organization, by virtue of the consolidation, and without any order or other action on the part of any court or otherwise, shall hold and enjoy the same and all rights of property, franchises and interests, including appointments, designations and nominations and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, guardian of mentally incompetent persons and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises and interests were held or enjoyed by each consolidating organization at the time of the consolidation. Where any such consolidating organization at the time of consolidation was acting under appointment of any court as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, guardian of mentally incompetent persons or in any other fiduciary capacity, the consolidated organization shall be subject to removal by a court of competent jurisdiction in the same manner and to the same extent as was the consolidating organization prior to the consolidation. Nothing in this act shall be construed to impair in any manner the right of any court to remove the consolidated organization for reasons other than the fact of consolidation, and to appoint in lieu thereof a substitute trustee, executor or other fiduciary, except that such right shall not be exercised in such a manner as to discriminate against national banking associations. The consolidated organization shall file with each court or other public tribunal, agency or officer by which each of the consolidating organizations shall have been appointed in the capacity of fiduciary or agent, and in the court file of each estate, suit or proceeding in which any of them has been acting, a statement setting forth the fact of consolidation, the name of each organization participating therein, the name of the consolidated organization, its place of business and the amount of its capital and surplus.

HISTORY: New 1969, p. 699, Act 319, Imd. Eff. Aug. 20.

487.427 Consolidation; agreement, recording.

Sec. 127. A certified copy of the agreement of consolidation, after filing and approval of the commissioner, shall be recorded in the office of the register of deeds of each county where real property owned by any of the consolidating organizations is situated.

HISTORY: New 1969, p. 700, Act 319, Imd. Eff. Aug. 20.

487.428 Consolidation; pending actions saved.

Sec. 128. Any action or proceeding by or against any of the consolidating organizations may be prosecuted to judgment, as if consolidation had not taken place or the consolidated organization may be substituted in the place of any consolidating organization.

HISTORY: New 1969, p. 700, Act 319, Imd. Eff. Aug. 20.

487.429 Consolidation or purchase of assets; branching rights.

Sec. 129. Subject to the requirements, restrictions and limitations of section 171, any consolidated bank or national banking association resulting from a consolidation under section 125, and any bank or national banking association which purchases the

assets of a bank or national banking association as provided for in section 121 may establish and operate as a branch or branches the acquired organization or organizations or any organization which sells its assets to another bank or national banking association as provided for in section 121.

HISTORY: New 1969, p. 700, Act 319, Imd. Eff. Aug. 20.

487.431 Bank; conversion into national banking association.

Sec. 131. (1) Upon the affirmative votes of the shareholders representing 2/3 of the total number of shares of each class of its outstanding capital stock, a bank may be converted under the laws of the United States into a national banking association. The conversion of a bank into a national banking association shall not release the bank from its obligations to pay and discharge all the liabilities created by law or incurred by it before becoming a national banking association or any tax imposed by the laws of this state up to the date of its becoming a national banking association in proportion to the time which has elapsed since the last preceding payment therefor or any assessment, penalty or forfeiture imposed or incurred under the laws of this state up to the date of its becoming a national banking association. No conversion shall be made to defeat or defraud any of the creditors of the bank.

(2) Certified copies of all proceedings by the directors and shareholders of the bank shall be filed with the commissioner in triplicate and in addition, the bank shall furnish a certified copy of consent or approval of the comptroller of the currency to the conversion if such consent or approval is required by the national bank laws. One copy of the proceedings shall be filed in the office of the bureau and the commissioner shall certify and forward 1 copy of the proceedings to the county clerk of the county in which such converted bank is located and 1 to the corporation division, department of treasury.

HISTORY: New 1969, p. 701, Act 319, Imd. Eff. Aug. 20.

487.433 National banking association; conversion into bank.

Sec. 133. With the approval of the commissioner and upon the affirmative votes of the shareholders representing 2/3 of the total number of shares of each class of its outstanding capital stock, a national banking association doing business in this state and having an unimpaired capital and surplus sufficient to entitle it to become a bank under the provisions of existing laws of this state may be converted into a bank if the conversion is not in contravention of any laws of the United States. In such case, the articles of incorporation may be executed by a majority of the directors of the national banking association. A majority of the directors, after executing the articles of incorporation, shall have the power to execute all other papers and to do whatever may be required to complete its organization as a bank. The shares of the bank may continue to be for the same amount each as they were before the conversion; and the directors may continue to be directors of the bank until others have been elected or appointed pursuant to the laws of this state. The approval of the commissioner shall be based on an examination of the national banking association and of the proceedings had by its directors and shareholders with respect to the conversion. No conversion shall be made to defeat or defraud any of the creditors of such bank. In his discretion and subject to such conditions as he may prescribe, the commissioner may permit the converted bank to retain and carry, at a value determined by the commissioner, such of the assets of the converting national banking association as do not conform to the legal requirements relative to assets acquired and held by banks.

HISTORY: New 1969, p. 701, Act 319, Imd. Eff. Aug. 20.

487.435 Effect of conversion; branches.

Sec. 135. (1) When a conversion under either sections 131 or 133 becomes effective, all the property of the converting organization, including all its right, title and interest

in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, belonging or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer and without any further act or deed, be vested in and become the property of the converted organization, which shall have, hold and enjoy the same in its own right as fully and to the same extent as it was possessed, held and enjoyed by the converting organization. The converted organization shall be deemed to be a continuation of the entity and of the identity of the converting organization. All the rights, obligations and relations of the converting organization to or in respect to any person, estate, creditor, depositor, trustee or beneficiary of any trust, and in, or in respect to, any executorship or trusteeship or any other trust or fiduciary function, shall remain unimpaired. The converted organization shall succeed to all such rights, obligations, relations and trusts, and the duties and liabilities connected therewith, and shall execute and perform each and every trust and relation in the same manner as if the converted organization had itself assumed the trust or relation and the obligations and liabilities connected therewith. If the converting organization is acting as administrator, coadministrator, executor, coexecutor, trustee or cotrustee of or in respect to any estate or trust being administered under the laws of this state, such relation, as well as any other or similar fiduciary relations, and all rights, privileges, duties and obligations connected therewith shall remain unimpaired and shall continue into and in the converted organization from and as of the time of taking effect of the conversion, irrespective of the date when any such relation may have been created or established and irrespective of the date of any trust agreement relating thereto or the date of the death of any testator or decedent whose estate is being so administered. Nothing done in connection with the conversion, in respect to any executorship, trusteeship or similar fiduciary relation, shall be deemed to be or to effect under the laws of this state a renunciation or revocation of any letters of administration or letters testamentary pertaining to such relation nor a removal or resignation from any such executorship or trusteeship or other fiduciary relationship nor shall the same be deemed to be of the same effect as if the executor or trustee or other fiduciary had died or otherwise become incompetent to act.

(2) A bank or national banking association resulting from a conversion under either section 131 or 133 shall have the right, notwithstanding any of the requirements, restrictions and limitations of section 171 to the contrary, to retain and continue to operate any and all branches of the converting organization which were in lawful operation immediately prior to conversion, without being required to establish or reestablish any branch or branches pursuant to section 171 and irrespective of whether any such branch or branches could, at the time the conversion becomes effective, have been established or reestablished as a branch or branches of such converting or converted organization, consistently with the requirements, restrictions and limitations of section 171.

HISTORY: New 1969, p. 701, Act 319, Imd. Eff. Aug. 20.

487.439 Sale, consolidation or conversion; rights or liabilities unimpaired.

Sec. 139. The liability of any bank or national banking association or of the shareholders, directors or officers thereof, or the rights or remedies of the creditors thereof, or of persons transacting business therewith, shall not be lessened or impaired by virtue of the sale of all or substantially all of the assets thereof or by the consolidation of two or more organizations or the conversion of an organization.

HISTORY: New 1969, p. 702, Act 319, Imd. Eff. Aug. 20.

CHAPTER 4

POWERS

487.451 Banks; general and specific powers.

Sec. 151. Subject to the limitations and restrictions contained in this act or in its articles, a bank may engage in the business of banking and any business related or incidental thereto, and for such purpose, without specific mention thereof in its articles, shall have all the powers conferred by this act and the following additional corporate powers:

(1) To have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or reproduced in any manner.

(2) To have succession in perpetuity or for a limited period of time as fixed by its articles or until its affairs are finally wound up by liquidation, forfeiture or dissolution as provided in this act.

(3) To make contracts.

(4) To sue and be sued, complain and defend, in its corporate name as fully as a natural person.

(5) To elect or appoint directors who shall appoint from their members a president who shall perform such duties as may be designated by the board and who shall serve as the chairman of the board unless the board designates another director to be chairman in lieu of the president. The board also shall appoint 1 or more vice-presidents, a cashier and such other officers as the board deems necessary, who may or may not be members of the board, shall define their duties, shall dismiss such officers, or any of them, at pleasure and shall appoint others to fill their places.

(6) To make, alter, amend and repeal bylaws not inconsistent with its articles or with law for the administration and regulation of the affairs of the bank.

(7) To have and exercise all of the powers and means appropriate to effect the purpose for which the bank is incorporated.

(8) To make contributions and donations for the public welfare or for religious, charitable, scientific or educational purposes, and in connection therewith, to establish and operate charitable trusts.

(9) To purchase, take, lease as lessee or otherwise acquire, to own, hold and use and to sell, lease as lessor, mortgage, pledge, grant a security interest in, convey or otherwise dispose of any real or personal property in connection with the exercise of any power granted in this act.

(10) To act as agent of the United States or of any instrumentality or agency thereof for the sale or issue of bonds, notes or other obligations of the United States or any instrumentality or agency thereof and in connection therewith to take such other action as in the opinion of the board of directors may be necessary or proper to enable it to so act.

(11) To become a member of the federal reserve system, to hold shares of stock in a federal reserve bank, to take all actions incident to maintenance of such membership and to exercise all powers, not inconsistent with the provisions of this act, conferred on member banks by the federal reserve act.

(12) To become an insured bank pursuant to the federal deposit insurance act and to take all actions incident to maintenance of an insured status thereunder.

(13) To purchase the shares of stock of any small business investment company doing business in this state and licensed under, or established pursuant to, the provisions of the federal small business investment act of 1958, Public Law 85-699, and to purchase shares of stock of any business development corporation established pursuant to

the provisions of Act No. 117 of the Public Acts of 1963, being sections 487.851 to 487.867 of the Compiled Laws of 1948.

(14) To sell mortgage loans to the federal national mortgage association, or any successor thereof, and in connection therewith to make payments of any capital contributions, required pursuant to law, in the nature of subscriptions for stock of such association or any successor thereof, to receive stock evidencing such capital contributions and to hold or dispose of the stock.

(15) To conduct its business through subsidiaries but no bank shall acquire or hold for its own account shares of any bank or bank holding company unless such shares are acquired as provided in subdivision (18) of this section. The commissioner may prescribe such rules as he deems necessary to effectuate the provisions of this subdivision and prevent evasions thereof. For the purpose of this paragraph subsidiary means any corporation of which at least 80% of the voting stock of such corporation is owned by state and national banks located in Michigan.

(16) To make application for and to obtain insurance of loans but not to operate an insurance underwriting business.

(17) To give its bond in any proceeding in any court in which it is a party or upon any appeal thereof and to pledge assets as security for such bond.

(18) To acquire and hold irrespective of any restriction or limitation of this act any property or a security interest in any property as protection against loss on an evidence of indebtedness, on an agreement for the payment of money or on an investment security, previously acquired lawfully and in good faith, subject to:

(a) A determination by a majority vote of its directors at least once each year as to the advisability of retaining any such property or security interest so acquired, and

(b) Disposition within a period of 60 months after the date of acquisition or such longer period as the commissioner may approve.

(19) To hold property lawfully held on the effective date of this act, subject to the inclusion of any such property in any computation of a limitation on the acquisition for holding of property of a like character under this act.

(20) To service loans for others and to receive a fee therefor.

(21) To purchase capital stock, bonds, debentures or other obligations of any corporation created pursuant to the authority granted by sections 161 to 165 but subject to the limitations and conditions of those sections.

(22) To execute and deliver such guarantees as may be incidental or usual in carrying on the business of a bank.

HISTORY: New 1969, p. 702, Act 319, Imd. Eff. Aug. 20;—Am. 1970, p. 483, Act 148, Imd. Eff. Aug. 1.

487.452 Grant of authority; powers, effect, exercise.

Sec. 152. The powers granted in section 151 shall not be construed as limiting or enlarging any grant of authority made elsewhere by this act except as provided in subdivision (18) of section 151. Except as otherwise provided in this act or in the articles or in the bylaws such powers shall be exercised by the board of directors of the bank.

HISTORY: New 1969, p. 704, Act 319, Imd. Eff. Aug. 20.

487.454 Investment securities; limitations.

Sec. 154. A bank may purchase, sell, underwrite and hold investment securities which are obligations in the form of bonds, notes or debentures of such type and to the extent permitted from time to time by rule of the commissioner but such rules shall permit the underwriting of investment securities only to the extent that national banks are authorized to underwrite investment securities pursuant to regulations of the comptroller of the currency. A bank may hold, without limit, investment securities which are obligations of the United States, or obligations which are guaranteed fully &

to principal and interest by the United States, or any general obligations of any state or of any political subdivision thereof.

HISTORY: New 1969, p. 704, Act 319, Imd. Eff. Aug. 20.

487.457 Principal office of bank; change of location.

Sec. 157. With the prior written approval of the commissioner, any bank may change the location of its principal office to a new location in the same city if established in a city, the same incorporated village if established in an incorporated village or the same township if established in an unincorporated village but not elsewhere.

HISTORY: New 1969, p. 705, Act 319, Imd. Eff. Aug. 20.

487.459 Corporate stock transactions; limitations.

Sec. 159. (1) An institution may not engage in any transaction with respect to shares of the capital stock of any corporation unless specifically authorized by this act.

(2) A bank may purchase and sell shares of stock upon the order of and for the account of a customer without recourse.

(3) A bank shall not make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase is necessary to prevent loss upon a debt previously contracted in good faith.

(4) A bank, hereafter, may not purchase and hold shares of its own capital stock but may hold shares previously purchased until disposed of in compliance with an existing stock option plan.

HISTORY: New 1969, p. 705, Act 319, Imd. Eff. Aug. 20;—Am. 1970, p. 485, Act 148, Imd. Eff. Aug. 1.

487.461 Foreign banking; powers; application, contents, approval.

Sec. 161. (1) Any bank possessing a capital and surplus of \$1,000,000.00 or more may file application with the commissioner for permission to exercise, upon such conditions and under such regulations as may be prescribed by the commissioner, the following powers:

(a) To establish branches in foreign countries or dependencies or insular possessions of the United States for the furtherance of foreign commerce of the United States and to act, if required to do so, as fiscal agents of the United States.

(b) To invest an amount not exceeding in the aggregate 10% of its paid in capital stock and surplus in the stock of 1 or more banking organizations or corporations chartered or incorporated under the laws of the United States or of any state thereof, and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States, either directly or through the agency, ownership or control of local institutions in foreign countries or in such dependencies or insular possessions.

(c) To acquire and hold, directly or indirectly, stock or other evidences of ownership in 1 or more banking organizations organized under the law of a foreign country or a dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the commissioner, is incidental to the international or foreign business of the foreign banking organization; and to make loans or extensions of credit to or for the account of such banking organization in the manner and within the limits prescribed by the commissioner by general or specific rule or ruling.

(2) The applications shall specify the name and capital and surplus of the bank filing it, the powers applied for and the places where the banking operations are to be carried on. The commissioner may approve or reject the application in whole or in part if for any reason the granting of the application is deemed inexpedient and from time to

time may increase or decrease the number of places where the banking operations may be carried on.

HISTORY: New 1969, p. 705, Act 319, Imd. Eff. Aug. 20.

487.462 Foreign banking; information given upon demand of commissioner; examinations.

Sec. 162. Every bank operating foreign branches shall furnish information concerning the condition of the branches to the commissioner upon demand, and every bank investing in capital stock of banking organizations or corporations as provided in sections 161 to 165 shall furnish information concerning the condition of the banking organizations or corporations to the commissioner upon demand. The commissioner may order special examinations of the branches, banking organizations or corporations at such times as he deems best.

HISTORY: New 1969, p. 706, Act 319, Imd. Eff. Aug. 20.

487.463 Foreign banking; agreement with commissioner; investigations; disposal of holdings.

Sec. 163. Before any bank is permitted to purchase stock in any such banking organizations or corporations, the banking organizations or corporations shall enter into an agreement or undertaking with the commissioner to restrict their operations or conduct their businesses in such manner or under such limitations and restrictions as the commissioner may prescribe for the places wherein the business is to be conducted. If at any time the commissioner has ascertained that the rules prescribed by him are not being complied with, he may institute an investigation of the matter and send for persons and papers, subpoena witnesses and administer oaths in order to satisfy himself as to the actual nature of the transactions referred to. If the investigation results in establishing the failure of the banking organization or corporation in question, or of the bank which may be a stockholder therein, to comply with the rules laid down by the commissioner the bank may be required to dispose of stockholdings in the banking organization or corporation upon reasonable notice.

HISTORY: New 1969, p. 706, Act 319, Imd. Eff. Aug. 20.

487.464 Foreign banking; independent accounts.

Sec. 164. Every bank operating foreign branches shall conduct the accounts of each foreign branch independently of the accounts of other foreign branches established by it and of its home office and at the end of each year shall transfer to its general ledger the profit or loss accrued to each branch as a separate item.

HISTORY: New 1969, p. 706, Act 319, Imd. Eff. Aug. 20.

487.465 Foreign banking; rules.

Sec. 165. Rules issued by the commissioner, in addition to regulating powers which a foreign branch may exercise under other provisions of law, may authorize a foreign branch, subject to such conditions and requirements as the rules prescribe, to exercise such further powers as may be usual in connection with the transaction of the business of banking in the places where the foreign branch transacts business. The rules shall not authorize a foreign branch to engage in the general business of producing, distributing, buying or selling goods, wares or merchandise. Except to such limited extent as the commissioner may deem to be necessary with respect to securities issued by any foreign government or any department, district, province, county, possession, or other similar governmental organization or subdivision of a foreign government, and any agency or instrumentality of any foreign government or of any organization or subdivision, the rules shall not authorize a foreign branch to engage or participate, directly or indirectly, in the business of underwriting, selling or distributing securities.

HISTORY: New 1969, p. 706, Act 319, Imd. Eff. Aug. 20.

487.466 Foreign banking; contract liability, expropriation.

Sec. 166. (1) Notwithstanding section 1105 of Act No. 174 of the Public Acts of 1962, being section 440.1105 of the Compiled Laws of 1948, any bank doing business in this state, under whatever authority organized, which has 1 or more branch offices in any foreign country shall be liable for contracts to be performed at any branch offices and for deposits to be repaid at such branch offices to no greater extent than a bank, banking corporation or other organization or association for banking purposes organized and existing under the laws of such foreign country would be liable under its laws. The laws of the foreign country for the purpose of this section shall be deemed to include all acts, decrees, regulations and orders promulgated or enforced by a dominant authority asserting governmental, military or police power of any kind at the place where any branch office is located, whether or not such dominant authority is recognized as a de facto or de jure government.

(2) Notwithstanding section 1105 of Act No. 174 of the Public Acts of 1962, if by action of any dominant authority which is not recognized by the United States as the de jure government of the foreign territory concerned, any property situated in or any amount to be received in the foreign territory and carried as an asset of any branch office of the bank in the foreign territory is seized, destroyed or canceled, then the liability of the bank for any deposit theretofore received and thereafter to be repaid by it, and for any contract theretofore made and thereafter to be performed by it, at any branch office in the foreign territory shall be reduced pro tanto by the proportion that the value, as shown by the books or other records of the bank at the time of such seizure, destruction or cancellation of such assets bears to the aggregate of all the deposit and contract liabilities of the branch offices of such bank in the foreign territory, as shown at such time by the books or other records of such bank.

HISTORY: New 1969, p. 706, Act 319, Imd. Eff. Aug. 20.

487.469 Personal property; leasing; taxation.

Sec. 169. Any institution may become the owner or lessor of personal property acquired upon the specific request and for the use of a customer and may incur such additional obligations as may be incident to becoming an owner or lessor of such property. Such lease transactions shall not constitute obligations for the purpose of sections 196 to 198 and lease payments shall constitute rent rather than interest. The provisions of this section shall not be deemed to exempt from general property taxation any personal property of a state chartered or federally chartered bank or trust company which is leased, loaned or otherwise made available to and used by a private individual, association or corporation in connection with a business conducted for profit. Such personal property shall be subject to taxation in the same amount and to the same extent as though the lessee or user were the owner of such property. Taxes shall be assessed to such lessees or users of such property and collected in the same manner as taxes assessed to owners of personal property, except that such taxes shall not become a lien against the property. When due, such taxes shall constitute a debt due from the lessee or user to the unit of government for which the taxes were assessed.

HISTORY: New 1969, p. 707, Act 319, Imd. Eff. Aug. 20.

487.471 Branches; approval; limitations; change of location.

Sec. 171. (1) With the written approval of the commissioner, any bank may establish and operate a branch or branches within a village or city other than that in which it was originally chartered if the village or city in which it is proposed to establish and operate a branch is located in the same county in which the parent bank has its principal office or, if not in the county, then within 25 miles of the parent bank or in a contiguous county at a point more than 25 miles from the parent bank, if the county has no bank. A branch shall not be established in a city or village in which a state or national

bank or branch thereof is then in operation. The commissioner shall not grant such approval unless he is satisfied as to the sufficiency of the capital and surplus of the bank, the necessity for the establishment of such branch or branches and the prospects of successful operation if established.

(2) With the written approval of the commissioner, any bank may establish and operate a branch or branches within the limits of the city or village in which the bank is located if the commissioner is satisfied as to the necessity for the establishment of the branch or branches and the prospects of successful operation if established.

(3) A branch of any bank shall not be moved from 1 location to another without the written approval of the commissioner.

HISTORY: New 1960, p. 707, Act 319, Imd. Eff. Aug. 20.

487.473 Branch facility; operation; approval; hours open.

Sec. 173. Subject to the requirements, limitations and restrictions of section 171, any bank, with the prior written approval of the commissioner, may establish and operate for the sole purposes of selling exchange, cashing checks, receiving deposits and payments on loans a branch facility in a city or village other than the city or village in which it was originally chartered. A branch facility shall not be established in a city or village if any state or national bank or branch thereof is then in operation within 5 miles of the branch facility. A branch facility shall not be established in any city or village having a population of more than 1,000. The operation of a branch facility in a city or village shall not preclude any state or national bank from establishing and operating a branch in the city or village, subject to the provisions of section 171. The authority of a bank to establish and operate a branch facility shall be revoked automatically when any state or national bank or branch thereof begins operating in the city or village in which the branch facility is located. Each branch facility shall remain open for the transaction of business with the public during such hours on such secular or business days of the week and during such periods of the year as may be approved from time to time by resolution adopted by a vote of a majority of the bank's board of directors and approved in advance by the commissioner. On the business or secular days of the week and during the periods of the year when the branch facility is closed for the transaction of business with the public, for all purposes whatever as regards the presenting for payment or acceptance, and the protesting and giving notice of the dishonor of bills of exchange, bank checks and promissory notes, the making or withdrawal of deposits, and the proper disposition of notices to stop payment of checks and similar functions, all such bills, checks and notes otherwise presentable for acceptance or payment, all deposits to be made or withdrawn, all notices to stop payment of checks to be given and similar functions shall be deemed transferable to, and treated as a part of, the business of the main office of the parent bank. Notice of the hours, days and periods of the year during which such branch facility is open for the transaction of business with the public shall be posted conspicuously in the office lobbies of both the branch facility and parent bank and shall be kept posted, except at such times as the branch facility is closed for a period of more than 1 week.

HISTORY: New 1960, p. 707, Act 319, Imd. Eff. Aug. 20.

487.474 Branch or branch facility; discontinuance; effect; posting of notice.

Sec. 174. Whenever any bank permanently discontinues the operations of any branch or branch facility, all bills, checks and notes otherwise presentable for acceptance or payment, all deposits to be made or withdrawn, all notices to stop payment of checks to be given and similar functions, shall be deemed transferable to, and treated as a part of, the business of the main office of the parent bank. Notice of the date upon which such bank shall discontinue operations shall be posted conspicuously and con-

tinuously in the office lobbies of both the branch facility or branch to be discontinued and parent bank at least 14 days prior to discontinuance.

HISTORY: New 1969, p. 706, Act 319, Imd. Eff. Aug. 20.

487.481 Trust powers; application; approval; powers granted.

Sec. 181. (1) Upon application, the commissioner may grant to any bank full trust powers, as herein provided, but subject to the conditions, limitations and restrictions set forth in sections 181 to 186.

(2) Upon approval of the application the bank shall have the power to conduct a trust business including, but not by way of limitation:

(a) In and by its corporate name to take, receive and hold, and repay, reconvey and dispose of any effects and property, both real and personal, which may be granted, committed, transferred or conveyed to it with its consent, upon any terms or upon any trust at any time, by any person, including married women and minors, or bodies corporate or by any court, including the federal courts, in the state; and to administer, fulfill and discharge the duties of such trust for such remuneration as may be agreed upon.

(b) To act generally as agent for the transaction of business; the management of estates; the collection of rents, interest, dividends and moneys; the collection of principal and interest on mortgages, bonds, notes and securities for moneys and to enforce the payment thereof; and also to act as agent for the purpose of issuing, negotiating, registering, transferring or countersigning the certificates of stock, bonds or other obligations of any corporation, association or municipality and to manage any sinking fund therefor on such terms as may be agreed upon.

(c) To accept and to execute the offices of executor, administrator, trustee, receiver, conservator, liquidating agent, assignee or guardian of any minor, incompetent person, mental incompetent or any person subject to guardianship subject to the laws of this state applicable thereto. In all cases when application is made to any court in this state for the appointment of any trustee, receiver, executor, administrator or guardian of any minor, incompetent person, mental incompetent or any other person subject to guardianship, the court may appoint such bank, with its consent, to hold such office. The accounts of the bank as trustee, receiver, conservator, liquidating agent, assignee, administrator, executor or guardian shall be regularly settled and adjusted by the proper officer or tribunals. All proper, legal, usual and customary charges, costs and expenses shall be allowed to such bank for the care and management of the estate so committed to it. In case of appointment by any court, the bank shall not be required to give any security except in the discretion of the court, other than as provided in section 184 for deposit with the state treasurer, and if the court orders the bank to give security, the security shall be a bond in an amount fixed by the court and with a surety company authorized to do business in this state as surety thereon, or with personal surety or sureties thereon satisfactory to the court. If any bank is required, in the course of the administration of any trust, to give a bond whether as additional security, substituted security or otherwise, the surety thereon shall not be liable directly or indirectly for any act or default committed by the bank prior to the date of the filing and approval of the bond, or for the failure of the bank to pay over on final settlement, if the failure to pay over is due to an act or default committed prior to the filing and approval of the bond, or for the failure of the bank to collect from itself or from any prior surety or sureties the amount of any loss due to any act or default committed by the bank prior to the date of the filing and approval of such bond.

(d) To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as are necessary to carry on a trust business.

HISTORY: New 1969, p. 706, Act 319, Imd. Eff. Aug. 20.

487.482 Trust department; separate from commercial banking business; consolidating and commingling of funds, conditions.

Sec. 182. (1) Every bank exercising any trust power as provided in sections 181 to 186 shall segregate all assets held in any fiduciary capacity from the general assets of the bank, shall keep a separate set of books and records showing in proper detail all transactions engaged in under the authority of sections 181 to 186, and at all times shall keep its trust department business separate and distinct from its commercial banking business.

(2) Funds, at any time and from time to time, held in trust by the bank, awaiting investment or other disposition, may be commingled and consolidated, and may be deposited in such other banks not affiliated with the bank as may be designated by the board of directors or may be held at any time and from time to time by the bank under a deposit relationship and used by the bank in the conduct of its individual corporate business but only to the extent and when the bank shall set aside for the protection of the owners of the funds obligations of the United States, obligations which are guaranteed fully as to principal and interest by the United States, general obligations of this state or of any political subdivision thereof, or other securities approved by the commissioner equal at face value to the amount of the funds held and so used. In the event of the failure of the bank, the owners of the funds held in trust, awaiting investment or other disposition, shall have a lien on the securities so set apart in addition to any other claims against the bank.

HISTORY: New 1969, p. 709, Act 319, Imd. Eff. Aug. 20;—Am. 1970, p. 485, Act 148, Imd. Eff. Aug. 1.

487.483 Trust powers; granting; limitations.

Sec. 183. (1) In passing upon applications for permission to exercise full fiduciary powers as provided in section 181, the commissioner shall take into consideration the following, and he may grant or refuse the application accordingly:

- (a) The sufficiency of the capital and surplus of the applying bank.
- (b) Any other facts or circumstances which he deems proper.

(2) Without regard to the capital and surplus requirements specified in subsection (1), the commissioner may grant to a bank the limited trust power to act as executor, administrator or guardian and to serve as a testamentary trustee.

HISTORY: New 1969, p. 709, Act 319, Imd. Eff. Aug. 20.

487.484 Securities; deposition; kinds; safekeeping receipt; certificate; interest; liquidation.

Sec. 184. (1) Before any bank has commenced exercising trust powers, it shall deposit with the state treasurer securities of a value equal to not less than 50% of the amount of its capital stock or \$500,000.00, whichever is the lesser. The securities shall be obligations of the United States, obligations which are guaranteed fully as to principal and interest by the United States, general obligations of this state or of any political subdivision thereof or other securities approved by the commissioner and shall be held by the state treasurer, in trust, as security for the trust creditors of the bank. The state treasurer may accept in lieu of the actual deposit of such securities a safekeeping receipt from a duly qualified depository institution designated by the state treasurer, which safekeeping receipt shall acknowledge the possession of the securities and that they are held subject only to the order of the state treasurer. The existence of such deposit and the amount thereof shall be considered by any court in connection with the requirement of the court with respect to the giving of security by the bank for the discharge of its obligations in the execution of the office of executor, administrator, trustee, receiver or assignee, or guardian of any minor, incompetent person, mental incompetent or any person subject to guardianship. Upon the deposit being made, the state treasurer shall issue to the bank a certificate of such fact, and securities or such

safekeeping receipts equal in value, to be determined by the commissioner, shall remain on deposit in the state treasury. The state treasurer shall pay over to such bank, as soon as collected, the interest and income received on the securities so deposited or he shall authorize the bank to collect the same for its own benefit.

(2) When a bank goes into liquidation in the manner prescribed by this act, the deposit shall be returned by the state treasurer to the liquidating committee or liquidating agent appointed by the shareholders of such bank, to be applied under the direction of the commissioner by the liquidating committee or liquidating agent. If a receiver is appointed for the bank, the deposit of securities shall be returned to the receiver to be applied as the circuit court may order. If pursuant to a plan of reorganization of the bank, the deposit of securities [sic] are assigned by the bank to a liquidating committee, liquidating trustees or liquidating agents, or if the securities are to be liquidated by the bank itself, the deposit of securities, upon written order of the commissioner, shall be returned to the liquidating committee, liquidating trustees, liquidating agents or bank, to be applied under the direction of the commissioner.

HISTORY: New 1969, p. 710, Act 319, Imd. Eff. Aug. 20.

487.485 Trust funds; investment.

Sec. 185. Trust funds received by any bank and available for investment shall be invested at the time and in the manner specified in and by the agreement, instrument or order creating or defining the trust or other holding and, unless otherwise specified in the agreement, instrument or order, may be invested in the same manner as an individual acting in a like capacity may invest trust funds under the laws of this state. Trust funds shall not be invested in any securities or other properties, real or personal, purchased from the bank in its individual capacity or from any affiliate of the bank.

HISTORY: New 1969, p. 710, Act 319, Imd. Eff. Aug. 20.

487.486 Trust powers; rules.

Sec. 186. The commissioner may promulgate such rules necessary to enforce compliance with the provisions of sections 181 to 186 and to provide for the proper exercise of the powers granted therein.

HISTORY: New 1969, p. 710, Act 319, Imd. Eff. Aug. 20.

487.488 Safe deposit and storage department; safe and collateral deposit company; bank's liability; lien for unpaid rental and storage charges.

Sec. 188. (1) Any bank may operate a safe deposit and storage department or invest an amount not exceeding in the aggregate 15% of its unimpaired capital stock and surplus in the stock of not more than 1 safe and collateral deposit company organized under the laws of this state.

(2) If a bank operates a safe deposit and storage department, the legal liability of the bank on account of any loss to a customer shall not exceed the sum of \$10,000.00 for any 1 box or compartment, including all property accepted for storage outside of the box or compartment. The bank may contract with the renter to have the renter assume all risks arising from the use of the box, compartment or storage.

(3) The bank shall have a lien for unpaid rental and storage charges on the contents of any box or compartment and any property accepted for storage outside of the box or compartment. If the charges are not paid within 1 year from the date of accrual, then the bank may sell the property at public auction upon like notice as is required by law for sales on execution. After retaining from the proceeds of sale the amount of all charges due and owing at the time of the sale, and the reasonable expenses of the

sale, the bank shall pay the balance, if any, upon proper showing to the persons entitled thereto. The bank may fairly and in good faith purchase the property, or any part thereof, at the sale.

HISTORY: New 1969, p. 710, Act 319, Imd. Eff. Aug. 20.

487.489 Real estate; lease, purchase, holding and conveyance by bank.

Sec. 189. (1) A bank may lease, purchase, hold and convey real estate for the following purposes, but for no other:

(a) Such as shall be necessary for the convenient transaction of its business, including with its banking offices other space in the same buildings to rent as lessor. Without the approval of the commissioner, a bank shall not invest in bank premises, or in the stock, bonds, debentures or other such obligations of any corporation holding the premises of the bank or make loans to or upon the security of the stock, bonds and debentures of any such corporation, if the aggregate of all such investments and loans, together with the amount of any indebtedness incurred in connection with a bank premises real estate transaction by any such corporation which is an affiliate of the bank, exceeds 2/3 of the capital and surplus of the bank.

(b) Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its business.

(c) Such as it shall purchase at sales under judgments, decrees or mortgages held by the bank or shall purchase to secure debts due to it.

(d) Such as it shall legally own on the effective date of this act.

(e) Such as shall be conveyed to it under the provisions of sections 181 to 186.

(f) Such as it may acquire in connection with the purchase by it of a land contract but the acquisition of such real estate and the purchase of such land contract constitutes a loan secured by real estate within the meaning of section 194. At the termination of such land contract, the bank must divest itself of such real estate within 1 year after termination or such additional period as the commissioner may approve.

(g) Such as it may acquire upon the specific request and for the use of a customer by lease arrangement with the bank, but the acquisition of such real estate and leasing to the customer constitutes a loan secured by real estate within the meaning of section 194. At the termination of such lease, the bank must divest itself of such real estate within 1 year after termination or such additional period as the commissioner may approve.

(2) Real estate shall be conveyed under the corporate seal of the bank and the signature of such officers as may be authorized by its board of directors.

(3) Real estate acquired in the cases contemplated in subdivisions (b) and (c) of subsection (1) shall not be held for a longer period than 5 years or such extended period thereafter as may be approved by the commissioner.

HISTORY: New 1969, p. 711, Act 319, Imd. Eff. Aug. 20.

487.491 Interest and charges on loans; credit card arrangements; installment loans.

Sec. 191. Banks may collect interest and charges on loans as follows:

(a) On any loan made pursuant to an existing credit card arrangement or other agreement existing prior to such loan whereby the bank honors the borrower's draft, pays or agrees to pay the borrower's obligations, purchases the borrower's obligation or advances money to or for the account of the borrower, and in which the loan finance charges are not precomputed but are computed from time to time on the basis of the unpaid balances, interest and charges in a combined amount of not to exceed 1.5% of the unpaid balance per month.

(b) On any existing credit card arrangement or future credit card arrangement banks may not charge a discount of more than 5% of the gross amount of obligations purchased by the bank.

(c) On installment loans which are repayable in uniform weekly, semimonthly, monthly, quarterly or semiannual installments, except for the final installment which may be less than the amount of any previous installment, and the term of which loan does not exceed a period of 84 months and 32 days, interest added in advance at the rate of 7% per annum or less on the entire amount of the loan from date of disbursement to date of maturity, plus a charge for expenses of \$1.00 for each \$50.00 or fraction thereof but not in excess of \$15.00.

(d) On any loan not covered by subdivisions (a), (b) or (c), as provided by section 192.

HISTORY: New 1969, p. 711, Act 319, Imd. Eff. Aug. 20;—Am. 1970, p. 496, Act 148, Imd. Eff. Aug. 1.

487.492 Interest and charges on loans; investigation fee or handling charge.

Sec. 192. A bank or any officer or employee thereof shall not, directly or indirectly, take or receive more than the rate of interest allowed by law in advance on its loans and discounts. Except as otherwise provided by law, a bank may charge an investigation fee or handling charge in connection with any one transaction of not to exceed \$6.00 and such fee or charge shall not be considered as interest but such investigation fee or handling charge shall not be made on any transaction renewing or continuing an original transaction.

HISTORY: New 1969, p. 712, Act 319, Imd. Eff. Aug. 20.

487.493 Interest on deposits; regulation.

Sec. 193. (1) A bank shall not, directly or indirectly, by any device whatsoever, pay any interest on any deposit which is payable on demand. If national banking associations are permitted to pay interest on demand deposits, the commissioner, by appropriate rule, may permit state banks to pay interest on demand deposits in the same manner and at the same rate accorded national banking associations.

(2) Insofar as inconsistent with the provisions of this section, any act or part of an act requiring the payment of interest by banks on trust funds or any or all public funds as hereinbefore prescribed is superseded.

(3) From time to time the commissioner may regulate the payment of interest on all other deposits in the case of a bank which is not a member of either the federal reserve system or the federal deposit insurance corporation.

HISTORY: New 1969, p. 712, Act 319, Imd. Eff. Aug. 20.

487.494 First mortgage real estate loans; limitations.

Sec. 194. (1) Any bank may make, participate in or purchase in whole or in part first mortgage real estate loans secured by liens on real estate or leaseholds, but the total of all such loans shall not exceed an amount equal to the capital stock of the bank paid in an unimpaired plus its unimpaired surplus fund, or 70% of its time and savings deposits, whichever is greater. With respect to any such loan made for a term in excess of 5 years, the loan shall provide for installment payments, not less frequent than annually from the date of the loan, sufficient in amount to amortize during the term thereof 35% of the principal if the term is in excess of 5 years but not in excess of 10 years, 50% if the term is in excess of 10 years but not in excess of 15 years, 70% if the term is in excess of 15 years but not in excess of 25 years and 100% if the term is in excess of 25 years. No such loan shall be for a term in excess of 30 years. A bank shall not make, participate or purchase any such loan unless an appraisal has been made and filed in such manner and in such form as the commissioner may prescribe and the amount of any such loan shall not exceed 80% of the appraised value. In any case in which a loan

made pursuant to this section is guaranteed or insured in whole or in part by a mortgage guaranty firm approved to do business in the state by the insurance bureau, only that part of the loan, if any, which is not covered by such guaranty or insurance shall be subject to the limitations of this section with respect to the ratio of amount of loan to appraised value of the property. The restrictions of this section shall not apply to any loan where an interest in real estate is taken as security for a nonreal estate loan previously contracted in good faith or where an interest in real estate is taken as security for a loan to an industrial or commercial business and where the bank is relying primarily on the borrower's general credit standing.

(2) Loans made to finance the construction of industrial, commercial, residential or farm buildings and having maturities of not to exceed 36 months, whether or not secured by a mortgage or similar lien on the real estate upon which the industrial, commercial, residential or farm building is being constructed, shall not be considered as loans secured by real estate within the meaning of this section but shall be classed as ordinary commercial loans. Such loans in aggregate shall not exceed the bank's paid in unimpaired capital and surplus.

(3) Where a loan is secured by real estate but with part or all of such loan being guaranteed by the United States or any instrumentality thereof or by the state or any instrumentality thereof, only that part of the loan, if any, which is not so guaranteed shall be subject to the limitations of this section with respect to the ratio of amount of loan to the appraised value of the property or to the ratio of aggregate amount of loans to capital stock and surplus or time and savings deposits.

HISTORY: New 1969, p. 712, Act 319, Imd. Eff. Aug. 20;—Am. 1970, p. 486, Act 148, Imd. Eff. Aug. 1.

487.496 Obligation limitations of any one borrower.

Sec. 196. (1) The total obligations to any bank of any one customer which includes an individual or any legal entity, at no time shall exceed 10% of the capital and surplus of the bank, except that upon approval by 2/3 vote of its board of directors such limit may be increased to not to exceed 20% of the capital and surplus of such bank. The term "obligations" means the direct liability of the maker or acceptor of paper discounted with or sold to the bank and the liability of the indorser, drawer or guarantor who obtains a loan from or discounts paper with or sells paper under his guaranty to the bank and includes in the case of obligations of a copartnership or association, the obligations of the several members thereof and in the case of obligations of a corporation, all obligations of all subsidiaries thereof in which the corporation owns or controls a majority interest. If the commissioner determines at any time that the interests of a group of more than 1 person, copartnership, association or corporation are so interrelated that they should be considered as a unit for the purpose for which credit was extended, the total indebtedness of that group acquired at any time shall be combined and deemed indebtedness acquired from 1 customer in applying the limitations of sections 196 to 198. A bank shall not be deemed to have violated sections 196 to 198 solely by reason of the fact that the indebtedness of a group then held exceeds the limitations of sections 196 to 198 at the time of a determination by the commissioner that the indebtedness of that group shall be combined but if required by the commissioner, the bank shall dispose of indebtedness of the group in the amount in excess of the limitations of sections 196 to 198 within such reasonable time as shall be fixed by the commissioner.

(2) Such limitations shall be subject to the exceptions as set forth in sections 197 and 198.

HISTORY: New 1969, p. 713, Act 319, Imd. Eff. Aug. 20.

487.497 Obligation limitations based on capital and surplus; exceptions.

Sec. 197. The following obligations shall not be subject under sections 196 to 198 to any limitation based upon such capital and surplus:

- (a) Obligations in the form of drafts or bills of exchange drawn in good faith against actually existing values.
- (b) Obligations arising out of the discount of commercial or business paper actually owned by the customer negotiating it.
- (c) Obligations drawn in good faith against actually existing values and secured by goods or commodities in process of shipment.
- (d) Obligations in the form of bankers' acceptances of other banks of the kind described in section 13 of the federal reserve act.
- (e) Obligations representing loans to any national banking association or to any banking institution organized under the laws of any state or to any receiver, conservator or any other agent or supervising authority in charge of the business and property of such association or banking institution, when the loans are approved by the commissioner.
- (f) Obligations representing loans to any customer, to the extent that they are secured or covered by guarantees or by commitments or agreements to take over or to purchase the same, made by any federal reserve bank or by the United States, or any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States. The provisions of this subdivision shall not apply to loans which are insured or guaranteed pursuant to the national housing act, as amended, or pursuant to the Bankhead-Jones farm tenant act, as amended, including the farmers' home administration act of 1946, as amended, or pursuant to the federal servicemen's readjustment act of 1944, as amended.
- (g) Obligations representing loans from 1 business day to the next to any state bank or national banking association of excess reserve balances from time to time maintained under the provisions of section 207 of this act or section 19 of the federal reserve act.
- (h) Obligations secured by not less than a like amount of direct obligations of the United States which will mature in not more than 18 months from the date the obligations to the bank are entered into.
- (i) Obligations secured by loan agreements between a local public agency or a public housing agency and an instrumentality of the United States pursuant to federal housing legislation under which funds will be provided for payment of the obligations secured by such loan agreements.

HISTORY: New 1969, p. 713, Act 319, Imd. Eff. Aug. 20.

487.498 Obligation limitations based on capital and surplus.

Sec. 198. The following limitations based upon such capital and surplus shall apply:

- (a) Obligations as indorser or guarantor of notes, other than commercial or business paper excepted under subdivision (b) of section 197, having a maturity of not more than 6 months and owned by the customer indorsing and negotiating the same, shall be subject to a limitation of 25% of such capital and surplus.
- (b) Obligations of any customer, in the form of notes or drafts secured by shipping documents, warehouse receipts or other such documents transferring or securing title covering readily marketable nonperishable staples when the property is fully covered by insurance, if it is customary to insure the staples, shall be subject to a limitation of 25% of such capital and surplus, when the market value of the staples securing the obligations is not at any time less than 115% of the face amount of the obligation and to

an additional increase of limitation of 5% of such capital and surplus for each increase of 5% of the market value in relation to the face amount of the obligation, but no loan shall exceed 50% of capital and surplus. The exception allowed in this subdivision shall not apply to obligations of any one customer arising from the same transactions or secured upon the identical staples for more than 10 months.

(c) Obligations of any customer in the form of notes or drafts secured by shipping documents, warehouse receipts or other such documents transferring or securing title covering refrigerated or frozen readily marketable staples when the property is fully covered by insurance, shall be subject to a limitation of 25% of capital and surplus when the market value of the staples securing the obligation is not at any time less than 115% of the face amount of such additional obligation. This exception shall not apply to obligations arising from the same transactions or secured by the identical staples for more than 6 months.

(d) Obligations of any customer in the form of notes or drafts secured by shipping documents transferring or securing title covering livestock, when the market value of the livestock securing the obligation is not at any time less than 115% of the face amount of the notes covered by the documents, shall be subject to a limitation of 25% of capital and surplus. Obligations arising out of the discount by dealers in dairy cattle of paper given in payment for dairy cattle, which bear a full recourse indorsement or unconditional guarantee of the seller and are secured by the cattle being sold, shall be subject to a limitation of 25% of capital and surplus.

(e) Obligations of any customer in the form of notes secured by not less than a like amount, at market value, of direct obligations of the United States or obligations guaranteed fully as to principal and interest by the United States, except to the extent permitted by rules prescribed by the commissioner, shall be subject to a limitation of 25% of capital and surplus.

(f) Obligations as indorser or guarantor of negotiable or nonnegotiable installment consumer paper which carries a full recourse indorsement or unconditional guarantee by the customer transferring the same, shall be subject to a limitation of 25% of capital and surplus. If the bank's files or the knowledge of its officers of the financial condition of each maker of the obligations is reasonably adequate, and upon certification by an officer of the bank designated for that purpose by the board of directors of the bank, that the responsibility of each maker of the obligations has been evaluated and the bank is relying primarily upon the maker for the payment of the obligations, the limitations as to the obligations of each maker shall be the sole applicable loan limitation. The certification shall be in writing and shall be retained as part of the records of such bank.

HISTORY: New 1989, p. 714, Act 319, Imd. Eff. Aug. 30.

CHAPTER 5

REGULATION

487.501 Impairment of capital; determination; assessments upon shareholders.

Sec. 201. (1) Every bank whose capital, in the opinion of the commissioner, shall have become impaired by losses or otherwise, within 2 months after receiving notice thereof from the commissioner, shall meet the deficiency in the capital by an assessment upon the shareholders pro rata on the amount of capital stock held by each. If any bank fails to restore its capital as provided by law for 2 months after receiving notice from the commissioner or, within the same period, fails to take steps to liquidate its business and affairs, a receiver may be appointed for the bank in accordance with the provisions of this act. The commissioner, in his discretion, may grant such exten-

sions of time as he deems advisable in order to allow the bank to meet the deficiency in the capital.

(2) If any part of the capital of a bank consists of preferred stock, the determination of whether or not the capital of the bank is impaired and the amount of such impairment shall be based upon the par value of its stock even though the amount which the holders of the preferred stock shall be entitled to receive in the event of retirement or liquidation shall be in excess of the par value of the preferred stock.

(3) The directors of every bank whose capital has become impaired by losses or otherwise shall levy within the 2 months' period an assessment upon the stock of the bank to repair the deficiency, and shall give notice of the action of the commissioner and the amount of the assessment which each shareholder must pay for the purpose of making good the deficiency to each shareholder by written or printed notice mailed to the shareholder at his last known address as appears from the records of the bank or served personally upon him.

(4) If the assessment is levied by the directors, and if any shareholder refuses or neglects to pay the assessment as provided in this section within 30 days from the date of mailing to the shareholder a notice of the amount to be paid by him, the directors of the bank shall sell the stock of the shareholder to the highest bidder at either public or private sale in the manner provided for the disposition of collateral pursuant to the provisions of section 9504 of Act No. 174 of the Public Acts of 1962, being section 440.9504 of the Compiled Laws of 1948.

(5) A sale of stock as provided in this section shall effect an absolute cancellation of the outstanding certificates evidencing the stock so sold and shall make same null and void, and new certificates shall be issued by the bank to the purchaser thereof. Out of the proceeds of the stock so sold, the directors shall pay the necessary costs of sale and the amount of assessment levied thereon and the balance if any shall be paid to the person whose stock has been sold.

(6) The holders of preferred stock shall not be liable for assessments to restore impairment in the capital of a bank.

HISTORY: New 1969, p. 715, Act 319, Imd. Eff. Aug. 20.

487.505 Reserve cities; legal depositary for reserve funds, qualification as.

Sec. 205. (1) Annually the commissioner shall designate and approve certain cities in this and any other state as reserve cities for banks which are not member banks under the federal reserve act.

(2) Any bank or national banking association in such cities shall be a legal depositary for reserve funds referred to in this section, if it shall have a combined capital and surplus of \$500,000.00 if located in a city which has a population of not more than 250,000, \$1,000,000.00 if located in a city which has a population of more than 250,000, \$1,500,000.00 if located in a city which has a population of more than 500,000 and \$3,000,000.00 if located in a city which has a population of more than 1,000,000. The bank shall make such reports as the commissioner may prescribe, shall submit to such examinations as the commissioner deems necessary, and shall furnish each depositing state bank a detailed daily statement of account of all reserve moneys so deposited on active account. If any bank in any reserve city violates the provisions of this act, the commissioner may prohibit such bank from acting as a legal depositary for reserve funds.

HISTORY: New 1969, p. 715, Act 319, Imd. Eff. Aug. 20.

487.507 Reserve fund requirement; composition; definitions; rules.

Sec. 207. (1) A bank which is not a member of the federal reserve system shall maintain at all times a reserve fund in an amount as fixed from time to time by the commissioner not in excess of the aggregate of 14% of demand deposits and 10% of

time deposits and not less than the aggregate of 7% of demand deposits and 3% of time deposits.

(2) The amount of such reserve for each day shall be computed on the basis of average daily deposits covering such bi-weekly or shorter periods as fixed by rule of the commissioner.

(3) Not more than 90% of the reserve required to be maintained against time and savings deposits by this section may consist of obligations of the United States or in obligations unconditionally guaranteed both as to principal and interest by the United States, and any such obligations maintained in such reserve shall be owned absolutely by the bank and shall not be pledged, assigned or hypothecated in any manner. The value of the obligations which constitute a part of a bank's reserve fund shall be computed at the par value thereof. The balance of the reserve fund shall consist of United States coin and currency on hand or on deposit payable upon demand with a legal depositary for reserve funds designated by the commissioner under the provisions of section 205 or with the federal reserve bank in the district in which the depositing bank is located.

(4) For the purpose of reserve requirement and the composition of the required reserve fund under this section:

(a) "Demand deposits" means the aggregate of deposits which can be required to be paid on demand or within less than 30 days after demand.

(b) "Time deposits" means deposits which cannot be required to be paid within less than 30 days, including savings deposits.

(5) The commissioner may prescribe such rules as he deems necessary to effectuate the provisions of this section and prevent evasions thereof.

HISTORY: New 1989, p. 716, Act 319, Imd. Eff. Aug. 20.

487.509 Reserve fund; notice of deficiency; failure to give notice, penalty.

Sec. 209. (1) A bank which is not a member of the federal reserve system shall give written notice to the commissioner of any deficiency in the reserve fund required under section 207 within 3 business days after the close of any scheduled averaging period during which the deficiency occurs.

(2) A bank which fails to give written notice to the commissioner of a deficiency in its reserve fund shall pay to the commissioner a penalty of \$50.00 for each day that it does not give the notice after the time fixed by this section for the giving of such notice. The commissioner may relieve any bank from the payment of the penalty, in whole or in part, upon a showing to the commissioner of good cause for the failure of the bank to give the notice. If a bank fails to pay a penalty from which it has not been relieved, the commissioner may maintain an action in his name against the delinquent bank for the recovery of the penalty. All penalties collected shall be paid into the state treasury to the credit of the general fund.

HISTORY: New 1989, p. 716, Act 319, Imd. Eff. Aug. 20.

487.511 Loans to executive officers; limitations; report on outstanding indebtedness.

Sec. 211. (1) An executive officer of any bank shall not borrow from or otherwise become indebted to any bank of which he is an executive officer and a bank shall not make any loan or extend credit in any other manner to any of its own executive officers except as provided in this section. Loans made to any executive officer prior to the date he became an executive officer may be continued, renewed or extended for periods expiring not more than 5 years from the date he became an executive officer. With the prior approval of a 2/3 majority of the entire board of directors a bank may extend credit to any executive officer thereof and the executive officer may become indebted thereto in an amount not exceeding \$5,000.00. With such prior approval any bank may

extend credit in excess of \$5,000.00 to any executive officer and the executive officer may become indebted thereto in an additional amount not exceeding \$30,000.00 if the additional amount is secured by a real estate mortgage complying with the provisions of this act covering the residence of the executive officer and an additional amount not exceeding \$10,000.00 outstanding at any one time to finance the education of the children of the executive officer. Any loan made pursuant to this subsection shall be subject to the loan limitations as provided in sections 196 to 198.

(2) Each bank officer shall make a written report to the directors, at the time of the annual meeting of the bank directors, as to all of his outstanding indebtedness to any bank or national banking association which report shall state the dates of all loans, the current balances thereof and whether or not such indebtedness is secured.

(3) Borrowing by, or loaning to, a partnership, in which one or more executive officers of a bank are partners having either individually or together a majority interest in the partnership, is within the prohibition of this section. Nothing contained in this section shall prohibit any officer of a bank from indorsing or guaranteeing for the protection of the bank any loan or other asset which shall have been previously acquired by the bank in good faith or from incurring any indebtedness to the bank for the purpose of protecting the bank against loss or giving financial assistance to it. The commissioner shall determine what shall be deemed to be a borrowing, indebtedness, loan or extension of credit, for the purposes of this section, and prescribe rules as he deems necessary to effectuate the provisions of this section in accordance with its purposes and to prevent evasions of such provisions.

(4) This section shall not be construed as preventing any officer of any bank from being indebted to the bank upon installment debt transferred to the bank in the regular course of business by a seller of consumer goods purchased by the officer or debt resulting from the normal use by such officer of a credit card issued or caused to be issued by the bank.

HISTORY: New 1969, p. 716, Act 319, Imd. Eff. Aug. 20.

487.513 Directors and officers; personal liability for violation of act; limitation of action.

Sec. 213. If the directors or officers of a bank knowingly violate, or knowingly permit any of the agents, officers or directors of a bank to violate, any of the provisions of this act or rules of the commissioner made under authority thereof, every director and officer who participated in or assented to the violation shall be held liable in his personal and individual capacity for all damages which the bank, any shareholder or any other person sustains in consequence of the violation. Any action to recover damages shall be brought within 3 years from the time of the violation, and not afterwards.

HISTORY: New 1969, p. 717, Act 319, Imd. Eff. Aug. 20.

487.515 Securities business; bank affiliations prohibited.

Sec. 215. Except as otherwise provided in this act, a bank shall not be affiliated with any corporation, association, business trust or other similar organization engaged principally in the issue, flotation, underwriting, public sale or distribution, at wholesale or retail, or through syndicate participation of stocks, bonds, debentures, notes or other securities. Nothing in this section shall apply to any organization which has been placed in formal liquidation and which transacts no business except such as may be incidental to the liquidation of its affairs.

HISTORY: New 1969, p. 717, Act 319, Imd. Eff. Aug. 20.

487.517 Securities business; prohibition on directors, officers and employees.

Sec. 217. (1) An officer, director or employee of any corporation or unincorporated association, a partner or employee of any partnership and an individual primarily en-

gaged in the issue, flotation, underwriting, public sale or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds or other similar securities, shall not serve at the same time as an officer, director or employee of any bank.

(2) An officer or employee of any bank, in his individual capacity, shall not act as agent in the sale of stock or other securities to any person, partnership, association or corporation or receive directly or indirectly any consideration or commission resulting from the sale of stock or other securities by others to the bank by which he is employed.

HISTORY: New 1909, p. 717, Act 319, Imd. Eff. Aug. 20.

487.519 Consideration or gratuity for procuring loan.

Sec. 219. An officer, director or employee of a bank may not receive or consent or agree to receive any consideration or gratuity from a borrower for procuring a loan from the bank.

HISTORY: New 1909, p. 718, Act 319, Imd. Eff. Aug. 20.

487.521 Officers and employees; bonding; expense; insurable losses.

Sec. 221. (1) The board of directors shall require every employee concerned in the handling of moneys, accounts or securities of the bank, who can be bonded, to be bonded by a surety company authorized to do business in this state in such an amount as shall be determined by them. The bank shall pay for any surety bonds required of its employees.

(2) The commissioner shall require every bank to provide reasonable protection and indemnity against burglary, defalcation and other reasonably required insurable losses. Whenever a bank refuses to comply with such requirement, the commissioner may contract for the protection and indemnity and charge the same to the bank. If the charge is not paid, the commissioner may collect the same in an action instituted by the attorney general.

HISTORY: New 1909, p. 718, Act 319, Imd. Eff. Aug. 20.

487.523 Reports of condition; time, contents, publication; waiver; special reports.

Sec. 223. Every bank shall make not less than 2 reports of condition during each calendar year to the commissioner, at such times as he shall require and according to forms prescribed and furnished by him. The reports shall be prepared by or under the direction of an officer of the bank, shall be signed by the officer and shall be attested to by at least 3 directors as being correct reports to the best of their knowledge and belief. The reports shall exhibit, in detail and under appropriate heads, the resources and liabilities of the bank at the close of business of any past date specified by the commissioner and shall be transmitted to him within 10 days after the receipt of a request therefor from the commissioner. Within 30 days after receipt of the notice, the reports shall be published by the bank in the same form as submitted to the commissioner and proof of publication shall be furnished to him. In the case of a bank which is a member of the federal reserve system, the commissioner may waive this requirement of publication when the bank publishes a report of substantially the same character in compliance with the federal reserve act. The commissioner may call for special reports from any bank whenever, in his judgment, they are necessary to inform him fully as to the condition of the bank.

HISTORY: New 1909, p. 718, Act 319, Imd. Eff. Aug. 20.

487.525 Biannual report of earnings and dividends.

Sec. 225. Every bank shall make a report of earnings and dividends for each 6 months' period ending June 30 and December 31 of each year to the commissioner. The report shall be submitted within 30 days after the termination of each period and

shall be in such detail and on such form as prescribed and furnished by the commissioner. The report shall be prepared by or under the direction of an officer of the bank and shall be signed by the officer.

HISTORY: New 1969, p. 718, Act 319, Imd. Eff. Aug. 20.

487.526 Reports; failure to make; penalty, action to collect delinquent penalty.

Sec. 226. Every bank failing to make and transmit to the commissioner or to publish and furnish to the commissioner proof of publication of any of the reports required by section 223 or section 225 shall be subject to a penalty of \$100.00 for each day after the time for making any report. All penalties collected shall be paid into the state treasury to the credit of the general fund. Whenever any bank delays or refuses to pay the penalty for a failure to make and transmit a report, the commissioner may maintain an action against the delinquent bank for the recovery of such penalty.

HISTORY: New 1969, p. 718, Act 319, Imd. Eff. Aug. 20.

487.528 Savings deposits; payment; regulations, posting and furnishing to depositor.

Sec. 228. Subject to section 193, all savings deposits shall be repaid to the depositor, or his lawful representatives, at such time, with such interest and under such regulations as the board of directors of the bank may prescribe from time to time, which regulations shall be conspicuously posted in each banking office where savings business is transacted. A copy of the regulations shall be furnished to each savings depositor at the time of the initial deposit.

HISTORY: New 1969, p. 719, Act 319, Imd. Eff. Aug. 20.

487.530 Deposits, funds and assets; emergency powers, not in force until copy posted.

Sec. 230. Notwithstanding any other provision of law, the board of directors of a bank, with the approval of the commissioner, may regulate and prescribe the terms, conditions and bylaws and rules under which deposits, other funds and assets may be received, conserved, paid out, withdrawn or otherwise disposed of whenever in the opinion of the commissioner an emergency exists in the affairs of a bank and such action is advisable to conserve, safeguard and protect depositors, borrowers, deposits, moneys, funds, assets and the business of the bank, and all parties in interest, including the public, but no such terms, conditions, bylaws and rules shall be in force until a copy thereof is posted in the lobby of each office of the bank.

HISTORY: New 1969, p. 719, Act 319, Imd. Eff. Aug. 20.

487.531 Preference prohibited; pledging of bank assets.

Sec. 231. (1) Except as otherwise provided in this section, a bank or bank officer shall not give preference to any depositor or creditor by pledging the assets of the bank as collateral security or otherwise. A bank may pledge any of its assets to secure any of its liabilities of the type described in subdivisions (d), (f), (g) and (j) of section 233.

(2) A bank, with the written consent of the commissioner, may pledge assets of the bank in an amount not in excess of 10% of its total deposits for the purpose of securing:

(a) Funds belonging to the United States or belonging to or being administered by any officer, instrumentality or agent thereof, funds of estates being administered by a federal court under the national bankruptcy act and any other funds when required or permitted to do so under the laws of the United States or an order of any federal court.

(b) Surplus funds of the state held by the state treasurer.

(c) Funds of the Mackinac bridge authority, which is declared to be a political subdivision of this state, under Act No. 21 of the Public Acts of the Extra Session of 1950, being sections 254.301 to 254.304 of the Compiled Laws of 1948.

(d) Funds of the international bridge authority, which is declared to be a political subdivision of this state, under Act No. 99 of the Public Acts of 1954, as amended, being sections 254.221 to 254.240 of the Compiled Laws of 1948.

(e) Funds on deposit under Act No. 205 of the Public Acts of 1941, as amended, being sections 252.51 to 252.64 of the Compiled Laws of 1948, providing for limited access highways.

(f) Funds on deposit to the credit of the Michigan employment security commission.

(g) Funds of the Michigan state housing development authority constituting proceeds of the sale of the authority's notes and bonds and repayments thereof, under Act No. 346 of the Public Acts of 1966, as amended, being sections 125.1401 to 125.1457 of the Compiled Laws of 1948.

(3) A bank shall not pledge its assets for the purpose of securing any funds belonging to any other political subdivision of this state.

(4) The requirements, restrictions and limitations imposed by this section shall not apply to the pledging of obligations of the United States, direct or fully guaranteed, or both, for the purpose of securing deposits of the United States when such deposits are established coincidentally with the purchase of obligations of the United States by or through any institution.

HISTORY: New 1969, p. 719, Act 319, Imd. Eff. Aug. 20;—Am. 1970, p. 487, Act 148, Imd. Eff. Aug. 1.

487.533 Indebtedness of bank; limitation; exceptions.

Sec. 233. A bank may not borrow money or become indebted or liable to an amount exceeding at any time the amount of its capital stock at such time actually paid in and remaining undiminished by losses or otherwise plus 50% of the amount of its unimpaired surplus fund. This limitation shall not apply to demands of the following nature:

(a) Moneys deposited with or collected by the bank.

(b) Bills of exchange or drafts drawn against money actually on deposit to the credit of the bank, or due thereto.

(c) Liabilities to the shareholders of the bank for dividends declared.

(d) In case of member banks, liabilities incurred under the provisions of the federal reserve act; and in the case of nonmember banks, liabilities incurred through borrowing under the same conditions as are imposed upon members of the federal reserve system by the provisions of the federal reserve act.

(e) Liabilities created by the indorsement of accepted bills of exchange payable abroad actually owned by the indorsing bank and discounted at home or abroad.

(f) Liabilities incurred under the provisions of section 202 of title 2 of the federal farm loan act, approved July 17, 1916, as amended.

(g) Liabilities incurred on account of loans made with the express approval of the commissioner under subdivision (e) of section 197.

(h) Liabilities incurred on account of rediscount in good faith and the indorsement of its negotiable notes.

(i) Liabilities incurred on account of capital notes and debentures issued pursuant to the provisions of section 73.

(j) Liabilities incurred on account of borrowings from 1 business day to the next from any bank or national banking association of excess reserve balances from time to time maintained by such bank or national banking association under the provisions of section 207 of this act or section 19 of the federal reserve act.

HISTORY: New 1969, p. 719, Act 319, Imd. Eff. Aug. 20.

487.535 Deposits of banks with other banks; deposit in legal depository in reserve city; limitation.

Sec. 235. Except where required or permitted under the federal reserve act, a bank shall not deposit an amount in excess of 10% of its capital and surplus with any other bank or national banking association but any bank may deposit an amount not to exceed 15% of its capital, surplus and deposits in any legal depository in a reserve city designated by the commissioner pursuant to the provisions of this act.

HISTORY: New 1969, p. 720, Act 319, Imd. Eff. Aug. 20.

487.539 Overdrafts; director or officer overdrawing account.

Sec. 239. (1) An overdraft existing for 90 days shall be charged off to the profit and loss account of the bank at the expiration of that time.

(2) A director or executive officer of a bank shall not knowingly overdraw his account.

HISTORY: New 1969, p. 720, Act 319, Imd. Eff. Aug. 20.

487.541 Bad debts; charging off.

Sec. 241. All debts due to any bank on which interest is past due and unpaid for a period of 6 months, unless the debts are well secured and in process of collection or the debts constitute claims against solvent estates in probate, shall be charged off to the reserve for bad debts or the profit and loss account of the bank at the expiration of that time.

HISTORY: New 1969, p. 720, Act 319, Imd. Eff. Aug. 20.

487.545 Null and void transactions.

Sec. 245. Any transfer of any assets of a bank to either its shareholders or creditors made after the commission of an act of insolvency or made in contemplation thereof, with a view to preventing the application of its assets in the manner prescribed by this act, or with a view to the preference of 1 creditor over another, is null and void.

HISTORY: New 1969, p. 720, Act 319, Imd. Eff. Aug. 20.

CHAPTER 6

RECEIVERSHIPS AND CONSERVATORSHIPS

487.551 Receivership; grounds for appointment; dissolution; federal deposit insurance corporation as receiver, bond.

Sec. 251. Whenever a bank has refused to pay its deposits or obligations in accordance with the terms under which such deposits or obligations were incurred or whenever any bank becomes insolvent, or whenever any bank shall refuse to submit its books, papers and records for inspection by the commissioner or whenever it appears to the commissioner that the bank is in an unsafe or unsound condition, the commissioner shall either appoint a conservator under the provisions of section 261 or, with the attorney general representing him, shall apply to the circuit court for the county in which the bank is located for the appointment of a receiver for the bank. In any proceeding for the appointment of a receiver the commissioner shall request that the court appoint the federal deposit insurance corporation as the receiver if the deposits in the bank are insured to any extent by the corporation. The court may act upon the application forthwith and without notice to any person but if at any time it appears to the court that none of the claimed reasons for receivership did in fact exist, the receiver

ership shall be dissolved and the proceedings terminated. If the federal deposit insurance corporation accepts the appointment as receiver, it may act as such without bond.

HISTORY: New 1969, p. 720, Act 319, Imd. Eff. Aug. 20.

487.552 Receiver; powers and duties.

Sec. 252. Subject to the approval of the appointing court, a receiver shall:

(a) Take possession of the books, records and assets of every description of the bank and collect all debts, dues and claims belonging to it.

(b) Sue and defend, compromise and settle all claims involving the bank.

(c) Sell any and all real and personal property.

(d) Exercise any and all fiduciary functions of the bank as of the date of the commencement of the receivership.

(e) Pay all expenses of the receivership, which expenses shall be a first charge upon the assets of the bank and shall be fully paid before any final distribution or payment of dividends to creditors or shareholders.

(f) Pay ratably any and all debts of such bank, except that debts not exceeding \$50.00 in amount may be paid in full but the holders thereof shall not be entitled to interest thereon.

(g) Repay, ratably, any amount which may have been paid in by any shareholder by reason of assessments made upon the stock of the bank by order of the commissioner in accordance with the provisions of this act.

(h) Pay, ratably, to the shareholders of the bank in proportion to the number of shares held and owned by each the balance of the net assets of the bank after payment or provision for payments as provided in subdivisions (e), (f) and (g).

(i) Borrow such sum of money as may be necessary or expedient in aiding the liquidation of the bank and in connection therewith to secure such borrowings by the pledge, hypothecation or mortgage of the assets of the bank.

(j) Exercise such other powers and duties as may be provided by the appointing court pursuant to the laws of this state applicable to the appointment of receivers by circuit court judges.

HISTORY: New 1969, p. 721, Act 319, Imd. Eff. Aug. 20.

487.553 Receiver; reports to commissioner.

Sec. 253. The receiver from time to time shall report to the commissioner with respect to all of his acts and proceedings in connection with the receivership.

HISTORY: New 1969, p. 721, Act 319, Imd. Eff. Aug. 20.

487.554 Receiver; bank liquidation, act provides exclusive procedures.

Sec. 254. The full and exclusive procedures for the liquidation of a bank subject to the provisions of this act shall be the procedures prescribed in this act and no receiver or other liquidating agent shall be appointed for such purpose or for any bank or its assets and property except as expressly provided in this act.

HISTORY: New 1969, p. 721, Act 319, Imd. Eff. Aug. 20.

487.557 Receivership; federal deposit insurance corporation; subrogation.

Sec. 257. Whenever any bank has been closed and placed in receivership, and the federal deposit insurance corporation pays or makes available for payment the insured deposit liabilities of the closed bank, the corporation, whether or not it has become receiver thereof, is subrogated to all of the rights of the owners of the deposits against the closed bank in the same manner and to the same extent as subrogation of the corporation is provided for in the federal reserve act, as amended, in the case of the closing of a national banking association. The rights of depositors and other creditors of

the closed bank shall be determined in accordance with the applicable provisions of the laws of this state.

HISTORY: New 1969, p. 721, Act 319, Imd. Eff. Aug. 20.

487.561 Conservator; appointment, bond; expenses.

Sec. 261. (1) If any of the grounds set forth in section 251 authorizing the appointment of a receiver exist or whenever the commissioner deems it necessary in order to conserve the assets of any bank for the benefit of the depositors and other creditors thereof, the commissioner may appoint a conservator for the bank and require of him such bond and security as the commissioner deems proper.

(2) The commissioner may appoint as conservator 1 of the bank examiners of the bureau or some other competent and disinterested person. The bureau shall be reimbursed out of the assets of the conservatorship for all sums expended by it in connection with the conservatorship as expenses or otherwise, which funds shall be paid into the revolving fund provided for in section 267. Any conservator by such appointment shall become a member of the bureau. All expenses of any conservatorship shall be paid out of the assets of the bank, upon the approval of the commissioner. The expenses shall be a first charge upon the assets and shall be fully paid before any final distribution or payment of dividends to creditors or shareholders.

HISTORY: New 1969, p. 722, Act 319, Imd. Eff. Aug. 20.

487.562 Conservator; powers and duties.

Sec. 262. The conservator, under the direction of the commissioner, shall take possession of the books, records and assets of every description of the bank, and take such action as may be necessary to conserve the assets of the bank pending further disposition of its business as provided by law. The conservator shall have all the rights, powers and privileges of receivers of banks appointed pursuant to this act and shall be subject to the obligations and penalties, not inconsistent with the provisions of this act with respect to conservators, to which receivers are subject. During the time that the conservator remains in possession of the bank, the rights of all parties with respect thereto, subject to the other provisions of this act with respect to conservators, shall be the same as if a receiver had been appointed. The conservator may execute the discharge of any real estate mortgage held as part of the assets of the bank.

HISTORY: New 1969, p. 722, Act 319, Imd. Eff. Aug. 20.

487.563 Conservator; deposits and withdrawals, ratable basis; new deposits and assets.

Sec. 263. While a bank is in the hands of the conservator appointed by the commissioner, he may require the conservator to set aside and make available for withdrawal by depositors and payment to other creditors, on a ratable basis, such amounts as in the opinion of the commissioner may be used safely for this purpose. The commissioner may permit the conservator to receive deposits. Deposits received while the bank is in the hands of the conservator shall not be subject to any limitation as to payment or withdrawal. Such deposits and any new assets acquired on account of the deposits shall be segregated and shall be held especially for the new deposits and shall not be used to liquidate any indebtedness of such bank existing at the time that a conservator was appointed for it or any subsequent indebtedness incurred for the purpose of liquidating any indebtedness of the bank existing at the time the conservator was appointed. Deposits received while the bank is in the hands of the conservator shall be kept on hand in cash, invested in the direct obligations of the United States or deposited in banks designated by the commissioner.

HISTORY: New 1969, p. 722, Act 319, Imd. Eff. Aug. 20.

487.564 Conservator; borrowing power.

Sec. 264. With the prior approval of the commissioner, the conservator of any bank may borrow such sums of money as are necessary or expedient in aiding the operation, reorganization or liquidation of the bank, including the payment of liquidating dividends, and may secure the loans by the pledge, hypothecation or mortgage of the assets of the bank.

HISTORY: New 1969, p. 722, Act 319, Imd. Eff. Aug. 20.

487.565 Conservatorship; termination; resumption of business.

Sec. 265. If the commissioner is satisfied that it may be done safely and that it would be in the public interest, he may terminate the conservatorship and permit the bank to resume the transaction of its business subject to such terms, conditions, restrictions and limitations as he may prescribe.

HISTORY: New 1969, p. 722, Act 319, Imd. Eff. Aug. 20.

487.566 Conservatorship; return of bank to directors; effect on segregation of deposits; notice.

Sec. 266. After 15 days from the date upon which the affairs of a bank shall have been turned back to its board of directors by the conservator, either with or without being reorganized, the provisions of section 263 with respect to the segregation of deposits received while it is in the hands of the conservator and with respect to the use of such deposits to liquidate the indebtedness of the bank shall no longer be effective. Before the conservator turns back the affairs of the bank to its board of directors, he shall publish a notice in form approved by the commissioner, stating the date on which the affairs of the bank will be returned to its board of directors and that the provisions of section 263 will not be effective after 15 days from such date. On the date of the publication of the notice, the conservator shall immediately send to every person who deposited money in the bank after the appointment of a conservator therefor, a copy of the notice by mail, postage prepaid, addressed to the last known address of the person as shown by the records of the bank. The conservator shall send similar notice in like manner to every person making deposit in the bank under section 263 after the date of the newspaper publication and before the time when the affairs of the bank are returned to its directors.

HISTORY: New 1969, p. 723, Act 319, Imd. Eff. Aug. 20.

487.567 Receiver and conservator; rules prescribed by commissioner; revolving fund to reimburse bureau.

Sec. 267. (1) The commissioner is authorized and empowered to prescribe such rules as he deems necessary in order to carry out the provisions of this chapter as to receivers and conservators.

(2) All compensation and expenses allowed to reimburse the bureau when a bank examiner acts as receiver or conservator and all expenses for state supervision of receiverships and conservatorships under the provisions of this act shall be turned over to the state treasurer and shall be credited to a revolving fund, hereby created, to be held for the bureau, which fund shall be disbursed on proper vouchers approved by the commissioner to reimburse the bureau in connection with the provisions of this act with respect to receivers and conservators of banks.

HISTORY: New 1969, p. 723, Act 319, Imd. Eff. Aug. 20.

487.568 Reorganization of bank; consent; definition; effect on depositors, creditors and shareholders.

Sec. 268. (1) In any reorganization of any bank under a plan of a kind which requires the consent of depositors and other creditors or of shareholders or of both de-

positors and other creditors and shareholders, the reorganization shall become effective when both the following occur:

(a) The commissioner is satisfied that the plan of reorganization is fair and equitable as to all depositors, other creditors and shareholders and is in the public interest and has approved the plan subject to such conditions, restrictions and limitations as he may prescribe.

(b) After reasonable notice of the reorganization as determined by the commissioner, depositors and other creditors of such bank representing at least 75% in amount of its total deposits and other liabilities as shown by the books of the bank or shareholders owning at least 2/3 of its outstanding capital stock as shown by the books of the bank or both depositors and other creditors representing at least 75% in amount of the total deposits and other liabilities and shareholders owning at least 2/3 of its outstanding capital stock as shown by the books of the bank, shall have consented in writing to the plan of reorganization. Claims of depositors or other creditors which will be satisfied in full under the provisions of the plan of reorganization shall not be included among the total deposits and other liabilities of the bank in determining the 75% thereof. The term "reorganization" as used in this section may be construed to include the establishment of a new bank in conformity with any plan of reorganization.

(2) When the reorganization becomes effective, all books, records and assets of the bank shall be disposed of in accordance with the provisions of the plan and the affairs of the bank shall be conducted by its board of directors in the manner provided by the plan and under the conditions, restrictions and limitations which may have been prescribed by the commissioner. In any reorganization which has been approved and become effective, all depositors and other creditors and shareholders of the bank, whether or not they have consented to the plan or reorganization, shall be fully and in all respects subject to and bound by its provisions and claims of all depositors and other creditors shall be treated as if they had consented to the plan of reorganization. The state or any department, agency or political subdivision thereof holding a claim against the bank is authorized to participate in a plan or reorganization as any other creditor and shall be subject to and bound by its provisions as any other creditor.

HISTORY: New 1969, p. 723, Act 319, Imd. Eff. Aug. 20.

CHAPTER 7

SAFE AND COLLATERAL DEPOSIT COMPANIES

487.571 Safe and collateral deposit companies; incorporators, number; application of act.

Sec. 271. (1) Any number of persons, not less than 5, may incorporate for the purpose of carrying on a safe deposit and collateral deposit business under the provisions of this chapter and with the powers conferred by this chapter.

(2) A person, partnership, association or corporation shall not carry on a safe deposit and collateral deposit business unless incorporated under the provisions of this chapter or authorized to do so under the provisions of this act. None of the provisions of this act with respect to safe and collateral deposit business shall apply to any savings and loan association duly organized or chartered by the state or to any federal savings and loan association.

HISTORY: New 1969, p. 724, Act 319, Imd. Eff. Aug. 20.

487.573 Articles of incorporation; execution and acknowledgment; filing.

Sec. 273. The persons incorporating shall execute, acknowledge before any officer authorized by the laws of this state to take and certify acknowledgments and deliver to the commissioner in quadruplicate original articles of incorporation. If the commissioner finds that the articles conform to law, when all requirements have been com-

plied with, he shall file 1 of the original articles in the office of the bureau, certify and forward by registered mail 1 of the original articles to the county clerk of the county in which the safe and collateral deposit company is located, and 1 to the corporation division, department of treasury, and shall certify and return 1 of the original articles to the incorporators.

HISTORY: New 1969, p. 724, Act 319, Imd. Eff. Aug. 20.

487.574 Articles of incorporation; contents.

Sec. 274. The articles of incorporation shall specify:

(a) The name of the incorporators and their places of residence and addresses respectively and the number of shares of stock held by each.

(b) The name by which the corporation shall be known and the place where its principal office for the transaction of business is to be established.

(c) The purpose of the incorporation as mentioned in this act.

(d) The amount of capital stock, which shall not be less than \$100,000.00 and be fully paid in at the time of incorporation; and which shall be divided into shares of \$100.00 each.

(e) The number of the directors of the corporation, which shall be not less than 5 nor more than 9.

(f) The period for which such corporation is to be incorporated, which may be a term of years or in perpetuity.

(g) Any other provisions consistent with the laws of this state for the conduct of the affairs of any such safe and collateral deposit company.

HISTORY: New 1969, p. 724, Act 319, Imd. Eff. Aug. 20.

487.575 Articles of incorporation; evidence; certified filing date.

Sec. 275. The articles of incorporation on file with the bureau, or copies thereof duly certified by the commissioner, with the seal of the bureau attached, or on file with the county clerk, or copies thereof duly certified by the county clerk, may be used as evidence in all courts for and against such corporation. The commissioner shall certify upon the articles filed with the bureau, and the county clerks shall certify upon the articles filed with them, the date when they were filed.

HISTORY: New 1969, p. 724, Act 319, Imd. Eff. Aug. 20.

487.577 Corporate powers.

Sec. 277. All corporations organized and established or governed under this chapter shall be deemed bodies politic and corporate, capable of suing and being sued, may have a common seal and may adopt, from time to time, bylaws not inconsistent with this chapter or any other provision of law.

HISTORY: New 1969, p. 725, Act 319, Imd. Eff. Aug. 20.

487.579 Corporate officers.

Sec. 279. The officers of the corporation shall be a president, vice-president, secretary and treasurer, who shall be members of the board of directors, and such other officers as shall be provided for by the bylaws of the corporation. The office of secretary and treasurer may be held by 1 person.

HISTORY: New 1969, p. 725, Act 319, Imd. Eff. Aug. 20.

487.581 First meeting; notice, contents, service; waiver.

Sec. 281. The first meeting of the corporation shall be called by a notice signed by any incorporator designating the time and place of the meeting and stating the pur-

pose for which the meeting is called. The notice shall be personally served on all the incorporators at least 2 days before the date set for the meeting, or if all the incorporators are present at the meeting or in writing waive notice and fix a time and place of meeting, then no notice whatever shall be required of the first meeting.

HISTORY: New 1969, p. 725, Act 319, Imd. Eff. Aug. 20.

487.582 Annual meeting.

Sec. 282. The annual meeting of the corporation shall be held on the third Tuesday in January in each year, at the principal office of the corporation, in such manner and upon such notice as the bylaws of the corporation shall determine.

HISTORY: New 1969, p. 725, Act 319, Imd. Eff. Aug. 20.

487.583 Board of directors; election, term, powers; quorum.

Sec. 283. The stock, property and affairs of such corporation shall be managed by a board of directors, who shall be chosen annually, at the annual meeting of the corporation or at any lawful adjournment thereof and shall hold their offices for the period of 1 year and until their successors shall be duly chosen. The board of directors shall have power to do all things which may be proper or necessary, not inconsistent with law, for the general regulation and management of the business of the corporation and the administration of its affairs, including the election of officers. A majority of the board of directors constitutes a quorum at all lawful meetings.

HISTORY: New 1969, p. 725, Act 319, Imd. Eff. Aug. 20.

487.584 Directors, officers and employees; indemnification or reimbursement.

Sec. 284. A person may be indemnified or reimbursed by a safe and collateral deposit company subject to the provisions of this chapter, for reasonable expenses actually incurred by him in connection with any action, suit or proceeding to which he is made a party by reason of his being or having been a director, officer or employee of a safe and collateral deposit company. A person shall not be indemnified or reimbursed in relation to any action, suit or proceeding in which he has finally been adjudged negligent in the performance of his duties or to have committed an act or failed to perform a duty for which there is a common law or statutory liability. A person shall not be indemnified or reimbursed in relation to any action, suit or proceeding which has been made the subject of a compromise settlement, except with the approval of the holders of record of a majority of the outstanding shares of the safe and collateral deposit company. The right of indemnification or reimbursement shall not be exclusive of other rights to which a person may be entitled as a matter of law.

HISTORY: New 1969, p. 725, Act 319, Imd. Eff. Aug. 20.

487.586 Safe deposit and storage business; liability limit; lien for unpaid rental and storage charge.

Sec. 286. (1) Any corporation organized under this chapter may operate a safe deposit and storage business and provide proper vaults and premises for the same.

(2) The legal liability of the corporation on account of any loss to a customer shall not exceed the sum of \$10,000.00 for any 1 box or compartment, including all property accepted for storage outside of the box or compartment. The corporation may contract with the renter to have the renter assume all risks arising from the use of such box, compartment or storage.

(3) The corporation shall have a lien for unpaid rental and storage charges on the contents of any box or compartment and any property accepted for storage outside of the box or compartment. If the charges are not paid within 1 year from the date of accrual, the corporation may sell the property at public auction upon like notice as is required by law for sales on execution and after retaining from the proceeds of sale the

amount of all charges due and owing at the time of the sale and the reasonable expenses of the sale, it shall pay the balance upon proper showing to the person entitled thereto. The corporation may fairly and in good faith purchase the property or any part thereof at the sale.

HISTORY: New 1969, p. 725, Act 319, Imd. Eff. Aug. 20.

487.587 Property rights; investments.

Sec. 287. A safe and collateral deposit corporation may purchase, lease, hold and convey all such real and personal property as may be necessary for the proper conduct of its business. Any surplus capital may be invested in such securities as are designated by law as lawful investments for banks organized and existing under the provisions of this act.

HISTORY: New 1969, p. 726, Act 319, Imd. Eff. Aug. 20.

487.589 Annual reports; time, signing, contents.

Sec. 289. Every safe and collateral deposit company shall make to the commissioner not less than 1 report during each calendar year, at such time as the commissioner requires it, according to the forms prescribed by him, verified by the oath or affirmation of the president, vice-president, secretary or treasurer thereof and signed by a majority of its board of directors. The report shall exhibit the condition of the corporation and shall contain such information as may be required by the commissioner. The commissioner may call for special reports from any safe and collateral deposit company whenever, in his judgment, the same are necessary to inform him fully of the condition of the safe and collateral deposit company.

HISTORY: New 1969, p. 726, Act 319, Imd. Eff. Aug. 20.

CHAPTER 8

GENERAL PROVISIONS, REPEALS AND SAVINGS CLAUSE

487.591 Attachment and execution against bank.

Sec. 291. Attachment or execution shall not be issued against any bank or its property before final judgment in any suit, action or proceeding in any court.

HISTORY: New 1969, p. 726, Act 319, Imd. Eff. Aug. 20.

487.592 Prohibited use of names.

Sec. 292. The use of the word "bank", "banker", or "banking" or, in any foreign language, words of similar meaning as a designation or name, or part of a designation or name under which business is or may be conducted in this state, is restricted to a national banking association, a bank subject to the provisions of this act, a bank holding company registered as such under the provisions of the state bank holding company act, or to a banking institution or banking corporation formed under the laws of any other state, which is conducting business in this state. All other persons, firms, partnerships or corporations are prohibited from using the word "bank", "banker", "banking" or, in any foreign language, words of similar meaning, as a designation or name, or part of a designation or name, under which business may be conducted in this state.

HISTORY: New 1969, p. 726, Act 319, Imd. Eff. Aug. 20.

487.593 Scope of act.

Sec. 293. (1) The powers, privileges, duties and restrictions conferred and imposed upon any institution existing and doing business under the laws of this state, to which this act is applicable, are abridged, enlarged or modified as each particular case may require to conform to the provisions of this act and to such amendments as may be made thereto. Nothing in this act shall be construed to affect the legality of investments heretofore made, or of transactions heretofore had, pursuant to any provisions

of law in force when such investments were made or transactions had, nor to require the change of investments for those named in this act, except as the same can be done by the sale or redemption of the securities so invested in, in such manner as to prevent loss or embarrassment in the business of such institution, or unnecessary loss or injury to the borrowers on such securities; but no extension of any such loan or investment shall be made by any institution, unless necessary to avoid loss or embarrassment as above provided.

(2) No institution which may be incorporated under this act shall hereafter be incorporated except under the provisions of this act. Every institution governed by the terms of this act heretofore organized and incorporated under any law of this state, which if now incorporated would be required to incorporate under and be subject to this act, shall hereafter be subject to the provisions of this act without formal reorganization hereunder and such corporations shall be deemed to exist under this act and the provisions of this act shall govern all such corporations heretofore or hereafter incorporated in this state. Nothing in this act shall be construed as attempting to deprive any such corporation of any constitutional power, right, privilege or franchise which any such corporation now enjoys; nor to deprive any trust company of any abstracting business which it may now own and operate.

HISTORY: New 1969, p. 726, Act 319, Imd. Eff. Aug. 20.

487.595 General corporation act not applicable.

Sec. 295. Notwithstanding any other provision of law, no bank, industrial bank or trust company subject to the provisions of this act shall be governed by the provisions of Act No. 327 of the Public Acts of 1931, as amended, being sections 450.1 to 450.192 of the Compiled Laws of 1948.

HISTORY: New 1969, p. 727, Act 319, Imd. Eff. Aug. 20.

487.597 Repeal.

Sec. 297. Act No. 341 of the Public Acts of 1937, as amended, being sections 487.1 to 487.292 of the Compiled Laws of 1948, is repealed.

HISTORY: New 1969, p. 727, Act 319, Imd. Eff. Aug. 20.

487.598 Saving clause.

Sec. 298. This act shall not impair or affect any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if this act had not been passed. Such proceedings may be consummated under and according to the law in force at the time such proceedings are or were commenced. All prosecutions pending at the effective date of this act and all prosecutions instituted after the effective date of this act for offenses committed prior to the effective date of this act may be continued or instituted under and in accordance with the provisions of the law in force at the time of the commission of such offense.

HISTORY: New 1969, p. 727, Act 319, Imd. Eff. Aug. 20.

487.601-487.617, 487.621, 487.641 Repealed. 1962, p. 317, Act 174, Eff. Jan. 1, 1964.

Section related to collection and payment of checks by banks.

Act 165, 1865, p. 273; Eff. Jun. 22.

AN ACT making it obligatory upon banks and bankers in this state to stamp counterfeit, altered and worthless bank bills.

*The People of the State of Michigan enact:***487.651 Marking of counterfeit, altered or worthless bills by bankers.**

Sec. 1. That any bank or banker in this state to whom may be tendered in payment, or upon deposit, or for any other purpose, a counterfeit or worthless bank bill, or a bank bill which has been altered from its original denomination or name, or a paper not a bank bill but made in the similitude thereof, or purporting to be the bill of a bank which never existed, shall write or stamp upon all such counterfeit bills the word "counterfeit;" upon all such altered bills the word "altered;" and upon all such other bills and papers the word "worthless," adding thereto the name of the bank or banker by which the writing or stamp is made.

HISTORY: CL 1871, 2255;—How. 3210;—CL 1897, 5277;—CL 1915, 6722;—CL 1929, 19070;—CL 1948, 487.651.

487.652 Marking of counterfeit, altered or worthless bills; penalty for failure, recovery, disposition of proceeds; civil liability for mistaken marking.

Sec. 2. Any bank or banker willfully or knowingly neglecting or refusing to write upon or stamp any bill or bills knowing them to be counterfeit, altered or worthless as presented in the preceding section, shall forfeit and pay the purported value of the bill or bills allowed to pass without being so written upon or stamped, to be recovered before any court having jurisdiction, and paid into the county treasury, for the benefit of the library fund; and if any bank or banker, or bank officer, shall so write upon or stamp a bank bill which is not a counterfeit, or altered or worthless bill, such bank or banker or bank officer shall only be liable to pay the holder thereof the value of such bill or bills, which shall be paid on presentation and surrender of such bill or bills to the person stamping or marking the same.

HISTORY: CL 1871, 2256;—How. 3211;—CL 1897, 5278;—CL 1915, 6723;—CL 1929, 19071;—CL 1948, 487.652.

487.661, 487.671, 487.681, 487.682 Repealed. 1962, p. 317, Act 174, Eff. Jan. 1, 1964.

Section related to checks forged, revocation and stop payment orders.

Act 349, 1925, p. 527; Eff. Aug. 27.

AN ACT relative to notice of adverse claim to a bank deposit and to prescribe the procedure necessary to make such claim effective to cause recognition of the adverse claimant.

*The People of the State of Michigan enact:***487.691 Adverse claim to bank deposit; notice; restraining order; exception.**

Sec. 1. Notice to any bank or trust company doing business in this state of an adverse claim to a deposit standing on its books to the credit of any person shall not be effectual to cause said bank to recognize said adverse claimant unless said adverse claimant shall also either procure a restraining order, injunction or other appropriate process against said bank from a court of competent jurisdiction in a cause therein instituted by him wherein the person to whose credit the deposit stands is made a party and served with summons, or shall execute to said bank, in form and with sureties acceptable to it a bond, indemnifying said bank from any and all liability, loss, damage, costs and expenses for and on account of the payment of such adverse claim or the dishonor of the check or other order of the person to whose credit the deposit stands on the books of said bank: Provided, That this law shall not apply in any instance where the person to whose credit the deposit stands is a fiduciary for such adverse claimant, and the facts constituting such relationship, as also the facts showing reasonable cause

of belief on the part of the said claimant that the said fiduciary is about to misappropriate said deposit, are made to appear by the affidavit of such claimant.

HISTORY: CL 1929, 12068;—CL 1948, 487.691.

Act 248, 1909, p. 432; Eff. Sep. 1.

AN ACT in relation to the payment of deposits of money in banks and trust companies by minors, trust deposits, and deposits in the names of more than 1 person.

The People of the State of Michigan enact:

487.701 Minor's deposit; payment, receipt or acquittance sufficient.

Sec. 1. When any deposit of money shall be made in any bank or trust company by or in the name of any minor, the same shall be held for the exclusive right and benefit of such minor, and shall be paid, together with the dividends and interest thereon to the person in whose name the deposit shall have been made, and the receipt or acquittance of such minor shall be a valid and sufficient release and discharge for such deposit, or any part thereof to the corporation.

HISTORY: CL 1915, 8038;—CL 1929, 12061;—CL 1948, 487.701.

MINOR'S DEPOSIT: In credit union, see Compilers' § 490.13.

487.702 Trust deposits; payment to beneficiary on death of trustee; exception, receipt sufficient for payment.

Sec. 2. When any deposit of money shall be made in any bank or trust company by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same, or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom the deposit was made: Provided, however, That if the balance on such deposit shall exceed 100 dollars and such person shall be under the age of 18 years, the same may be paid only to his or her legally appointed guardian, and the receipt or acquittance of such beneficiary or guardian to whom such payment is made shall be a valid and sufficient release and discharge to said depository for all payments so made.

HISTORY: CL 1915, 8039;—Am. 1929, p. 338, Act 145, Eff. Aug. 28;—CL 1929, 12062;—CL 1948, 487.702.

TRUST DEPOSIT: In credit union, see Compilers' 490.13.

487.703 Deposit in name of joint beneficiaries; payment, receipt sufficient; deposits made payable to survivor; prima facie evidence.

Sec. 3. When a deposit shall be made, in any bank by any person in the name of such depositor or any other person, and in form to be paid to either or the survivor of them, such deposits thereupon and any additions thereto, made by either of such persons, upon the making thereof, shall become the property of such persons as joint tenants, and the same together with all interest thereon, shall be held for the exclusive use of the persons so named and may be paid to either during the lifetime of both, or to the survivor after the death of 1 of them, and such payment and the receipt or acquittance of the same to whom such payment is made shall be a valid and sufficient release and discharge to said banking institution for all payments made on account of such deposits prior to the receipt by said bank of notice in writing not to pay such deposit in accordance with the terms thereof.

When a deposit has been made, or shall hereafter be made, in any banking institution transacting business in this state, in the names of 2 or more persons, payable to either or the survivor or survivors, such deposit or any part thereof or any interest or dividend thereon and any additions thereto, made by any 1 of the said persons, shall become the property of such persons as joint tenants, and the same shall be held for

the exclusive use of the persons so named and may be paid to any 1 of said persons during the lifetime of said persons or to the survivor or survivors after the death of 1 of them, and such payment and the receipt or acquittance of the same to whom such payment is made shall be a valid and sufficient release and discharge to said banking institution for all payments made on account of such deposits prior to the receipt by said bank of notice in writing not to pay such deposit in accordance with the terms thereof.

The making of the deposit in such form shall, in the absence of fraud or undue influence, be prima facie evidence, in any action or proceeding, to which either such banking institution or surviving depositor or depositors is a party, of the intention of such depositors to vest title to such deposit and the additions thereto in such survivor or survivors.

HISTORY: CL 1915, 8040;—CL 1929, 12063;—Am. 1937, p. 533, Act 286, Imd. Eff. July 23;—CL 1948, 487.703.

HUSBAND AND WIFE: Joint tenancy in certain securities, see Act 212 of 1927, being Compilers' § 557.151.

Act 330, 1939, p. 850; Eff. Sep. 29.

AN ACT to provide for access to, removal of contents from, surrender of, and discharge of liability of lessor of safe deposit boxes or compartments rented to 2 or more persons by either or any 1 of such persons or the survivor or survivors of them, unless otherwise provided in the safe deposit box or compartment rental agreement.

The People of the State of Michigan enact:

487.721 Safe deposit box rented to joint holders; rights of various holders and survivors; exceptions.

Sec. 1. When 2 or more persons rent a safe deposit box or compartment, either or any 1 of such persons or the survivor or survivors of them shall be deemed, unless it is otherwise provided in the safe deposit box or compartment rental agreement, to have a right of access thereto for any purpose, to have a right to remove or exchange any contents therein and to have a right to surrender the box or compartment, terminate the rental contract and discharge the lessor of the box or compartment from liability arising from the rental thereof; and the safe deposit and collateral company, bank, industrial bank, trust company or other lessor of the box or compartment shall be protected against all renters of the box or compartment, their assigns, heirs, executors and administrators in recognizing such rights: Provided, That the foregoing shall not be construed to effect a transfer of title to any contents of such box or compartment from 1 renter thereof to another: And provided further, That the survivor or survivors of such renters shall have no right of access to such safe deposit box or compartment until the provisions of section 9 of Act No. 188 of the Public Acts of 1899, as now or hereafter amended, being section 3681 of the Compiled Laws of 1929, have been complied with.

HISTORY: CL 1948, 487.721.

NOTE: Sec. 9, Act 188, 1899, above referred to, is Compilers' § 205.209.

Act 146, 1941, p. 190; Imd. Eff. May 29.

AN ACT to authorize banks, industrial banks and trust companies to qualify as issuing agents for the sale of United States defense savings bonds, debentures, notes or other similar obligations of the United States of America and, if required, to pledge assets for the purpose of qualifying as such agents.

The People of the State of Michigan enact:

487.731 U.S. defense savings bonds; banks and trust companies authorized as issuing agent for sale of; deposit or pledge of assets.

Sec. 1. Any bank, any industrial bank and any trust company is authorized to qualify as issuing agent for the sale of United States defense savings bonds, debentures, notes or other similar obligations of the United States of America and may, subject to the approval of the commissioner of the banking department, deposit and/or pledge assets as may be required for the purpose of qualifying as such agent.

HISTORY: CL 1948, 487.731.

487.732 Pledging of assets; limitation of financial institutions act not otherwise affected.

Sec. 2. This act shall not affect the limitations and restrictions of Act No. 341 of the Public Acts of 1937, as amended, with respect to the pledge of assets of the institutions herein named, except in so far as provided in this act.

HISTORY: CL 1948, 487.732.

NOTE: Act 341, 1937, above referred to, is Compilers' repealed § 487.1 et seq.

Sec. 3.

HISTORY: Rep. 1943, p. 121, Act 89, Imd. Eff. April 13.

NOTE: This section provided for expiration of act April 1, 1943.

Act 2, 1935, p. 13; Imd. Eff. Feb. 20.

AN ACT to authorize loans, advances of credit and purchases in accordance with the provisions of an act of Congress, entitled "National Housing Act," approved by the President on June 27, 1934, and any acts amendatory thereof or supplemental thereto; and prescribing the effect of this act.

The People of the State of Michigan enact:

487.751 National housing act; state financial institutes' authorized transactions; collateral.

Sec. 1. Subject to such regulations as may be prescribed by the proper state supervising authority, banks, trust companies, building and loan associations, insurance companies, finance companies and other lending agencies, the character, extent or incidents of whose loans are subject to the law of this state, are authorized:

(a) To make such loans and advances of credit and purchases of obligations representing loans and advances of credit as are eligible for insurance by the federal housing administrator, and to obtain such insurance.

(b) To make such loans secured by mortgages on real property as are eligible for insurance by the federal housing administrator, and to obtain such insurance.

(c) To purchase, invest in, and dispose of, bonds or notes secured by mortgage or trust deed insured by the federal housing administrator or debentures issued by the federal housing administrator or securities issued by national mortgage associations.

Wherever, by statute of this state, collateral is required as security for the deposit of public or other funds, or deposits are required to be made with any public official or department, or any investment of capital or surplus, or a reserve or other fund, is required to be maintained consisting of designated securities, notes or bonds secured by mortgage or trust deed insured by the federal housing administrator, debentures issued by the federal housing administrator, and obligations of national mortgage associations shall be eligible for such purposes.

HISTORY: Am. 1937, p. 387, Act 245, Imd. Eff. July 21;—CL 1948, 487.751.

NOTE: National housing act, see 12 U.S.C.A. § 1703 et seq.

487.752 Construction of act as to effect of state laws.

Sec. 2. No law of this state prescribing the nature, amount or form of security or deposit, or requiring security upon which loans or advances of credit may be made, or prescribing or limiting interest rates upon loans or advances of credit, or prescribing or limiting the period for which loans or advances of credit may be made, or prescribing or limiting the investment in loans or advances of credit, shall be deemed to apply to security given, furnished or accepted, or to loans, advances of credit, or purchases made, pursuant to section 1 of this act: Provided, however, That nothing contained in this act shall, directly or indirectly, authorize or permit any institution subject to its terms to invest in loans or make advances of credit or purchase securities pursuant to section 1 hereof in an amount greater than now authorized by the respective statutes which govern the organization and management of such institutions.

HISTORY: CL 1948, 487.752.

487.753 Declaration of necessity.

Sec. 3. This act is immediately necessary for the preservation of the public welfare, peace, health and safety.

HISTORY: CL 1948, 487.753.

487.761 Repealed. 1964, p. 393, Act 256, Eff. Aug. 28.

Section provided for appointment, supervision, reports and compensation of receivers of banks owned by any individual or unincorporated association.

Act 160, 1859, p. 444; Eff. May 18.

AN ACT relative to brokers and exchange dealers.

The People of the State of Michigan enact:

487.801 Certificate of brokers; necessity; filing with county clerk; contents; public inspection.

Sec. 1. That no person or persons shall be engaged in the business of a broker, or of buying or selling current or uncurrent money, or bank notes, or in the exchange thereof, or in the buying or selling exchange, or in the exchange of coins, or in the receiving of deposits of money, or bank notes, as such broker or exchange dealer, unless such person or persons shall first make and file with the county clerk of the county in which such broker's office is or shall be located, a certificate in writing, to be signed by each, and verified by the affidavit of 1 of the members of said copartnership or company, setting forth the full name of each and every person composing the said firm, and the residence of each, the name and style of the firm, the terms of said partnership, and the length of time for which it is to continue, if limited by the partnership contract, and also the locality of their place of business; which certificate shall be kept in the office of the said county clerk, as a public document, and open to the inspection of any person.

HISTORY: CL 1871, 1825;—How. 3128;—CL 1897, 5271;—CL 1915, 6715;—CL 1929, 9710;—CL 1948, 487.801.

487.802 Certificate of brokers; new certificate, cause, prior liability.

Sec. 2. In case there shall be, at any time after the making and filing of said certificate, any change in the name or style of said firm, or in the terms of their partnership, then a new certificate, verified as before specified, shall in like manner be filed, as required by section 1 of this act, before such change shall take effect; and until such new

certificate shall have been made and filed, as above specified, the individual member or members of the firm, as set forth in the certificate on file, shall be held to be the actual members of the firm, and in all respects holden and liable for any obligation, debt or liability, incurred by the said company, as brokers or exchange dealers.

HISTORY: CL 1871, 1828;—How. 3129;—CL 1897, 5272;—CL 1915, 6716;—CL 1929, 9711;—CL 1948, 487.802.

487.803 Certificate of brokers; evidence of facts.

Sec. 3. A certified copy of the said certificate on file in the county clerk's office, signed by the county clerk, and attested by the seal of the circuit court of the county, shall be held to be good and sufficient evidence of any or all the facts in said certificate, stated and set forth.

HISTORY: CL 1871, 1827;—How. 3130;—CL 1897, 5273;—CL 1915, 6717;—CL 1929, 9712;—CL 1948, 487.803.

487.804 Violation of act; penalty.

Sec. 4. If any person shall carry on, or be engaged in carrying on, the business of a broker or exchange dealer, contrary to the provisions of this act, such person shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not less than 100 dollars, nor more than 1,000 dollars, at the discretion of the court.

HISTORY: CL 1871, 1828;—How. 3131;—CL 1897, 5274;—CL 1915, 6718;—CL 1929, 9713;—CL 1948, 487.804.

Sec. 5. (This was a repeal section.)

HISTORY: CL 1871, 1829;—How. 3132;—CL 1915, 6719;—CL 1929, 9714;—Hep. 1945, p. 402, Act 267, Imd. Eff. May 25.

ACT REPEALED: Secs. 10-15, Ch. 21, R.S. 1846.

487.806 Advertisement or representation of nature of business; violation, penalty; exception.

Sec. 6. No person or firm doing business under this act shall advertise or put up signs, or use any device or contrivance whatever, tending to convey the impression that the place of business of such person or firm is an organized bank, but in all such cases such person or firm, if they advertise at all, must use their individual or firm name, and state in such advertisement the names of every member of such copartnership or firm; in case any person or persons shall violate any of the provisions of this section, they shall be deemed guilty of a misdemeanor, and shall each, upon conviction, be punished by a fine of not more than 200 dollars and costs, or by imprisonment of not more than 6 months in the county jail; Provided, The words "bank, banking office or exchange office" as a sign over the door or on the building or used on notes, checks or drafts in connection with the individual or firm name, shall not be deemed a violation of the foregoing.

HISTORY: Add. 1875, p. 155, Act 126, Eff. Aug. 3;—How. 3133;—CL 1897, 5275;—CL 1915, 6720;—CL 1929, 9715;—CL 1948, 487.806.

RESTRICTION AS TO NAME: See Compilers' § 450.6.

ASSUMED NAME: See Compilers' § 445.1.

487.807 Violation of act; procedure for collection of penalties.

Sec. 7. The state treasurer shall, when his attention is called to violations of any of the provisions of this act, refer the same to the attorney general, who shall proceed, when warranted by the evidence, to collect the penalties as herein set forth; and all suits or proceedings for the violation of any of the provisions of this act shall be first commenced in the circuit court of the county in which the business office of said person or firm is located.

HISTORY: Add. 1875, p. 156, Act 126, Eff. Aug. 3;—How. 3134;—CL 1897, 5276;—CL 1915, 6721;—CL 1929, 9716;—CL 1948, 487.807.

487.831-487.848 Repealed. 1963, p. 167, Act 117, Eff. Sep. 6.

Sections provided for organization and regulation of development credit corporations, and provided for their rights and powers and conditions on which such corporations might exercise powers.

Act 117, 1963, p. 162; Eff. Sep. 6.

AN ACT to provide for the organization and regulation of business development corporations; to provide their rights and powers and to prescribe the conditions on which such corporations may exercise their powers; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

487.851 Business development corporations; incorporators.

Sec. 1. Any number of persons not less than 5 may incorporate to carry on the business of a business development corporation.

HISTORY: New 1963, p. 162, Act 117, Eff. Sep. 6.

CITED IN OTHER SECTIONS: Sections 487.851 to 487.867 are cited in § 487.451.

487.852 Articles of incorporation; copies, filing, fee.

Sec. 2. Triplicate original articles of incorporation, signed by the incorporators shall be delivered to the state department of banking, together with filing and examination fee in the amount of \$50.00. If the department finds that the articles conform to law it shall file 1 of the original articles in the office of the department, shall certify and forward by mail 1 of the original articles to the clerk of the county in which the corporation is located, and shall return 1 of the original articles to the incorporators.

HISTORY: New 1963, p. 162, Act 117, Eff. Sep. 6.

487.853 Articles of incorporation; contents.

Sec. 3. The articles of incorporation shall specify (a) the name assumed by such corporation; (b) the place where such corporation is to be located and conduct its business; (c) the purposes of the corporation; (d) the amount of its capital stock authorized and the amount subscribed and paid in. There shall be but 1 class of stock issued by such corporation; (e) the names and addresses of the incorporators; (f) the period for which the corporation is organized; (g) such other matters as are not inconsistent with the purposes of this act.

HISTORY: New 1963, p. 162, Act 117, Eff. Sep. 6.

487.854 Purpose of corporation.

Sec. 4. The purposes of such corporation shall be to assist, promote, encourage and through the cooperative efforts of the institutions and corporations which, from time to time, shall become members thereof, develop and advance the business prosperity and economic welfare of the state; to encourage and assist in the location of new business and industry in the state and to rehabilitate existing business and industry; to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the economic stability of the state. provide maximum opportunities for employment, encourage thrift and improve the standard of living of the citizens of the state; to cooperate and act in conjunction with other organizations, public or private, the objects of which are the promotion and advancement of industrial, commercial, agricultural and recreational developments in the state; to furnish either equity capital, debt capital or both to approved and deserving applicants, for the promotion, development and conduct of all kinds of business activity in the state, thereby establishing a source of capital and credit not otherwise readily available therefor.

HISTORY: New 1963, p. 162, Act 117, Eff. Sep. 6.

487.855 Corporate powers.

Sec. 5. In furtherance of the purposes set forth in section 4, and in addition to the powers conferred on corporations by general laws, such corporation, subject to the restrictions and limitations contained in this article, shall have the following powers:

Borrowing power.

(a) To borrow money and otherwise incur indebtedness for any of its purposes; to issue its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured therefore; and to secure the same by mortgage, pledge, deed of trust or other lien on its property, franchises, rights and privileges of every kind and nature or any part thereof.

Lending power; surety.

(b) To lend money to, and to guarantee, indorse, or act as surety on the bonds, notes, contracts, or other obligations of, or otherwise assist financially, any person, firm, corporation or association, and to establish and regulate the terms and conditions with respect to any such loans or financial assistance and the charges for interest and service connected therewith. It is not the intention hereof to take from banking organizations any such loans or commitments as may be desired by them generally in the ordinary course of their business.

Real and personal property.

(c) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, mortgage, lease, pledge, or otherwise dispose of, upon such terms and conditions as its board of directors may deem advisable, real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by such corporation from time to time in the satisfaction of debts or enforcement of obligations.

Good will and other rights; industrial plants; business establishments.

(d) To acquire the good will, business, rights, real and personal property and other assets, or any part thereof, of such persons, firms, corporations, joint stock companies, associations or trusts as may be in furtherance of the corporate purposes provided herein, and to assume, undertake, guarantee or pay the obligations, debts and liabilities of any such person, firm, corporation, joint stock company, association or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments, and, in furtherance of the corporate purposes, to acquire, construct, or reconstruct, alter, repair, maintain, operate, sell, lease, or otherwise dispose of industrial plants or business establishments.

Stockholding.

(e) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the stock, shares, bonds, debentures, notes or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint stock company, association or trust, and while the owner or holder thereof, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, but nothing herein provided shall authorize the holding of securities of or otherwise engaging directly or indirectly in a business where such holding of securities or engaging in business is not authorized for general profit corporations under the provisions of Act No. 327 of the Public Acts of 1931, as amended, being sections 450.1 to 450.568 of the Compiled Laws of 1948.

Cooperation with and assistance to governmental agencies.

(f) To cooperate with and avail itself of the facilities of state departments and other government agencies; and to cooperate with and assist, and otherwise encourage, local

organizations in the various communities in the state in the promotion, assistance and development of the business prosperity and economic welfare of such communities and of the state.

HISTORY: New 1963, p. 163, Act 117, Eff. Sep. 6.

487.856 Board of directors; number, residency, terms, election, voting classes, vacancies.

Sec. 6. All the corporate powers of the corporation shall be exercised by a board of not less than 15 directors who shall be residents of this state. The number of directors and their term of office shall be determined by the stockholders at the first meeting held by the incorporators and by the stockholders and members at each annual meeting thereafter. In the first instance the directors shall be elected by the stockholders to serve until the first annual meeting. At the first annual meeting, and at each annual meeting thereafter, not less than 1/3 nor more than 1/2 of the directors as specified in the bylaws shall be elected by the stockholders and the remaining directors shall be elected by members of the corporation. On the election of directors and on all other matters not otherwise provided for by the bylaws, the voting by stockholders and members shall be by separate classes with each stockholder having 1 vote regardless of the number of shares held, and with each member having 1 vote plus 1 additional vote if the member has a loan limit of more than \$50,000.00. The removal of any director from this state shall immediately vacate his office. If any vacancy occurs in the board of directors through death, resignation or otherwise, the remaining directors may elect a person to fill the vacancy until the next annual meeting of the corporation. The directors shall be annually sworn to the proper discharge of their duties and they shall hold office until others are elected or appointed and qualified in their stead.

HISTORY: New 1963, p. 164, Act 117, Eff. Sep. 6.

487.857 Loan committee; number, election, terms, vacancies, duties.

Sec. 7. (1) There shall be a loan committee of such corporation consisting of 2 members elected by the stockholders and 4 members elected by the members of the corporation. The members of each such loan committee shall be elected at the annual meetings of such corporation in the same manner as is provided in section 6 and shall serve for terms of 1 year.

(2) If a vacancy occurs in the membership of the loan committee, the remaining members of the committee shall elect a person to fill the vacancy for the unexpired term. Upon the expiration of their terms the members of the loan committee shall continue as such until their successors have been elected and have qualified.

(3) Every application to the corporation for a loan or financial assistance shall be made through the loan committee. The loan committee shall review the application and promptly transmit it to the board of directors for consideration along with the recommendations of the loan committee with respect thereto.

HISTORY: New 1963, p. 164, Act 117, Eff. Sep. 6.

487.858 Business development corporation; members; limitation on loans to corporation.

Sec. 8. (1) The members of the corporation shall consist of such banking organizations, insurance and surety companies as may make application for membership in the corporation. Membership shall become effective upon the acceptance of the application by the board of directors. Each member shall lend funds to the corporation as and when called upon by it to do so, but the total amount on loan by any member at any one time shall not exceed the following limit to be determined as of the time it be-

comes a member, and as readjusted annually in the event of any change in the base of the loan limit of the member: national banking associations, state-chartered commercial banks and trust companies, 2% of capital and surplus; savings and loan associations, 2% of loss reserves; stock insurance companies, 2% of capital and surplus; surety and casualty companies, 2% of capital and surplus; mutual insurance companies, 2% of guaranty funds or of surplus, whichever is applicable; and comparable limits for other banking, loaning and insurance organizations, as established by the board of directors. The total amount on loan by any member at any one time shall not exceed \$500,000.00. All loan limits shall be established at the thousand dollar nearest to the amount computed on an actual basis. All calls of funds which members are committed to lend to the corporation shall be prorated by the corporation among the members in the same proportion that the maximum loan limit of each bears to the aggregate loan limits of all members of such corporation.

Withdrawal of member.

(2) Upon 6 months' prior written notice to the board of directors, a member of the corporation may withdraw from membership, effective at the end of such 6-month period and, after the effective date of withdrawal, the member shall be free of obligations hereunder except those accrued or committed by such corporation prior to the effective date of withdrawal.

Investments by banking, insurance and surety organizations.

(3) Notwithstanding the provisions of any other law, the notes or other interest-bearing obligations of the corporation, issued in accordance with and by virtue of this act and the bylaws of the corporation, shall be legal investments for the banking, insurance and surety organizations who become members of the corporation, up to the loan limits established in this section.

HISTORY: New 1963, p. 164, Act 117, Eff. Sep. 6.

487.859 Capital stock; earned surplus, investment.

Sec. 9. (1) The capital stock of the corporation shall be 20,000 shares of no par value, which shall be issued for \$100.00 per share in cash. At least 5% of the capital stock of the corporation shall be paid into its treasury in cash before it shall be authorized to transact any business other than as relates to its organization.

(2) The corporation shall set apart as an earned surplus not less than 10% of its net earnings in each year until the earned surplus equals the total of the paid-in capital and paid-in surplus then outstanding. The earned surplus shall be held in cash, invested in United States government bonds, or as provided in the corporation's bylaws, and shall be used to meet losses and contingencies of the corporation. Whenever the amount of earned surplus becomes impaired, it shall be built up again to the required amount in the manner provided for its original accumulation.

HISTORY: New 1963, p. 165, Act 117, Eff. Sep. 6.

487.860 Deposit of funds in banking institution; loans to officers, stockholders, or members.

Sec. 10. The corporation shall not deposit any of its funds in any banking institution unless the institution has been designated as a depository by a vote of a majority of the directors, exclusive of any director who is an officer or director of the depository so designated. The corporation shall not receive money on deposit. No loans shall be made directly or indirectly to any officer of the corporation or to any stockholder or member.

HISTORY: New 1963, p. 165, Act 117, Eff. Sep. 6.

487.861 Supervision, examination and control of state banking department; annual examination, no fee; annual report.

Sec. 11. The corporation shall be subject to the supervision, examination and control of the state banking department in the same manner as banking organizations are supervised, examined and controlled by him pursuant to law, and shall be examined by him annually, but the corporation shall not be deemed to be a banking organization nor be required to pay a fee for the examination. The corporation shall make an annual report of its condition to the governor, legislature and the banking department, on or before January 1 of each year and at such other time as the banking department shall require.

HISTORY: New 1963, p. 165, Act 117, Eff. Sep. 6.

487.862 Holders of capital stock; rights denied.

Sec. 12. (1) The holders of capital stock of the corporation shall not, as such, have any preemptive or preferential right to purchase or subscribe for any part of the unsold or new issue of capital stock of such corporation, whether now or hereafter authorized or issued, or to purchase or subscribe for any bonds or other obligations, whether or not convertible into stock of such corporation, now or hereafter authorized or issued.

Reorganization; meeting of creditors, members, stockholders.

(2) Whenever a compromise or arrangement or any plan of reorganization of such corporation is proposed between such corporation and its creditors, members or stockholders, the circuit court of Ingham county, on application of the corporation or of any creditor, member or stockholder thereof, or on the application of any receiver appointed for the corporation, may order a meeting of the creditors, members or stockholders as may be affected by the proposed compromise or arrangement or plan of reorganization, which shall be called in such manner as the court directs. If, at such meeting, the compromise or arrangement or plan of reorganization is agreed to by or on behalf of the creditors holding 2/3 in amount of the claims against the corporation, and by or on behalf of the stockholders holding the majority of capital stock, and by or on behalf of the members holding 2/3 in amount of the outstanding notes or other interest-bearing obligations of the corporation and if the agreement is further evidenced by the written acceptance of the creditors, stockholders and members, duly filed in the court, the compromise or arrangement or plan of reorganization, if approved by the court as just and equitable, shall be binding on all creditors, stockholders or members who are affected thereby, and also on the corporation. All persons who become creditors, stockholders or members of the corporation shall be deemed to have become creditors, stockholders or members subject in all respects to this section, and the same shall be absolutely binding upon them. For the purposes of this subsection only, members shall not be deemed to be creditors and shall act under this subsection as a separate class.

HISTORY: New 1963, p. 165, Act 117, Eff. Sep. 6.

487.863 Participation by domestic corporations; banks.

Sec. 13. Notwithstanding any rule at common law or any provision of law or any provision in their respective charters, agreements of association, articles of organization, certificates of incorporation, or trust indentures:

(a) All domestic corporations organized for the purpose of carrying on business within this state, including, without implied limitation, any railroad or transportation corporation, and all trusts, are authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, securities or other evidences of indebtedness created by, or the shares of the capital stock of the corporation and while owners of the stock, to exercise all the rights, powers and privileges of owner-

ship, including the right to vote thereon, all without the approval of any regulatory authority of this state.

(b) All banking organizations are authorized to become members of the corporation and to make loans to such corporation as provided in this act.

(c) A banking organization which does not become a member of the corporation shall not acquire any shares of the capital stock of such corporation.

(d) Each banking organization which becomes a member of the corporation is authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of any bonds, securities or other evidences of indebtedness issued by the corporation or the shares of its capital stock, and while owners of the stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon, all without the approval of any regulatory authority of this state. The amount of the capital stock of the corporation which may be acquired by any member shall not exceed 10% of the loan limit of such member as defined by section 8. The amount of capital stock of the corporation which any member is authorized to acquire shall be in addition to the amount of capital stock in corporations which such member may otherwise be authorized to acquire.

HISTORY: New 1963, p. 166, Act 117, Eff. Sep. 6.

487.864 First meeting of corporation; notice, contents.

Sec. 14. Any 3 of the incorporators named in this act may call the first meeting of the corporation by mailing a written notice signed by the 3 incorporators, postage prepaid, to each of the other incorporators, 5 days at least before the day of the meeting, naming the time, place and purpose of such meeting; and at such meeting the necessary directors may be chosen, bylaws adopted and other corporate business transacted. Without such call all the incorporators may meet voluntarily at any time and effect their organization by electing directors, adopting bylaws and transacting other lawful business.

HISTORY: New 1963, p. 166, Act 117, Eff. Sep. 6.

487.865 Application of general corporation act.

Sec. 15. Except where specific provision to the contrary is made herein, the provisions of Act No. 327 of the Public Acts of 1931, as amended, insofar as such provisions shall apply to general profit corporations, shall be applicable to corporations organized hereunder.

HISTORY: New 1963, p. 167, Act 117, Eff. Sep. 6.

487.866 Taxation; fees.

Sec. 16. Any corporation organized hereunder shall be subject to taxation and the payment of fees as a general profit corporation except as may be otherwise provided by law.

HISTORY: New 1963, p. 167, Act 117, Eff. Sep. 6.

487.867 Repeal.

Sec. 17. Act No. 158 of the Public Acts of 1956, as amended, being sections 487.831 to 487.848 of the Compiled Laws of 1948, is repealed.

HISTORY: New 1963, p. 167, Act 117, Eff. Sep. 6.

Act 136, 1960, p. 171; Eff. Jan. 1, 1961.

AN ACT in relation to the definition, licensing and regulating of the business of selling and issuing checks, drafts and money orders as a service or for a fee or other consideration; to permit the licensing of persons engaged in such business; to provide for the administration of this act; and to prescribe penalties.

The People of the State of Michigan enact:

487.901 Sale of checks act; short title.

Sec. 1. This act shall be known and may be cited as the "sale of checks act".

HISTORY: New 1960, p. 171, Act 136, Eff. Jan. 1, 1961.

487.902 Sale of checks; definitions.

Sec. 2. For the purpose of this act:

(a) "Person" means any individual, partnership, association, joint stock association, trust or corporation.

(b) "Licensee" means any person duly licensed by the commissioner pursuant to this act.

(c) "Check" means any check, draft, money order or other instrument for the transmission or payment of money.

(d) "Commissioner" means the commissioner of the financial institutions bureau.

HISTORY: New 1960, p. 171, Act 136, Eff. Jan. 1, 1961;—Am. 1970, p. 366, Act 113, Imd. Eff. Jul. 23.

487.903 License for sale of checks.

Sec. 3. No person shall engage in the business of selling or issuing checks as a service or for a fee or other consideration without first obtaining a license from the commissioner as provided in this act.

HISTORY: New 1960, p. 172, Act 136, Eff. Jan. 1, 1961.

487.904 Institutions exempt from act.

Sec. 4. (1) Nothing in this act shall apply to the sale or issuance of checks by:

(a) Banks, credit unions, trust companies, building and loan associations and savings and loan associations organized under the laws of this state or of the United States.

(b) The United States or any department or agency thereof.

(2) This act shall not apply to the receipt of money by an incorporated telegraph company at any office of such company for immediate transmission by telegraph.

HISTORY: New 1960, p. 172, Act 136, Eff. Jan. 1, 1961.

487.905 License application; form, contents.

Sec. 5. Each application for a license to engage in the business of selling or issuing checks shall be made in writing and under oath to the commissioner in such form as he may prescribe. The application shall state the full name and business address of

(a) The proprietor, if the applicant is an individual.

(b) Every member, if the applicant is a partnership or association, except that if the applicant is a joint stock association having 50 or more members the name and business address need be given only of the association and each officer and director thereof.

(c) The corporation and each officer and director thereof, if the applicant is a corporation.

HISTORY: New 1960, p. 172, Act 136, Eff. Jan. 1, 1961.

487.906 License application; investigation fee, no refund.

Sec. 6. Each application for a license shall be accompanied by an investigation fee of \$100.00. No investigation fee shall be refunded.

HISTORY: New 1960, p. 172, Act 136, Eff. Jan. 1, 1961.

487.907 License application; financial statement showing net worth; surety bond or deposit.

Sec. 7. (1) Each application for a license shall be accompanied by:

(a) Financial statements, reasonably satisfactory to the commissioner, showing that the applicant's net worth exceeds \$25,000.00; and

(b) A surety bond issued by a bonding company or insurance company authorized to do business in this state, in the principal sum of \$50,000.00 and in an additional principal sum of \$1,000.00 for each office and for each agency of the applicant in this state at which the business is to be conducted, but in no event shall the bond be required to be in excess of \$100,000.00. If the bond accompanying the application is in a principal sum of less than \$100,000.00, the application shall be accompanied by a list of the locations, including agencies, at which the business is to be conducted. The bond shall be in form satisfactory to the commissioner and shall run to the commissioner for the benefit of any creditors of or claimants against the applicant or its agents to secure the faithful performance of the obligations of the applicant and the agents of the applicant with respect to the receipt of money in connection with the sale or issuance of checks. The aggregate liability of the surety in no event shall exceed the principal sum of the bond.

(2) In lieu of a corporate surety bond the applicant may deposit with the commissioner bonds of the United States, of this or any other state or of any municipal corporation or county in this or any other state. The bonds shall be deposited with the commissioner to secure the same obligations as would a corporate surety bond, but the depositor shall be entitled to receive all interest and dividends thereon, shall have the right to substitute other bonds for those deposited, with the approval of the commissioner, and shall be required so to do on order of the commissioner made for good cause shown.

HISTORY: New 1960, p. 172, Act 136, Eff. Jan. 1, 1961.

487.908 Licenses; issuance, procedure and requirements.

Sec. 8. Upon the filing of the application, the payment of the investigation fee and the approval by the commissioner of the bond or securities delivered pursuant to section 7, the commissioner shall investigate the financial responsibility, financial and business experience, character and general fitness of the person and, if he deems it advisable, of its officers and directors, and if he finds these factors and qualities meet the requirements of this act and are such as to reasonably warrant the belief that the person's business will be conducted honestly, fairly, equitably, carefully and efficiently and in a manner commanding the confidence and trust of the community, he shall issue to the person a license to engage in the business of selling and issuing checks subject to the provisions of this act.

HISTORY: New 1960, p. 173, Act 136, Eff. Jan. 1, 1961.

487.909 License fee.

Sec. 9. Each licensee shall pay to the commissioner within 5 days after the issuance of the license, and annually thereafter on or before March 1 of each year, a license fee of \$150.00.

HISTORY: New 1960, p. 173, Act 136, Eff. Jan. 1, 1961.

487.910 Conduct of business at more than one location; license for employee or agent.

Sec. 10. Each licensee may conduct business at one or more locations within this state and through or by means of such employees, agents or representatives as the licensee may designate and appoint from time to time. No license under this act shall be required of any employee, agent or representative who is acting for or in behalf of a licensee in the sale of checks of which the licensee is the issuer.

HISTORY: New 1960, p. 173, Act 136, Eff. Jan. 1, 1961.

487.911 Annual statement listing officers and agents; quarterly supplements.

Sec. 11. Each licensee shall file with the commissioner annually on or before March 1 of each year a statement listing the locations of the offices of the licensee and the

names and locations of the agents authorized by the licensee to engage in the sale of checks of which the licensee is the issuer. A supplemental statement setting forth any changes in the list of offices or agents shall be filed with the commissioner on or before June 1, September 1 and December 1 of each year, and the principal sum of the bond required under section 7 shall be adjusted to reflect any increase or decrease in the number of offices and agents. The annual and supplemental statements shall not be required of any licensee who continues to maintain a corporate surety bond or other bonds in the principal sum of \$100,000.00. No licensee shall be required to list agents who or which are exempt from the provisions of this act pursuant to section 4.

HISTORY: New 1960, p. 173, Act 136, Eff. Jan. 1, 1961.

487.912 License; denial or revocation; notice, hearing, appeal.

Sec. 12. No license shall be denied or revoked except on 10 days' notice to the applicant or licensee setting forth in writing the reasons therefor. Within 5 days of receipt of the notice the applicant or licensee may make written demand for a hearing. The commissioner with reasonable promptness shall hear and determine the matter as provided by law; and if the applicant or licensee deems himself aggrieved by the order of the commissioner, he may appeal within 30 days from the date of such order to the circuit court in the manner provided in section 30 of Act No. 319 of the Public Acts of 1969, being section 487.330 of the Compiled Laws of 1948, and shall be entitled to the same judicial review as therein provided. If an appeal is taken from an order revoking any license, the effect of such order may be stayed by the court pending the final determination of such appeal.

HISTORY: New 1960, p. 173, Act 136, Eff. Jan. 1, 1961;—Am. 1970, p. 366, Act 113, Imd. Eff. Jul. 23.

487.913 Enforcement of act; rules and regulations.

Sec. 13. The commissioner may make and enforce such rules and regulations as are necessary for the enforcement of this act in accordance with Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.82 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

HISTORY: New 1960, p. 173, Act 136, Eff. Jan. 1, 1961.

487.914 Investigation by state banking commissioner; additional reports; cost audit by certified public accountant.

Sec. 14. The commissioner at any time may investigate the business done in this state of any licensee, and for that purpose may examine the books, accounts, records and files used and maintained by any licensee and may require the licensee to furnish additional reports relating to the licensee's business as the commissioner may require to effectuate the provisions of this act. In addition to the annual fee provided for in section 9, the commissioner shall make a charge to the licensee in an amount sufficient to cover the cost of any examination on the basis of \$75.00 per day for each examiner for each day engaged in the examination. The commissioner may accept an annual report and audit of the affairs of any licensee under this act when made by a certified public accountant in lieu of the examination herein provided for.

HISTORY: New 1960, p. 174, Act 136, Eff. Jan. 1, 1961;—Am. 1968, p. 199, Act 138, Eff. Nov. 15.

487.915 Violation of act; penalty, separate offense.

Sec. 15. If any person to whom or to which this act applies, or any agent or representative of such person violates any of the provisions of this act, or attempts to transact the business of selling or issuing checks without having first obtained a license from the commissioner pursuant to the provisions of this act, such person and each such agent or representative is guilty of a misdemeanor, and shall be fined not less than \$100.00 nor more than \$500.00, or imprisoned in the county jail for not more

than 90 days, or both. Each transaction in violation of this act and each day that a violation continues shall be a separate offense.

HISTORY: New 1960, p. 174, Act 136, Eff. Jan. 1, 1961.

487.916 Effective date of act.

Sec. 16. This act shall become effective January 1, 1961.

HISTORY: New 1960, p. 174, Act 136, Eff. Jan. 1, 1961.

CHAPTER 489. SAVINGS AND LOAN ASSOCIATIONS

BUILDING AND LOAN ASSOCIATIONS

Act 50 of 1887

489.1-489.40 Repealed.

FOREIGN ASSOCIATIONS

Act 14 of 1901

489.201-489.211 Repealed.

FEDERAL SAVINGS AND LOAN ASSOCIATIONS

Act 77 of 1939

489.351, 489.352 Repealed.

Act 78 of 1939

489.361 Repealed.

Act 180 of 1954

489.371, 489.372 Repealed.

BUILDING AND LOAN ASSOCIATIONS

Act 102 of 1959

489.401, 489.402 Repealed.

SAVINGS AND LOAN ASSOCIATION ACT OF 1964

Act 156 of 1964

489.501 Savings and loan association act of 1964; short title.

489.510 Savings and loan association act of 1964; definitions.

489.511 Agency; definition.

489.512 Association; definition.

489.515 Branch office; definition.

489.520 Capital; definition.

489.525 Direct reduction loan; definition.

489.526 Repealed.

489.528 Earnings; definition.

489.530 Repealed.

489.535-489.537 Repealed.

489.540 Impaired condition; definition.

489.541 Insolvent condition; definition.

489.542 Insured association; definition.

489.545 Lending area; definition.

489.550 Member; definition.

489.555 Repealed.

489.556 Repealed.

489.557 Net receipts; definition.

489.558 Net income and other sources available for payment of earnings; definition.

489.559 Net investment; definition.

489.560 Repealed.

489.561 Repealed.

489.565 Real estate expenses; definition.

489.566 Real estate income; definition.

489.567 Real estate loan; definition.

489.570 Savings account; definition.

489.571 Savings liability; definition.

489.572 Supervisory authority; definition.

489.580 Withdrawal value; definition.

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489.603 Articles of association; filing in triplicate, examination; guarantee of operating expenses.

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489.605 Application to organize; approval; filing of endorsement; adoption of bylaws.

489.606 Application to organize; disapproval, grounds.

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489.608 Articles of association and bylaws; amendments, procedure.

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489.612 Chairman of organization committee; bond.

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489.614 Organization expense fund; contributions, repayment.

489.615 Organization meeting; election of officers.

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489.624 Voting; proxy.

489.625 Voting; quorum, majority rule.

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489.632 Communication between members; approval of supervisory authority.

489.633 Communication between members; application of act to federal savings and loan associations.

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489.643 Board of directors; qualifications; ineligibility.

489.644 Board of directors; terms.

489.645 Board of directors; change in number.

489.646 Board of directors; change in number; classification.

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489.648 Board of directors; quorum.

489.651 Directors, officers or employees; indemnity bonds; collection agents; penalty for criminal act, limitations.

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- 489.672 Records; agents.
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- 489.758-489.767 Repealed.
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- 489.768b Loans; dealings with successors in interest.
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- 489.771-489.773 Repealed.
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- 489.776 Real estate loans; taxes, assessments, insurance premiums, life insurance; payment by associations.
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489.1-489.40 Repealed. 1964, p. 186, Act 156, Eff. Jan. 1, 1965.

Sections provided for incorporation and regulation of certain corporations known as building and loan associations and provided penalties for violations.

489.201-489.211 Repealed. 1964, p. 186, Act 156, Eff. Jan. 1, 1965.

Sections provided for regulation of foreign building and loan and savings and loan associations, prescribed terms and conditions upon which such foreign corporations would be permitted to do business in state.

489.351, 489.352 Repealed. 1964, p. 186, Act 156, Eff. Jan. 1, 1965.

Sections provided for ownership of share accounts in federal savings and loan associations by joint owners and fiduciaries.

489.361 Repealed. 1964, p. 186, Act 156, Eff. Jan. 1, 1965.

Section authorized ownership of share accounts in federal savings and loan associations by minors.

489.371, 489.372 Repealed. 1964, p. 186, Act 156, Eff. Jan. 1, 1965.

Sections required filing of annual report and payment of annual fee by federal savings and loan associations.

489.401, 489.402 Repealed. 1964, p. 186, Act 156, Eff. Jan. 1, 1965.

Sections regulated advertising by savings and loan and building and loan associations and prescribed penalties.

Act 156, 1964, p. 149; Eff. Jan. 1, 1965.

AN ACT to revise, consolidate and classify the laws relating to savings and loan associations and savings associations; to provide for the organization, chartering, regulation and supervision of such associations; to prescribe the rights, powers and immunities of such associations; to prescribe the fees, taxes and charges to be paid by such associations and the disposition of revenues therefrom; to require certain reports and examinations of such associations; to prescribe penalties for violations of this act and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

489.501 Savings and loan association act of 1964; short title.

Sec. 101. This act shall be known and may be cited as the "Savings and loan association act of 1964".

HISTORY: New 1964, p. 150, Act 156, Eff. Jan. 1, 1965.

CITED IN OTHER SECTIONS: Sections 489.501 to 489.809 are cited in §§ 16.334 and 206.71.

489.510 Savings and loan association act of 1964; definitions.

Sec. 110. When used in this act, the following words and phrases shall have the following meanings except to the extent that any such word or phrase is specifically qualified by its context.

HISTORY: New 1964, p. 150, Act 156, Eff. Jan. 1, 1965.

489.511 Agency; definition.

Sec. 111. "Agency" means the place of business, other than the home office or a branch office, at which an agent or agents of the association transact authorized business of the association.

HISTORY: New 1964, p. 150, Act 156, Eff. Jan. 1, 1965.

489.512 Association; definition.

Sec. 112. "Association" means a savings and loan association or savings association heretofore or hereafter organized and chartered pursuant to the provisions of this act for the purpose of accumulating and acquiring funds of the public and investing such funds pursuant to the provisions of this act.

HISTORY: New 1964, p. 150, Act 156, Eff. Jan. 1, 1965.

489.515 Branch office; definition.

Sec. 115. "Branch office" means a legally established place of business of the association other than the home office authorized by the board of directors and approved by the supervisory authority, at which savings accounts and loan payments may be accepted and applications for loans may be received, and at which account books and membership certificates may be issued and loans may be closed.

HISTORY: New 1964, p. 150, Act 156, Eff. Jan. 1, 1965.

489.520 Capital; definition.

Sec. 120. "Capital" means the savings liability as defined in section 171.

HISTORY: New 1964, p. 150, Act 156, Eff. Jan. 1, 1965.

489.525 Direct reduction loan; definition.

Sec. 125. "Direct reduction loan" means a loan repayable in regular installments, equal or unequal.

HISTORY: New 1964, p. 150, Act 156, Eff. Jan. 1, 1965.

489.526 Repealed. 1967, p. 122, Act 96, Imd. Eff. Jun. 21.

Section defined "dividend" with respect to savings and loan associations.

489.528 Earnings; definition.

Sec. 128. "Earnings" means that part of the sources available for payment of earnings of an association which is declared payable on savings accounts from time to time by the board of directors, and is the cost of savings money to the association. Earnings may also be referred to as "dividends" or "interest".

HISTORY: Add. 1967, p. 113, Act 96, Imd. Eff. Jun. 21;—Am. 1969, p. 536, Act 293, Imd. Eff. Aug. 11.

489.530 Repealed. 1970, p. 548, Act 185, Imd. Eff. Aug. 3.

Section defined gross income in relation to savings and loan associations.

489.535-489.537 Repealed. 1967, p. 122, Act 96, Imd. Eff. Jun. 21.

Sections defined "home", "home loan" and "home property" with respect to savings and loan associations.

489.540 Impaired condition; definition.

Sec. 140. "Impaired condition" means any condition, other than insolvency, resulting from unsafe, unsound, or illegal policies or practices of the association, its board of directors, or its personnel.

HISTORY: New 1964, p. 151, Act 156, Eff. Jan. 1, 1965.

489.541 Insolvent condition; definition.

Sec. 141. "Insolvent condition" means a condition in which the assets of an association in the aggregate do not have a fair value equal to the aggregate amount of liabilities of the association to its creditors, including its members and all other persons.

HISTORY: New 1964, p. 151, Act 156, Eff. Jan. 1, 1965.

489.542 Insured association; definition.

Sec. 142. "Insured association" means an association the savings accounts of which are insured wholly or in part by an agency of the federal government.

HISTORY: New 1964, p. 151, Act 156, Eff. Jan. 1, 1965.

489.545 Lending area; definition.

Sec. 145. "Lending area" means the area within a radius of miles from the association's home office prescribed by regulation of the supervisory authority.

HISTORY: New 1964, p. 151, Act 156, Eff. Jan. 1, 1965.

489.550 Member; definition.

Sec. 150. "Member" means a person owning a savings account of an association or a person borrowing from or assuming or obligated upon a loan or land contract by an association, and any other person obligated to an association. A joint and survivorship relationship, whether of investors or borrowers or contract vendees constitutes a single membership.

HISTORY: New 1964, p. 151, Act 156, Eff. Jan. 1, 1965.

489.555 Repealed. 1970, p. 548, Act 185, Imd. Eff. Aug. 3.

Section defined net earnings in relation to savings and loan associations.

489.556 Repealed. 1967, p. 122, Act 96, Imd. Eff. Jun. 21.

Section defined "net earnings available for dividends" with respect to savings and loan associations.

489.557 Net receipts; definition.

Sec. 157. "Net receipts" means the cash receipts of the association obtained from investments, interest, loans repaid to the association, fines and all other receipts, except borrowed money and borrowers' insurance and tax payments, less disbursements for

all expenses necessary and incidental to doing business, expenses of maintaining and improving real estate, including the payment of taxes and insurance thereon, the payment or renewal of obligations, the payment of interest, and creation of reserves for the payment of cash dividends.

HISTORY: New 1964, p. 151, Act 156, Eff. Jan. 1, 1965.

489.558 Net income and other sources available for payment of earnings; definition.

Sec. 158. "Net income and other sources available for payment of earnings" shall mean net income for an accounting period less amounts transferred to reserves as provided in or permitted by this act, plus any balance in undivided profits from preceding accounting periods.

HISTORY: Add. 1967, p. 114, Act 96, Imd. Eff. Jun. 21.

489.559 Net investment; definition.

Sec. 159. "Net investment" means unpaid principal balance of purchased land contract less amount of discount.

HISTORY: Add. 1967, p. 114, Act 96, Imd. Eff. Jun. 21.

489.560 Repealed. 1970, p. 548, Act 185, Imd. Eff. Aug. 3.

Section defined operating expenses in relation to savings and loan associations.

489.561 Repealed. 1970, p. 548, Act 185, Imd. Eff. Aug. 3.

Section defined operating income in relation to savings and loan associations.

489.565 Real estate expenses; definition.

Sec. 165. "Real estate expenses" means all expenses entered on its books of account, in connection with the ownership, maintenance and sale of real estate, other than office buildings, by an association during an accounting period, excluding losses on the sale of real estate.

HISTORY: New 1964, p. 152, Act 156, Eff. Jan. 1, 1965;—Am. 1970, p. 546, Act 185, Imd. Eff. Aug. 3.

489.566 Real estate income; definition.

Sec. 166. "Real estate income" means all income entered on its books of account by an association during an accounting period from real estate other than from office buildings.

HISTORY: New 1964, p. 152, Act 156, Eff. Jan. 1, 1965;—Am. 1970, p. 546, Act 185, Imd. Eff. Aug. 3.

489.567 Real estate loan; definition.

Sec. 167. "Real estate loan" means any loan or other obligation secured by real estate, whether in fee or in a leasehold extending or renewable automatically for a period of at least 15 years beyond the date specified for the final principal payment of the loan or obligation, or any transaction out of which a lien or claim is created against the real estate.

HISTORY: New 1964, p. 152, Act 156, Eff. Jan. 1, 1965.

489.570 Savings account; definition.

Sec. 170. "Savings account" means that part of the savings liability of the association which is credited to the account of the holder thereof. A savings account also may be referred to as a deposit.

HISTORY: New 1964, p. 152, Act 156, Eff. Jan. 1, 1965;—Am. 1969, p. 536, Act 293, Imd. Eff. Aug. 11.

489.571 Savings liability; definition.

Sec. 171. "Savings liability" means the aggregate amount of savings accounts of members, including dividends credited to such accounts, less redemptions and withdrawals, and is synonymous with "capital".

HISTORY: New 1964, p. 152, Act 156, Eff. Jan. 1, 1965.

489.572 Supervisory authority; definition.

Sec. 172. "Supervisory authority" means the department of commerce or such officer as is designated by law to regulate and supervise under the provisions of this act.

HISTORY: New 1964, p. 152, Act 156, Eff. Jan. 1, 1965;—Am. 1967, p. 114, Act 96, Imd. Eff. Jun. 21.

489.580 Withdrawal value; definition.

Sec. 180. "Withdrawal value" means the amount credited to a savings account of a member, less lawful deductions therefrom, as shown by the records of the association.

HISTORY: New 1964, p. 152, Act 156, Eff. Jan. 1, 1965.

489.601 Savings and loan association or savings association; application to organize, contents, approval; articles of association, signing, acknowledgment, filing.

Sec. 201. Any 15 or more individual citizens of this state, hereinafter referred to as the "organizers", desiring to organize a savings and loan association or savings association primarily to promote thrift and home financing, shall apply to the supervisory authority for permission to organize an association under this act. The application shall set forth their names, their present business, information respecting their financial responsibility, the nature and extent of present or prior affiliation with other financial institutions, and such other information as the supervisory authority shall require. Upon approval of the application by the supervisory authority, the organizers, by complying with the provisions of this act and entering into articles of association, may do such things and transact all such business incidental to and not inconsistent with the provisions of this act. The articles of association shall be signed by the persons associating, acknowledged before a person authorized by law to take acknowledgments of deeds and accompanied by the chartering fee, shall be filed with the supervisory authority.

HISTORY: New 1964, p. 152, Act 156, Eff. Jan. 1, 1965.

489.602 Articles of association; contents.

Sec. 202. The articles of association shall set forth:

- (a) The name of the association and location of its principal place of business.
- (b) The purpose for which the association is formed.
- (c) The classes of savings accounts and the amount subscribed.
- (d) The names of the organizers, their respective residences, and the amount paid in cash by each as subscriptions to the savings accounts of the proposed association.
- (e) The number of directors of the association, which shall be not less than 7 nor more than 15, and the names of the organizers who shall be its first directors until the first annual meeting. The organizers named as directors shall possess the qualifications of directors specified in this act. Before proceeding to transact any business, except that incidental and necessarily preliminary to obtaining a charter, the organizers shall comply with all of the requirements set forth in sections 201 to 216.

HISTORY: New 1964, p. 152, Act 156, Eff. Jan. 1, 1965.

489.603 Articles of association; filing in triplicate, examination; guarantee of operating expenses.

Sec. 203. The executed articles of association shall be filed in triplicate with the supervisory authority, who shall immediately examine into all of the facts connected with the formation of the proposed association, including its location and organizers and compliance with the provisions of this act and such other requirements he deems necessary or desirable. The supervisory authority shall determine the dollar amount of savings accounts to be pledged and the length of time for which the organizers shall guarantee to pay the association's operating expenses.

HISTORY: New 1964, p. 153, Act 156, Eff. Jan. 1, 1965.

489.604 Application to organize; notice; hearing, decision announcement.

Sec. 204. The supervisory authority within 10 days following receipt of application, shall send notice by mail to the home office of all associations who have offices within a radius of 25 miles of the proposed new association. The supervisory authority shall make such examination and investigation concerning the application as he deems necessary and advisable and the circumstances require. The supervisory authority may call a hearing concerning such application. If the supervisory authority receives objections in writing from any party to whom notice is required to be sent within 15 days from the time such notice is sent, he shall provide an opportunity for the aggrieved party to be heard. The supervisory authority shall announce his decision concerning such application within 60 days after receipt thereof and file in his office a written memorandum stating the reasons supporting his decision, which memorandum shall be available for public inspection.

HISTORY: New 1964, p. 153, Act 156, Eff. Jan. 1, 1965.

489.605 Application to organize; approval; filing of endorsement; adoption of bylaws.

Sec. 205. If it appears to the supervisory authority that the establishment of the association is warranted by the conditions prevailing in the area where the association proposes to transact business and that it will be in the public interest and benefit to its members, that the character, responsibility and general fitness of the organizers are such as to command confidence and warrant belief that the business of the association will be honestly and efficiently conducted, that the name proposed for the association conforms with the requirements of this act, that the proposed bylaws are proper and that the organizers have received a firm commitment for insurance of savings accounts of the association by an agency of the federal government, the supervisory authority shall approve and file the articles of association with the date of filing endorsed thereon. The supervisory authority shall file an authenticated copy of the articles of association in the office of the county clerk of the county in this state in which the principal office of the association is to be located and return 1 copy to the association for its files. Upon receipt of such copy, the persons named therein, their associates and successors, may exercise the powers granted in this act and such other powers, not inconsistent with the provisions of this act, as are necessary to enable the association to carry out the purpose of its organization, including the right to act as liquidating agent or receiver for any other association. Before the association proceeds to do business, it shall adopt bylaws for the regulation and management of its business, which bylaws shall not become operative until a copy certified by the president and secretary of the association has been filed with and approved by the supervisory authority.

HISTORY: New 1964, p. 153, Act 156, Eff. Jan. 1, 1965.

489.606 Application to organize; disapproval, grounds.

Sec. 206. The supervisory authority may refuse to approve the articles of association if he has reason to believe that the proposed association is to be formed for any other than legitimate savings and loan business, that the character and general fitness of the persons proposed as organizers are not such as to command the confidence of the community in which the association is to be located, that the public need and interest will not be promoted by its establishment, that the minimum initial paid-in savings capital is inadequate for a safe and sound operation at the inception of a new association, or such other reasons determined to be valid by the supervisory authority.

HISTORY: New 1964, p. 154, Act 156, Eff. Jan. 1, 1965.

489.607 Association existence; commencement; termination.

Sec. 207. The association existence shall begin when the supervisory authority files the articles of association and issues a charter certificate, which existence shall be perpetual unless terminated in accordance with the provisions of this act.

HISTORY: New 1964, p. 154, Act 156, Eff. Jan. 1, 1965.

489.608 Articles of association and bylaws; amendments, procedure.

Sec. 208. Amendments to the articles of association and bylaws shall be approved by resolution adopted by 2/3 of the voting units represented and voting at any annual meeting or at any meeting called for that purpose. The amendments shall not take effect until a copy of the resolution, certified by the president and secretary of the association, is filed and recorded in the same manner provided in this act for the filing and recording of original articles of association and bylaws.

HISTORY: New 1964, p. 154, Act 156, Eff. Jan. 1, 1965.

489.611 Chairman of organization committee; original savings account subscribers.

Sec. 211. The organizers shall appoint one of their number as chairman of the organization committee. The original savings account subscribers shall pay in cash to the chairman, as subscriptions to the savings accounts of the proposed association, including that part of the original subscriptions paid by the chairman, an aggregate amount as determined jointly by the supervisory authority and the federal savings and loan insurance corporation as being the minimum amount necessary at the inception of the proposed new association.

HISTORY: New 1964, p. 154, Act 156, Eff. Jan. 1, 1965.

489.612 Chairman of organization committee; bond.

Sec. 212. The chairman of the organizers shall procure a surety bond in the form and from a surety company or other surety approved by the supervisory authority and in an amount at least equal to the amount of minimum established savings account subscriptions plus the expense fund. The bond shall name the supervisory authority as obligee and shall be delivered to him. It shall guarantee the safekeeping of the funds subscribed and their delivery to the association after the issuance of the charter certificate and after the bonding of the officers. In the event of the failure to complete organization, the bond shall guarantee the return of the amounts collected to the respective subscribers or their assigns.

HISTORY: New 1964, p. 154, Act 156, Eff. Jan. 1, 1965.

489.613 Organization expense fund; contributions.

Sec. 213. The organizers shall create an expense fund in an amount deemed necessary to defray the expenses of organization. From this fund the expense of organizing and operating the association may be paid. The organizers and others shall pay the amount of the expense fund in cash to the credit of the chairman of the organization committee. The amounts contributed to the expense fund by the organizers shall not constitute a liability of the association except as otherwise provided in section 214.

HISTORY: New 1964, p. 154, Act 156, Eff. Jan. 1, 1965.

489.614 Organization expense fund; contributions, repayment.

Sec. 214. Contributions made by the organizers and others to the expense fund may be repaid pro rata to the contributors from the net earnings of the association after provision for statutory reserves and declaration of dividends. In case of the liquidation of an association before contributions to the expense fund have been repaid, any contributions to the expense fund remaining unexpended after the payment of expenses of liquidation, all creditors, and the withdrawal value of all savings accounts, shall be repaid to the contributors pro rata. The books of the association shall reflect the expense

fund which fund may be repaid to the contributors over such period of time as approved by the supervisory authority.

HISTORY: New 1964, p. 154, Act 156, Eff. Jan. 1, 1965.

489.615 Organization meeting; election of officers.

Sec. 215. Within 30 days after the association existence begins, the directors of the association shall hold an organization meeting and elect officers pursuant to the provisions of this act and the bylaws. At the organization meeting the directors shall take such other action as is appropriate in connection with beginning the transaction of business of the association. The supervisory authority may extend the time for the organization meeting.

HISTORY: New 1964, p. 155, Act 156, Eff. Jan. 1, 1965.

489.616 Forfeiture of charter for nonuse; time limitation; savings accounts.

Sec. 216. Any association which does not commence business within 6 months after the date upon which its association existence begins, shall forfeit its association existence and the articles of association shall become null and void unless the supervisory authority, before the expiration of the 6 months period and upon a written application stating the reasons for the delay, approves the extension of time within which it may commence business. Upon forfeiture the charter certificate shall expire, and all action taken in connection with the chartering thereof except the payment of the chartering fee, becomes void. Amounts credited on savings accounts shall be returned to the respective holders thereof.

HISTORY: New 1964, p. 155, Act 156, Eff. Jan. 1, 1965.

489.617 Association name; requirements and restrictions.

Sec. 217. The name of every association shall include either the words "savings and loan association" or "savings association". These words shall be preceded by appropriate descriptive words approved by the supervisory authority. An ordinal number may not be used as a single descriptive word preceding the words savings and loan association or savings association unless such words are followed by the words "of" the blank being filled in by the name of the town, city or county in which the association has its home office. An ordinal number may be used together with another descriptive word, preceding the words savings and loan association or savings association if the other descriptive word has not been used in the corporate name of any other association in the state, in which case the suffix mentioned above is not required to be used. An ordinal number may be used together with another descriptive word, preceding the words savings and loan association or savings association even when the descriptive word has been used in the corporate name of an association in the state, provided the suffix as provided above is also used. The suffix provided above may be used in any corporate name. The use of the words national, federal, United States, insured, guarantee, or any form thereof, separately or in any combination thereof with other words or syllables, is prohibited as part of the corporate name of an association. No charter certificate of a proposed association having the same name as a corporation authorized to do business under the laws of this state or a name so nearly resembling it as to be calculated to deceive shall be issued by the supervisory authority, except to an association formed by the reorganization or consolidation of the association with other associations, or upon the sale of the property or franchise of an association.

HISTORY: New 1964, p. 155, Act 156, Eff. Jan. 1, 1965;—Am. 1969, p. 536, Act 293, Imd. Eff. Aug. 11.

489.618 Authority to do business under act; injunction to restrict; violation, penalty.

Sec. 218. No person, firm, company, association, fiduciary, co-partnership, or corporation, either domestic or foreign, unless lawfully authorized to do business in the

state under the provisions of this act and actually engaged in carrying on a savings and loan association business, shall transact business under any name or title which contains the terms savings and loan association, savings association, building and loan association, building association, savings institution or any combination or hyphenated form thereof, or use any sign or circulate or use any letterhead, billhead, circular or paper whatever, or advertise or represent in any manner which indicated that his or its business is the character or kind of business carried on or transacted by an association or which is calculated to lead any person to believe that his or its business is that of an association. A court of competent jurisdiction may issue an injunction to restrain any such entity from violating or continuing to violate any of the provisions of this section. Any person who violates any provision of this section shall be fined not more than \$5,000.00.

HISTORY: New 1964, p. 155, Act 156, Eff. Jan. 1, 1965.

489.619 Association offices; additional offices; moving; change of name.

Sec. 219. Without the prior approval of the supervisory authority, as provided in sections 411 and 412, no association shall establish any office other than its home office, which shall be in the city and county named in the articles of association. No office of an association shall be moved unless approved by the supervisory authority. The name or the location of the home office of any association fixed in the articles of association may be changed in the manner prescribed by the supervisory authority.

HISTORY: New 1964, p. 156, Act 156, Eff. Jan. 1, 1965.

489.621 Members of association; annual meetings, special meetings.

Sec. 221. An annual meeting of the members of each association shall be held as fixed in the bylaws of the association. Special meetings may be called as provided in the bylaws.

HISTORY: New 1964, p. 156, Act 156, Eff. Jan. 1, 1965.

489.622 Voting; members.

Sec. 222. The members entitled to vote at any meeting of the members are those who are members of record at the end of the calendar month next preceding the date of the meeting of members, except those who have since ceased to be members. The number of votes which members shall be entitled to cast shall be in accordance with the books on the date determinative of entitlement to vote.

HISTORY: New 1964, p. 156, Act 156, Eff. Jan. 1, 1965.

489.623 Voting; number of votes per member.

Sec. 223. In the determination of all questions requiring action by the members, each account holding member shall be permitted to cast 1 vote for each \$100.00 or fraction thereof of the withdrawal value of his savings account. Each other member shall be permitted to cast 1 vote in addition to the number of votes to which he is entitled as a savings account holder. No member shall cast more than the maximum number of votes as stated in the bylaws of the association.

HISTORY: New 1964, p. 156, Act 156, Eff. Jan. 1, 1965.

489.624 Voting; proxy.

Sec. 224. At any meeting of the members, voting may be in person or by proxy. Every proxy shall be in writing and signed by the member or his duly authorized attorney-in-fact and, when filed with the secretary, unless otherwise specified in the proxy, shall continue in force from year to year until revoked by a writing duly delivered to the secretary or until superseded by a subsequent proxy.

HISTORY: New 1964, p. 156, Act 156, Eff. Jan. 1, 1965.

489.625 Voting; quorum, majority rule.

Sec. 225. Any number of members present in person or by proxy at a regular or special meeting of the members constitutes a quorum. A majority of all votes cast at any meeting of members shall determine any question, except as otherwise specified in this act.

HISTORY: New 1964, p. 156, Act 156, Eff. Jan. 1, 1965.

489.628 Membership fees prohibited.

Sec. 228. The association shall not charge any membership fee or sum of money for the privilege of becoming or ceasing to be a member of the association.

HISTORY: New 1964, p. 156, Act 156, Eff. Jan. 1, 1965.

489.631 Inspection of books and records; right of access; accounts and loans confidential.

Sec. 231. Every member shall have the right to inspect such books and records of an association as pertain to his loan or savings account. Otherwise, the right of inspection and examination of the books and records is limited to the supervisory authority or his duly authorized representatives as provided in this act; to persons duly authorized to act for the association; to any federal or state instrumentality or agency authorized to inspect or examine the books and records of an association; and to persons duly authorized to enter and inspect and examine specified books and records by a valid order of a court of competent jurisdiction. The accounts and loans of members shall be kept confidential by the association, its directors, officers and employees and by the supervisory authority, his examiners and representatives and the employees of any federal or state instrumentality or agency. No member or any other person shall have access to the books and records or possess a partial or complete list of the members, except upon express action and authority of the board of directors.

HISTORY: New 1964, p. 156, Act 156, Eff. Jan. 1, 1965.

489.632 Communication between members; approval of supervisory authority.

Sec. 232. If any member desires to communicate with the other members of the association with reference to any question pending or to be presented for consideration at a meeting of the members, the association shall furnish upon request a statement of the approximate number of members of the association at the time of such request, and an estimate of the cost of forwarding the communication. The requesting member shall then submit the communication to the supervisory authority who, if he finds it to be appropriate, truthful and in the best interests of the association and all its members, shall execute a certificate setting out his findings, forward the certificate together with the communication to the association, and direct that the communication be prepared and mailed by the association to the members upon the requesting member's payment to it of the expenses of the preparation and mailing. If the supervisory authority finds the proposed communication to be inappropriate, untruthful or contrary to the best interests of the association and its members, he may make any disposition of the request to communicate which he deems proper and shall execute a certificate setting out such findings and deliver it to the requesting member together with his order making disposition of the request.

HISTORY: New 1964, p. 157, Act 156, Eff. Jan. 1, 1965;—Am. 1969, p. 536, Act 293, Imd. Eff. Aug. 11.

489.633 Communication between members; application of act to federal savings and loan associations.

Sec. 233. Insofar as the provisions of sections 231 and 232 are not inconsistent with federal law, they shall apply to federal savings and loan associations whose home offices are located in this state, and to the members thereof, except that the communication provided for in section 232 shall be submitted to the federal home loan bank

board, Washington, D.C., and forwarded only upon the board's certificate and direction.

HISTORY: New 1964, p. 157, Act 156, Eff. Jan. 1, 1965.

489.635 Annual financial statement; publication.

Sec. 235. Each association at least once during the fiscal year, shall issue a full and concise statement, other than the annual report provided for in this act, listing the assets and liabilities in full and showing its true financial condition. The statement shall be signed and sworn to by the president and secretary and a copy shall be mailed to the supervisory authority within 30 days from the date of said report and said statement shall be published in a newspaper within the county of the home office, or in lieu thereof, shall be mailed to each member.

HISTORY: New 1964, p. 157, Act 156, Eff. Jan. 1, 1965.

489.641 Board of directors; number, election, residency requirement, meetings.

Sec. 241. The business of the association shall be under the direction of a board of directors of not less than 7 nor more than 15 as elected by ballot from among the members by a plurality of the votes of the members present in person or by proxy. At all times at least 4/5 of the directors shall be bona fide residents of this state. At such times as the bylaws shall designate, not less frequently than once a month, the directors shall hold meetings to transact such business as may come before it.

HISTORY: New 1964, p. 157, Act 156, Eff. Jan. 1, 1965.

489.642 Board of directors; receipt of official communications, recording in minutes of meeting.

Sec. 242. Each official communication directed by the supervisory authority to an association or to any officer thereof, relating to an investigation or examination conducted by the supervisory authority or containing suggestions or recommendations as to the conduct of the business of the association, shall be submitted by the officer receiving it to the board of directors at the next meeting of the board and its submission shall be recorded in the minutes of the board.

HISTORY: New 1964, p. 157, Act 156, Eff. Jan. 1, 1965.

489.643 Board of directors; qualifications; ineligibility.

Sec. 243. To qualify as a director, a member of an association shall hold a savings account, the withdrawal value of which is at least \$1,000.00. Any director, who after his election, hypothecates or pledges his savings account in any manner or ceases to be the owner in his own right of the necessary qualifying savings account, automatically ceases to be a director and is not eligible for re-election as a director for a period of 1 year from the date of the next succeeding annual meeting.

HISTORY: New 1964, p. 157, Act 156, Eff. Jan. 1, 1965.

489.644 Board of directors; terms.

Sec. 244. At the first annual meeting, the directors by majority vote shall be divided into 3 classes of as nearly equal numbers as possible. The term of office of directors of the first class shall expire at the annual meeting next after the first election; of the second class, 1 year thereafter; and the third class, 2 years thereafter; and at each annual election thereafter directors shall be chosen for a full term of 3 years to succeed those whose terms expire.

HISTORY: New 1964, p. 158, Act 156, Eff. Jan. 1, 1965.

489.645 Board of directors; change in number.

Sec. 245. The number of directors within the limits specified in this act may be changed by resolution of the board of directors as provided in the bylaws.

HISTORY: New 1964, p. 158, Act 156, Eff. Jan. 1, 1965.

489.646 Board of directors; change in number; classification.

Sec. 246. Whenever the number of directors is changed and vacancies caused by such change are filled, the directors so elected shall be classified in accordance with the provisions of this act so that each of the 3 classes shall always contain numbers as nearly equal as possible.

HISTORY: New 1964, p. 158, Act 156, Eff. Jan. 1, 1965.

489.647 Board of directors; vacancy.

Sec. 247. Any vacancy among directors may be filled by a majority vote of the remaining directors, though less than a quorum, by electing a director to serve until the next annual meeting of the members, at which time a director shall be elected to fill the vacancy for the unexpired term for the class of director in which the vacancy exists. In the event of a vacancy on the board of directors from any cause, the remaining directors shall have full power and authority to continue direction of the association until the vacancy is filled.

HISTORY: New 1964, p. 158, Act 156, Eff. Jan. 1, 1965.

489.648 Board of directors; quorum.

Sec. 248. One third of the total number of directors authorized constitutes a quorum.

HISTORY: New 1964, p. 158, Act 156, Eff. Jan. 1, 1965.

489.651 Directors, officers or employees; indemnity bonds; collection agents; penalty for criminal act, limitations.

Sec. 251. Before entering upon the performance of any of their duties, all directors when performing the duties of an officer or employee, officers and employees of an association shall be individually bonded with adequate corporate surety payable to the association as an indemnity for any loss the association may sustain of money or other property by or through any dishonest, fraudulent or criminal act by any such director, officer or employee. Associations which employ collection agents who for any reason are not covered by a bond, shall provide for the bonding of agents in an amount equal to at least twice the average monthly collection of the agent. The agents shall be required to make settlement with the association at least monthly. No bond coverage is required of any agent which is a bank insured by the federal deposit insurance corporation or an institution insured by the federal savings and loan insurance corporation. The amount and form of the bonds and sufficiency of the surety shall be prescribed by the supervisory authority. In lieu of individual bonds, a blanket bond, protecting the association from loss through any acts on the part of any such director, officer or employee may be obtained. A true copy of every indemnity bond shall be filed at all times with the supervisory authority. The bonds shall provide that a cancellation thereof either by the surety or by the insured shall not become effective until 10 days' notice in writing first is given to the supervisory authority, unless he has approved the cancellation earlier. Every officer, director or employee of an association who commits any of the acts mentioned in this section is guilty of a felony, and on conviction thereof shall be imprisoned for a period of not less than 1 year nor more than 10 years.

HISTORY: New 1964, p. 158, Act 156, Eff. Jan. 1, 1965.

489.655 Officers, directors and employees; conflicts of interest prohibited.

Sec. 255. No officer, director or employee of an association shall:

(a) Solicit, accept or agree to accept, directly or indirectly, from any person other than the association, any gratuity or compensation for any action taken by the association or for endeavoring to procure any such action.

(b) Have any interest, directly or indirectly, in the purchase of a savings account or

other indebtedness issued by the association, at less than its full value on the books of record of the association.

HISTORY: New 1984, p. 159, Act 156, Eff. Jan. 1, 1985.

489.656 Directors and officers; relationship to association; conflicts of interest; disclosures required; restrictions.

Sec. 256. Directors and officers occupy a fiduciary relationship to the association of which they are directors or officers, and a director or officer shall not engage or participate, directly or indirectly, in any business or transaction conducted on behalf of or involving the association which would result in a conflict of his own personal interests with those of the association which he serves, unless the business or transactions are conducted in good faith and are honest, fair and reasonable to the association; a full disclosure of the business or transaction and the nature of the director's or officer's interest is made to the board of directors; and the business or transaction is approved in good faith by the board of directors with any interested director abstaining which approval shall be recorded in the minutes. Any profits inuring to the officer or director shall not be at the expense of the association and shall not prejudice the best interests of the association in any way. The business or transaction shall not represent a breach of the officer's or director's fiduciary duty and shall not be fraudulent, illegal or ultra vires. Notwithstanding any other provisions of this section, the supervisory authority may require the disclosure by directors, officers and employees of their personal interest, directly or indirectly, in any business or transaction on behalf of or involving the association and of their control of or active participation in enterprises having activities related to the business of the association. The following restrictions governing the conduct of directors and officers expressly are specified, but such specification is not to be construed in any manner as excusing such persons from the observance of any other aspect of the general fiduciary duty owed by them to the association which they serve:

(a) An officer or director of an association shall not hold office or status as a member, director or officer of another association, the principal office of which is located in the association's lending area.

(b) A director shall not receive remuneration as director except reasonable fees for service as a director or for service as a member of a committee of directors. A director who is also an officer or employee of or attorney for the association may receive compensation for service as an officer, employee or attorney.

(c) A director or officer shall not have any interest, directly or indirectly, in the proceeds of a loan or investment or of a purchase or sale made by the association, unless the loan, investment, purchase or sale is authorized expressly by resolution of the board of directors, which resolution is approved by a vote of at least 2/3 of the directors authorized of the association with any interested director taking no part in the vote.

(d) A director or officer shall not have any interest, direct or indirect, in the purchase at less than its face value of any evidence of a savings account, deposit or other indebtedness issued by the association.

(e) A director, association or officer thereof shall not require, as a condition to the granting of any loan or the extension of any other service by the association, that the borrower or any other person undertake a contract of insurance or any other agreement or understanding with respect to the furnishing of any other goods or services, with any specific company, agency or individual.

(f) An officer or director acting as proxy for a member of an association shall not exercise, transfer or delegate such right in any consideration of a private benefit or advantage, direct or indirect, accruing to himself nor surrender control or pass his office

to any other for any consideration of a private benefit or advantage, direct or indirect. The voting rights of members and directors shall not be the subject of sale, barter, exchange or similar transaction, either directly or indirectly. Any officer or director who violates the provisions of this subsection shall be held accountable to the association for any increment.

(g) A director or officer shall not solicit, accept or agree to accept, directly or indirectly, from any person other than the association any gratuity, compensation or other personal benefit for any action taken by the association or for endeavoring to procure any such action.

HISTORY: New 1964, p. 159, Act 156, Eff. Jan. 1, 1965;—Am. 1969, p. 537, Act 293, Imd. Eff. Aug. 11.

489.657 Directors, officers and employees; violation of act, penalty.

Sec. 257. Any officer, director, or employee who violates the provisions of sections 255 and 256 is guilty of a misdemeanor and shall be fined not less than \$100.00 nor more than \$500.00, or imprisoned for not less than 1 month nor more than 6 months, or both.

HISTORY: New 1964, p. 159, Act 156, Eff. Jan. 1, 1965.

489.661 Director, officers and employees; expenses of litigation; payment by association.

Sec. 261. An association shall pay on behalf of or reimburse an officer, director or employee of an association for the expenses of defending a suit brought on behalf of the association or the savings account holders, other creditors or borrowers thereof, or other persons, founded upon any act or acts performed or omitted by such person acting as an officer, director, or employee under the following conditions:

(a) If the person is adjudicated to be not liable, then all reasonable expenses of such litigation shall be paid by the association.

(b) If the person is held to be liable on certain items and not liable on others, the association shall pay the proportion of the total reasonable expense of the litigation which the items on which he is held to be not liable bear to all the items alleged.

HISTORY: New 1964, p. 159, Act 156, Eff. Jan. 1, 1965.

489.662 Director, officers and employees; expenses of litigation; compromise and settlement, approval.

Sec. 262. If, in the opinion of the association, any such person is not liable upon the substantive issues alleged, the association may compromise and settle the claim or litigation and pay the entire expense thereof, including the compromise settlement, if the expense is reasonable. Any action taken by the association under this section shall require approval by vote of at least 2/3 of all the directors of the association, any interested director taking no part in the vote, or by vote of the members.

HISTORY: New 1964, p. 159, Act 156, Eff. Jan. 1, 1965.

489.671 Records; kept at home office.

Sec. 271. Every association shall keep correct and complete books of account and minutes of the proceedings of all meetings of members, directors and the executive committee at its home office.

HISTORY: New 1964, p. 159, Act 156, Eff. Jan. 1, 1965.

489.672 Records; agents.

Sec. 272. Each agent of an association shall keep a record of each transaction of business of the association and shall report promptly to the association. Complete detailed permanent records of such transactions are not required to be maintained by such agency.

HISTORY: New 1964, p. 160, Act 156, Eff. Jan. 1, 1965.

489.673 Closing of books.

Sec. 273. Every association shall close its books at the close of business on June 30 and December 31 of each year, or more often if desired.

HISTORY: New 1964, p. 160, Act 156, Eff. Jan. 1, 1965.

489.674 Description of assets.

Sec. 274. No association by any system of accounting or any device of bookkeeping shall enter any of its assets upon its books in the name of any other person, partnership, association or corporation or under any title or designation that is not truly descriptive of such assets.

HISTORY: New 1964, p. 160, Act 156, Eff. Jan. 1, 1965.

489.675 Repealed. 1970, p. 548, Act 185, Imd. Eff. Aug. 3.

Section related to bonds and obligations carried at cost.

489.676 Repealed. 1970, p. 548, Act 185, Imd. Eff. Aug. 3.

Section related to real estate carried at cost.

489.677 Real estate; appraisal; delinquent loans, reappraisal.

Sec. 277. Every association shall appraise each parcel of real estate at the time of its acquisition. The report of each appraisal shall be submitted in writing to the board of directors and shall be kept in the records of the association. The supervisory authority may require the re-appraisal of real estate securing loans which are delinquent.

HISTORY: New 1964, p. 160, Act 156, Eff. Jan. 1, 1965.

489.678 Records; reproduction and destruction.

Sec. 278. Any association may cause any or all records of the association to be copied or reproduced by any photostatic, photographic or microfilming process in accordance with section 2148 of Act No. 236 of the Public Acts of 1961, as amended, being section 600.2148 of the Compiled Laws of 1948, and thereafter dispose of the original records.

HISTORY: New 1964, p. 160, Act 156, Eff. Jan. 1, 1965.

489.701 Savings liability; limitations; dividends; preference.

Sec. 301. The savings liability of an association is not limited, but shall consist only of the aggregate amount of savings accounts of its members, plus dividends credited to such accounts, less redemption and withdrawal payments. Except as limited by the board of directors, a member may make additions to his savings accounts in such amounts and at such times as he may elect. The members of an association shall not be responsible for any losses which its savings liability shall not be sufficient to satisfy. Savings accounts shall not be subject to assessment nor shall the holders thereof be liable for any unpaid installments on their accounts. Dividends shall be declared in accordance with the provisions of this act. Except as otherwise provided in this act, no association shall prefer one of its savings accounts over any other savings account as to the right to participate in earnings. No preference between savings account members shall be created with respect to the distribution of assets upon voluntary or involuntary liquidation, dissolution or other termination of the legal existence of the association. No association may contract with respect to the savings liability in a manner inconsistent with the provisions of this act.

HISTORY: New 1964, p. 160, Act 156, Eff. Jan. 1, 1965;—Am. 1967, p. 114, Act 96, Imd. Eff. Jun. 21.

489.702 Savings account contracts; requirement; contents.

Sec. 302. Each holder of a savings account shall execute a savings account contract setting forth any special terms and provisions applicable to such savings account and the ownership thereof and the conditions upon which withdrawals may be made not inconsistent with the provisions of this act.

HISTORY: Add. 1967, p. 114, Act 96, Eff. Jun. 21.

489.703 School or institutional savings plans; payroll deduction plans.

Sec. 303. (1) An association may contract with the proper authorities of any public or nonpublic elementary or secondary school or institution of higher learning, or any public or charitable institution caring for minors, for the participation and implementation by the association in any school or institutional thrift or savings plan, and it may accept savings accounts at the school or institution, either by its own collector or by any representative of the school or institution which becomes the agent of the association for such purpose.

(2) An association may contract with any employer with respect to the solicitation, collection and receipt of savings by payroll deduction to be credited to a designated account or accounts of the employees who voluntarily may participate.

HISTORY: Add. 1987, p. 115, Act 96, Eff. Jun. 21.

489.705 Savings accounts; classes.

Sec. 305. (1) An association may issue the following types of savings accounts:

(a) Installment savings accounts upon which payment is made by the savings account holder as the bylaws require, until the account reaches its matured value or is withdrawn.

(b) Optional savings accounts upon which, after the initial payment, the savings account holder may pay any amount at any time at his option.

(c) Advanced payment savings accounts upon which a single payment of not less than 50% of the maturity value is paid at the time of issue.

(d) Fully paid savings accounts upon which a single payment is made at the time of issue equal to the stated value thereof.

(e) Short term specific purpose savings accounts with maturities not exceeding 15 months without being subject to dividend participation.

(f) Bonus savings accounts under a plan authorized for all associations by the supervisory authority.

(g) Savings accounts of such classifications and in such form and under such terms and conditions as may be authorized by the board of directors.

(2) These accounts shall be subject to such transaction charges as the board of directors prescribe.

(3) All moneys received from whatever sources shall be paid into the treasury of the association and disbursed by the proper officers as provided in the bylaws.

HISTORY: New 1964, p. 161, Act 156, Eff. Jan. 1, 1965;—Am. 1987, p. 115, Act 96, Imd. Eff. Jun. 21.

489.706 Savings accounts; ownership; transfer.

Sec. 306. Savings accounts may be opened and held solely and absolutely in his own right by, or in trust for, any person, including an adult or minor individual, male or female, single or married, a partnership, association and corporation. Savings accounts may be opened and held by a political subdivision or public or governmental unit for the purpose of pension, retirement, endowment funds and other purposes. Savings accounts shall be represented only by the account of each savings account holder on the books of the association, and shall be transferable only upon acceptance by the association of the transferee as a member upon terms approved by the board of directors. The association may treat the holder of record of a savings account as the owner thereof for all purposes without being affected by any notice to the contrary unless the association has acknowledged in writing notice of a pledge of such savings account.

HISTORY: New 1964, p. 161, Act 156, Eff. Jan. 1, 1965;—Am. 1989, p. 538, Act 293, Imd. Eff. Aug. 11.

489.707 Savings accounts; account books; certificates, form.

Sec. 307. An account book may be issued to each savings account holder on the books of the association, and such account books shall indicate the withdrawal value at

the savings account. A separate certificate for a savings account may be issued in lieu of an account book, entitled "certificate of savings account", and if issued shall be in the following form:

"This certifies that is a member of the undersigned and holds a dollar savings account therein, subject to the savings and loan association act, the articles of association and bylaws of the undersigned."

HISTORY: New 1964, p. 161, Act 156, Eff. Jan. 1, 1965.

489.708 Savings accounts; lost books or certificates, duplicates, bond.

Sec. 308. Upon the filing with an association by the holder of record as shown by the books of the association, or by his legal representative, of an affidavit to the effect that the account book or certificate evidencing his savings account with the association has been lost or destroyed, and that the account book or certificate has not been pledged or assigned in whole or in part, the association shall issue a new account book or certificate in the name of the holder of record, such book stating that it is issued in lieu of the one lost or destroyed and the association shall in no way be liable thereafter on account of the original account book. The board of directors may require a bond in an amount it deems sufficient to indemnify the association against any loss which might result from the issuance of the new account book or certificate.

HISTORY: New 1964, p. 161, Act 156, Eff. Jan. 1, 1965.

489.709 Savings accounts; married women; death of minor.

Sec. 309. An association and any federal savings and loan association may issue savings accounts to any married woman or minor as the sole and absolute owner of such savings account, and pay withdrawals and act with respect to such accounts on the order of the married woman or minor. Any payment or delivery of rights to a married woman or to any minor, or a receipt or acquittance signed by a married woman or by a minor, who holds a savings account, is a valid and sufficient release and discharge of the institution for any payment or delivery of rights so made to the married woman or minor. In the case of a minor, the receipt, acquittance or other action required by the institution to be taken by the minor shall be binding upon the minor with like effect as if he were of full age and legal capacity. The parent or guardian of the minor shall not in his capacity as parent or guardian have the power to attach or in any manner to transfer any savings account issued to or in the name of the minor. In the event of the death of the minor the receipt or acquittance of either parent or of a person standing in loco parentis to the minor is a valid and sufficient discharge of such institution for any sum not exceeding in the aggregate \$1,000.00 unless the minor has given written notice to the institution not to accept the signature of the parent or person.

HISTORY: New 1964, p. 161, Act 156, Eff. Jan. 1, 1965.

489.710 Savings accounts; joint accounts, payments; notice as to withdrawals, liability.

Sec. 310. When a savings account is opened in an association or a federal savings and loan association, in the names of 2 or more persons, whether minor or adult, in such form that the moneys in the account are payable to either or the survivor then the account and all additions thereto shall be the property of such persons as joint tenants. The moneys in the account may be paid to or on the order of any one of the persons during their life times or to or on the order of any one of the survivors of them after the death of any one or more of them. The opening of the account in such form, in the absence of fraud or undue influence, shall be conclusive evidence in any action or proceeding to which either the association or the survivor is a party, of the intention of all the parties to the account to vest title to the the account and the additions thereto in the survivor. By written instructions given to the institution by all the parties to the account, the signatures of more than one of the persons during their life-

times or of more than one of the survivors after the death of any one of them may be required on any check, receipt, or withdrawal order, in which case the institution shall pay the moneys in the account only in accordance with such instructions, but no such instruction shall limit the right of the survivor to receive the moneys in the account.

Payment of all or any of the moneys in the account shall discharge the institution from liability with respect to the moneys so paid, prior to receipt by the institution of a written notice from any one of them directing the institution not to permit withdrawals in accordance with the terms of the account or the instructions. After receipt of the notice, an institution may refuse, without liability, to honor any check, receipt, or withdrawal order on the account pending determination of the rights of the parties.

HISTORY: New 1964, p. 162, Act 156, Eff. Jan. 1, 1965.

489.711 Savings accounts; pledge of joint account.

Sec. 311. The pledge to an association or federal savings and loan association of all or part of a savings account in joint tenancy signed by that person or those persons who are authorized in writing to make withdrawals from the account, unless the terms of the savings account provide specifically to the contrary, is a valid pledge and transfer to the association of that part of the account pledged, and shall not operate to sever or terminate the joint and survivorship ownership of all or any part of the account.

HISTORY: New 1964, p. 162, Act 156, Eff. Jan. 1, 1965.

489.712 Savings accounts; payment to estate of nonresident decedent.

Sec. 312. When a savings account is held in an association or federal savings and loan association by a person residing in another state or country, the account, together with additions thereto and earnings thereon, or any part thereof, may be paid to the administrator or executor appointed in the state or country where the account holder resided at the time of death, if the administrator or executor has furnished the association with authenticated copies of his letters and of the order of the court which issued the letters to him authorizing him to collect, receive and remove the personal estate, and an affidavit by the administrator or executor that to his knowledge no letters then are outstanding in this state and no petition for letters by an heir, legatee, devisee or creditor of the decedent is pending on the estate in this state, and that there are no creditors of the estate in this state. Upon payment or delivery to such representative after receipt of the affidavit and authenticated copies, the association is released and discharged to the same extent as if the payment or delivery had been made to a legally qualified resident executor or administrator, and is not required to see to the application or disposition of the property.

HISTORY: New 1964, p. 162, Act 156, Eff. Jan. 1, 1965.

489.713 Savings accounts; fiduciaries; payment to beneficiary upon death of trustee.

Sec. 313. An association or federal savings and loan association may accept savings accounts in the name of any administrator, custodian, executor, guardian, trustee or other fiduciary in trust for a named beneficiary. The fiduciary shall have power to vote as a member as if the membership were held absolutely, to open and to make additions to, and to withdraw the account in whole or in part. The withdrawal value of the account, and dividends thereon, or other rights relating thereto may be paid or delivered, in whole or in part, to the fiduciary without regard to any notice to the contrary as long as the fiduciary is living. The payment or delivery to the fiduciary or a receipt or acquittance signed by the fiduciary to whom any payment or delivery of rights is made is a valid and sufficient release and discharge of an institution for the payment or delivery so made. Whenever a person holding an account in a fiduciary capacity dies and no written notice of the revocation or termination of the fiduciary relationship has been given to an institution and the institution has no notice of any other dis-

position of the beneficial estate, the withdrawal value of the account, and dividends thereon, or other rights relating thereto, at the option of the institution, may be paid or delivered, in whole or in part, to the beneficiary. Whenever an account is opened by any person, describing himself in opening the account as trustee for another and no other or further notice of the existence and terms of a legal and valid trust than such description has been given in writing to the association, in the event of the death of the person so described as trustee, the withdrawal value of the account or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom the account was thus stated to have been opened, and the account and all additions thereto shall be the property of the person. The payment or delivery to the beneficiary or designated person, or a receipt or acquittance signed by the beneficiary, or designated person, for any payment or delivery is a valid and sufficient release and discharge of an institution for the payment or delivery so made.

HISTORY: New 1984, p. 163, Act 156, Eff. Jan. 1, 1985.

489.714 Savings accounts; attorney-in-fact, revocation of authority.

Sec. 314. An association or federal savings and loan association may continue to recognize the authority of an attorney-in-fact authorized in writing to manage or to make withdrawals either in whole or in part from the savings account of a member until it receives written notice or is on actual notice of the revocation of his authority. For the purposes of this section, written notice of the death or adjudication of incompetency of such member constitutes written notice of revocation of the authority of his attorney.

HISTORY: New 1984, p. 163, Act 156, Eff. Jan. 1, 1985.

489.715 Savings accounts; legal investments.

Sec. 315. Savings accounts of associations under state supervision, and savings accounts of federal savings and loan associations organized under the laws of the United States and under federal supervision are legal investments for administrators, executors, custodians, guardians, trustees, and other fiduciaries of every kind and nature, insurance, business and manufacturing companies, banks, credit unions, and all other types of financial institutions, charitable, educational, eleemosynary, and public corporations and organizations, municipalities, and other public corporations and bodies, as within their powers, but as to political subdivisions, public and governmental units, such investments shall be limited to the purpose set forth in section 306.

HISTORY: New 1984, p. 163, Act 156, Eff. Jan. 1, 1985.

489.716 Savings accounts; garnishment, exemption.

Sec. 316. Savings accounts of associations and federal savings and loan associations shall be subject exclusively to garnishment or any similar process and shall not be subject to seizure and sale on execution, or proceedings supplementary thereto, but any amount in a savings account which is \$500.00 or less shall not be liable to garnishment or any similar process, except as to any indebtedness due to the association. The exemption shall not apply to any person who has a homestead exempted under the general laws of this state. Without inquiry into the validity of any garnishment or similar process, the institutions may pay any funds in excess of \$500.00 in any savings account into any court or to any qualified official making demand therefor, pursuant to any process or on any judgment pursuant thereto.

HISTORY: New 1984, p. 164, Act 156, Eff. Jan. 1, 1985.

489.717 Gross income; expenses; legal reserve for losses; undivided profit account, apportionment; insurance; transfer to legal reserve.

Sec. 317. The gross income of every association shall be ascertained at least semiannually. From the balance of the income remaining after the payment of, or provision for, all expenses, each association at least semiannually shall transfer to a legal reserve

account, which shall be set up and maintained for the sole purpose of absorbing losses, an amount not less than 5% of such balance until the legal reserve totals not less than 12% of its savings liability. If at any time thereafter the legal reserve falls below 12% of the savings liability, credits as above provided shall be made to the legal reserve until the legal reserve again equals at least 12% of the savings liability of the association. After providing for the expense of the association, the legal reserve and other appropriate reserves, the residue of the income shall be transferred to an undivided profit account and apportioned to the credit of the savings account holders as the association in its bylaws determines. After the aforesaid apportionment has been made, the balance in the undivided profit account shall not exceed 5% of the total assets of the association at any time. Any association may establish reserves for bad debts, and with the approval of the supervisory authority, establish other reserves for specific purposes. If an association has the insurance protection provided by the federal savings and loan insurance corporation under the national housing act as amended, any portion of the legal reserve of the association may be considered as constituting a portion of the federal insurance reserve required by the federal savings and loan insurance corporation and may be set up as a federal insurance reserve account on the books of the association. At the close of any semiannual period any insured association which meets the federal insurance reserve requirements stipulated by the regulations for insurance of accounts or any uninsured association which meets the equivalent of such requirements shall be considered to have met the requirements for transfer to legal reserves provided for by this section.

HISTORY: New 1964, p. 164, Act 156, Eff. Jan. 1, 1965;—Am. 1966, p. 190, Act 128, Eff. Nov. 15.

489.721 Repealed. 1967, p. 122, Act 96, Imd. Eff. Jun. 21.

Section related to declaration and distribution of dividends by savings and loan associations.

489.722 Earnings or dividends; payment; participation; declaration upon withdrawal; distribution.

Sec. 322. (1) An association may pay earnings on its savings accounts from sources available for payment of earnings at such rate and at such times and for such time or notice periods as is determined by resolution of its board of directors.

(2) All savings account holders shall participate equally in earnings pro rata to the withdrawable value of their respective accounts, except that an association may classify its savings accounts according to the character, amount or duration thereof, or regularity of additions thereto, and may agree in advance to pay an additional or different rate of earnings over and above the rate of earnings paid on all savings accounts on accounts based on such classification, and shall regulate the earnings in such manner that each savings account in the same classification receives the same ratable portion of the additional earnings.

(3) Except for accounts which shall be classified according to a specified contractual time or notice period, earnings shall be declared on the withdrawal value of each savings account at the beginning of the accounting period, plus additions thereto made during the period, less amounts previously withdrawn and noticed for withdrawal which for earnings purposes shall be deducted from the latest previous additions thereto computed at the declared rate for the time the funds have been invested, determined as next provided. The date of investment shall be the date of actual receipt by the association of an account or an addition to an account, except that if the board of directors so determines, accounts in 1 or more classifications or additions thereto received by the association on or before a date not later than the twentieth day of the month, unless the day determined is not a business day, in which case it may be the next succeeding business day, shall receive earnings as if invested on the first day of the month in which the payments were received. If the board makes such determina-

tion, it also shall determine that payments received subsequent to the determination date shall either receive earnings as if invested on the first day of the next succeeding month, or receive earnings from the date of actual receipt by the association.

(4) Notwithstanding the provisions of subsection (2), the board of directors, by resolution, may determine that earnings shall not be paid on any savings account which has a withdrawal value of a specified amount less than \$50.00 or on short term specific purpose accounts. An exception may be made and earnings paid on savings accounts opened pursuant to section 303.

(5) The directors shall determine by resolution the method of calculating the amount of any earnings on savings accounts as provided in this section and the time or times when earnings are to be declared, paid or credited.

(6) Notwithstanding the provisions of subsection (3) if by resolution of the board of directors earnings are distributed on amounts withdrawn from savings accounts, or designated classes thereof, between the dates as of which the association regularly distributes earnings on savings accounts, such earnings shall neither be distributed for any greater portion of the dividend period than that during which such amount remains in the association, nor at a rate in excess of that rate at which earnings are distributed to other accounts of the same class during the same dividend period.

HISTORY: Add. 1967, p. 115, Act 98, Imd. Eff. Jun. 21;—Am. 1969, p. 538, Act 293, Imd. Eff. Aug. 11.

489.725 Savings accounts; withdrawals; dividends, amount; order.

Sec. 325. (1) Except for accounts which shall be classified according to a specified contractual time or notice period, a savings account holder at any time may present a written application for withdrawal of all or any part of his savings accounts. No member shall have on file in any one association more than one application at a time. Every application shall request immediate withdrawal of a stated amount in accordance with this section. Any member may cancel his application at any time in whole or in part by written notice. Every association shall pay or number, date and file in the order of actual receipt every withdrawal application. Withdrawals shall be made in the order of actual receipt of applications, except as provided in this section. Upon withdrawal, an association shall pay the value of any savings account, as determined by the board of directors, but not in excess of the withdrawal value thereof. If an association so elects, at any time it may pay in full each and every application as presented. It shall not pay some in full unless it pays every application on file in full, except by paying all applications on file on the rotation plan prescribed in this section. The board of directors shall have an absolute right to pay any application not exceeding \$200.00 to any one account holder in any one month in any order. No association can obligate itself to pay withdrawals on any plan other than as provided in this act. Savings account holders who have filed written application for withdrawal remain savings account members until paid and have no greater rights as creditors. No dividends shall be declared upon that portion of an account which has been noticed for withdrawal, which for dividend purposes is required to be deducted from the latest previous additions to such account, so long as the application is on file.

(2) On the first day of each month, each application which has been on file since the first day of the preceding month and which is reached in order shall be paid, if funds are available for that purpose, \$1,000.00 on account, or in full if the amount noticed for withdrawal or the unpaid balance of such application is less than \$1,000.00. Each application for more than \$1,000.00 so paid shall be deemed refilled as if filed on that day. The limited payment on the first day of each month and the renumbering shall take place on the first day of each subsequent month as long as there are applications unpaid. At least 1/3 of the net receipts of an association during the preceding calendar month shall be applied on the first day of each month to the payment of applications

which have been on file since the first day of the preceding month. An association may apply to withdrawals an amount larger than 1/3 of the net receipts, but cannot obligate itself to do so. When an application to withdraw is reached for payment, a written notice shall be sent to the applicant by mail at his last address recorded on the books, and unless the applicant applies in person or in writing for the withdrawal within 15 days from the date of the notice, no payment on account of the application shall be made and the application shall be cancelled. Whenever the aggregate sum called for by applications for withdrawal on file exceeds 5% of the savings liability of the association, the board of directors may direct, with the approval of the supervisory authority, that the sums available each month for payment upon withdrawals shall be paid by distribution of such sums to the withdrawing members in proportion to their savings accounts to be withdrawn.

(3) At the discretion of the board of directors to meet the necessities of its savings account holders, an association may pay out to the savings account holders who have not on file applications for withdrawal not to exceed \$200.00 to any one savings account holder in any one month, but such payments shall not be made from or charged against the 1/3 of net receipts applicable to the payment of written applications for withdrawal.

(4) With the approval of the supervisory authority, the board of directors may provide that all funds available for withdrawals shall be apportioned and paid *pro rata* to all holders of savings accounts of the association not pledged for mortgage loans, without regard to applications for withdrawal, such sums to be distributed as may be provided by the board of directors, but at least twice a year.

HISTORY: New 1964, p. 164, Act 156, Imd. Eff. Jan. 1, 1965;—Am. 1969, p. 539, Act 293, Imd. Eff. Aug. 11.

489.727 Savings accounts; redemption.

Sec. 327. At any time funds are on hand for the purpose, the association may redeem by lot or otherwise, as the board of directors determines, all or any part of its savings accounts on a dividend date by giving 30 days' notice by certified mail addressed to the account holders at their last addresses recorded on the books of the association. No association shall redeem any of its savings accounts when the association is in an impaired condition or when it has applications for withdrawal which have been on file more than 30 days and have not been reached for payment. The redemption price of savings accounts redeemed shall be the full value of the account redeemed, as determined by the board of directors, but in no event shall the redemption price be less than the withdrawal value. If the notice of redemption has been given, and if on or before the redemption date the funds necessary for redemption have been set aside so as to be and continue to be available therefor, dividends upon the accounts called for redemption shall cease to accrue from and after the dividend date specified as the redemption date, and all rights with respect to such accounts, after the redemption date, terminate, except only the right of the account holder of record to receive the redemption price without interest.

HISTORY: New 1964, p. 165, Act 156, Imd. Eff. Jan. 1, 1965.

489.728 Repealed. 1967, p. 122, Act 96, Imd. Eff. Jun. 21.

Section related to prohibited business and borrowing power of savings and loan associations.

489.751 General powers granted by act.

Sec. 351. Every association organized pursuant to or operating under the provisions of this act shall have all of the powers enumerated, authorized and permitted by the act and such other rights, privileges and powers as may be incidental to or reasonably necessary for the accomplishment of the objects and purposes of the association.

HISTORY: New 1964, p. 166, Act 156, Imd. Eff. Jan. 1, 1965.

489.752 Enumerated powers granted by act.

Sec. 352. An association may raise its capital, which shall be unlimited, by acquiring payments on savings accounts; sue and be sued, complain and defend in any court of law or equity; acquire, purchase, hold and convey real and personal estate consistent with its objects and powers; mortgage, pledge, or lease any real or personal estate for its own use; take property by gift, devise or bequest; have a corporate seal, which may be affixed by imprint, facsimile, or otherwise; appoint officers, agents and employees as its business requires and allow them suitable compensation; provide for life, health and casualty insurance for officers and employees and adopt and operate reasonable bonus plans and retirement benefits for such officers and employees; adopt and amend bylaws as provided in this act; insure its accounts with the federal savings and loan insurance corporation and qualify as a member of a federal home loan bank; become a member of, own stock or investment certificates in to the extent of 3% of its assets, deal with, pay premiums to, or make contributions to any organization to the extent that such organization assists in furthering or facilitating the association's purposes or powers and to comply with conditions for membership; accept savings as provided in this act, together with such other powers as are otherwise expressly provided for in this act.

HISTORY: New 1964, p. 166, Act 156, Eff. Jan. 1, 1965.

489.753 Savings account loans; restrictions.

Sec. 353. An association may make loans on the sole security of savings accounts. No such loan shall exceed 90% of the withdrawal value of the accounts owned or otherwise pledged for or by the borrower. No such loan shall be made when an association has applications for withdrawal which have been on file for more than 60 days and not reached for payment.

HISTORY: New 1964, p. 166, Act 156, Eff. Jan. 1, 1965.

489.754 Life insurance policy loans; limitation.

Sec. 354. An association may invest in loans secured by the pledge of policies of life insurance, the assignment of which is properly acknowledged by the insurer but not exceeding the cash value of such policies.

HISTORY: Add. 1969, p. 540, Act 293, Imd. Eff. Aug. 11.

Former section 489.754 (Sec. 354, Act 156, 1964, p. 166, Eff. Jan. 1, 1965) was repealed by Act 96, 1967, p. 122, Imd. Eff. June 21. It authorized real estate loans by savings and loan associations.

489.755 Loans to members; limitations; credit card arrangements; term; interest, repayment, rebate.

Sec. 355. An association may originate and make loans to members not otherwise authorized by this act in an amount not to exceed \$2,500.00. This section shall not authorize the making of any loan pursuant to an existing credit card arrangement or other agreement existing prior to such loan whereby the association honors the borrower's draft, pays or agrees to pay the borrower's obligation, purchases the borrower's obligation or advances money to or for the account of the borrower and in which the loan finance charges are not precomputed but are computed from time to time on the basis of the unpaid balance. The aggregate of such loans is limited to 10% of assets. The term of any loan made under this section shall not exceed a period of 60 months. The rate of interest, repayment terms and rebate terms shall be in accordance with the provisions of section 370e (3) of this act.

HISTORY: Add. 1969, p. 540, Act 293, Imd. Eff. Aug. 11.

Former section 489.755 (Sec. 355, Act 156, 1964, p. 166, Eff. Jan. 1, 1965) was repealed by Act 96, 1967, p. 122, Imd. Eff. June 21. It authorized mortgage loans and land contracts by savings and loan associations.

489.756 Mobile home financing; security; definition.

Sec. 356. An association may invest in loans made for the purpose of mobile home financing, as authorized by the supervisory authority. Every mobile home loan shall be

secured by a security instrument constituting a first lien upon the mobile home securing the loan. For the purposes of this section "mobile home" means a movable accommodation used or designed for use as living quarters. The rate of interest, repayment terms and rebate terms shall be in accordance with the provisions of subsection (3) of section 370e.

HISTORY: Add. 1969, p. 540, Act 293, Imd. Eff. Aug. 11;—Am. 1970, p. 546, Act 185, Imd. Eff. Aug. 3.

Former section 489.756 (Sec. 356, Act 156, 1964, p. 166, Eff. Jan. 1, 1965) was repealed by P.A. 1967 No. 96, Imd. Eff. June 21. It provided for participation in mortgage investments secured by home loans.

489.757 Real estate loans; authorization; restrictions, requirements.

Sec. 357. An association may invest in loans secured by the pledge of real estate loans of a type in which the association is authorized to invest. The loans so pledged shall be subject to all restrictions and requirements which would be applicable were the association to invest directly in such loans.

HISTORY: Add. 1969, p. 540, Act 293, Imd. Eff. Aug. 11.

Former section 489.757 (Sec. 357, Act 156, 1964, p. 167, Eff. Jan. 1, 1965) was repealed by Act 96, 1967, p. 122, Imd. Eff. June 21. It authorized loans on completed residential real estate.

489.758-489.767 Repealed. 1967, p. 122, Act 96, Imd. Eff. Jun. 21.

Sections related to certain loans, purchases, sales and transfers by savings and loan associations.

489.768 Servicing of mortgages and land contracts.

Sec. 368. An association may service mortgages and land contracts.

HISTORY: Add. 1967, p. 116, Act 96, Imd. Eff. Jun. 21.

489.768a Loans; eligibility of minor veterans.

Sec. 368a. Any veteran eligible for a loan pursuant to the servicemen's readjustment act of 1944, or any amendments thereto, or under any similar federal or state acts, who is a minor, together with his or her minor spouse, may contract liability in this state for repayment of a loan pursuant to said acts. Notwithstanding any contrary provision of law, the veteran or spouse shall not void any such contracts because of age, nor shall the veteran or spouse interpose the defense in any action arising out of any loan pursuant to such acts that he or she were minors at the time of executing the contracts.

HISTORY: Add. 1967, p. 116, Act 96, Imd. Eff. Jun. 21.

489.768b Loans; dealings with successors in interest.

368b. If the ownership of the real estate security or any part thereof becomes vested in a person other than the parties originally executing the security instruments, and there is not an agreement in writing to the contrary, an association, without notice to such parties, may deal with the successor in interest with reference to the mortgage and the debt thereby secured in the same manner as with such parties, and may forbear to sue or may extend time for payment of, or otherwise modify the terms of, the debt secured thereby without discharging or in any way affecting the original liability of such parties thereunder or upon the debt thereby secured.

HISTORY: Add. 1967, p. 116, Act 96, Imd. Eff. Jun. 21.

489.768c Transfer and receipts of assets between associations.

368c. (1) Whenever by reason of the volume of real estate acquired by an association in satisfaction of debts by foreclosure or otherwise, or whenever by reason of delinquency in the payment of its mortgages, in the opinion of its board of directors it is desirable to do so, the board of directors with the approval of the supervisory authority may convey to any other association such portion of its assets as may be mutually agreed upon between the boards of directors of the associations, and may receive from the association its savings accounts to the amount of the book value of the assets so transferred, less such share of the reserve and undivided profits of the association making the transfer, after allowing for probable charge-offs as approved by the supervisory authority, determined in such proportion as the assets so transferred bear to the remaining assets of the association making such transfer, and thereafter the association

making the transfer shall proceed to conduct its affairs in accordance with subsection (4) of section 325, providing for pro rata payment of funds available for withdrawal.

(2) The board of directors of the association receiving the accounts, if it so determines, may offer to its own savings account holders to transfer to such of them as may elect to receive the same, their proportionate percentage of the accounts so received in payment for the transfer, and upon the delivery and acceptance of the same, their savings accounts in the association making the transfer shall be reduced accordingly, and thereafter they shall not participate in the distribution of any funds arising from the ownership or disposition of the accounts continuing to be held by such association.

HISTORY: Add. 1967, p. 116, Act 96, Imd. Eff. Jun. 21.

489.768d Emergency operations; temporary headquarters.

Sec. 368d. If an association's offices are destroyed by enemy attack or by natural disaster, the association may operate from such temporary headquarters as may be necessary until such time as it is again able to resume operations in its normal location or locations.

HISTORY: Add. 1967, p. 117, Act 96, Imd. Eff. Jun. 21.

489.768e Real estate loans; requirements.

Sec. 368e. Real estate loans may be made as authorized by this act. No real estate loan shall be made until a qualified person selected by the board of directors has submitted a signed appraisal of the real estate securing the loan, which shall be unencumbered except by prior liens held by the association.

HISTORY: Add. 1967, p. 117, Act 96, Imd. Eff. Jun. 21.

489.769 Real estate loans and land contracts; authority to make or purchase; limitation.

Sec. 369. An association may make or purchase real estate loans and land contracts secured by real property. No such real estate loans and land contracts shall be originated or purchased in excess of 80% of appraised valuation, except as provided in sections 369c, 369d, 369e, 370 and 370c.

HISTORY: Add. 1967, p. 117, Act 96, Imd. Eff. Jun. 21.

489.769a Participation in mortgage investments.

Sec. 369a. An association may participate with others in making, acquiring or selling first mortgage loans and land contracts as a participant, comortgagee or covendor.

HISTORY: Add. 1967, p. 117, Act 96, Imd. Eff. Jun. 21;—Am. 1969, p. 540, Act 293, Imd. Eff. Aug. 11.

489.769b Loan secured by first lien on real property; purchase or sale.

Sec. 369b. An association organized under the provisions of this act may purchase or sell any loan secured by a first lien on real property, if the loan conforms with the mortgage lending provisions of this act.

HISTORY: Add. 1967, p. 117, Act 96, Imd. Eff. Jun. 21.

489.769c Loans insured or guaranteed by United States.

Sec. 369c. An association may invest in any loan the repayment of which is wholly or partially guaranteed or insured by the United States or this state or by an agency of the United States or of this state.

HISTORY: Add. 1967, p. 117, Act 96, Imd. Eff. Jun. 21;—Am. 1969, p. 540, Act 293, Imd. Eff. Aug. 11.

489.769d Loans insured or guaranteed by federal authority; requirements.

Sec. 369d. Any loan insured by the federal housing administration or which is guaranteed by the servicemen's readjustment act of 1944, as amended, or which is guaranteed in whole or in part, by any other duly constituted federal instrumentality or private corporation approved by the federal home loan bank or the supervisory authority, which qualify to do business in this state for such insurance or guarantee, may be

made regardless of the requirements for loan to appraisal ratios and maximum aggregate lending limitations otherwise contained in this act.

HISTORY: Add. 1967, p. 117, Act 96, Imd. Eff. Jun. 21.

489.769e Real estate loans; single family residence; limitations; conditions.

Sec. 369e. An association organized under the provisions of this act may loan upon real estate improved by a single family residence only, up to an amount not exceeding 90% of the appraised value or 90% of the purchase price, whichever is lower, if secured by a mortgage and

- (a) The property is located within the authorized lending area.
- (b) Construction has been completed prior to the date of the final 10% disbursement of the mortgage loan proceeds.
- (c) If the loan contract requires that, in addition to interest and principal payments on the loan, the equivalent of 1/12 of the estimated annual taxes, assessments and insurance premiums on the real estate security be paid monthly in advance to the association.
- (d) Certification in writing has been made by the borrower and vendor stating the purchase price of the security property and that no lien or charge upon such property exists, or has been agreed to, other than the lien of the association or liens or charges which will be discharged from the proceeds of the loan.
- (e) Certification in writing has been made by the borrower stating that the loan is sought for the purpose of enabling the borrower to purchase or improve property and that he is actually occupying the property as a dwelling or in good faith intends to do so.
- (f) The association at the time of any disbursement on the loan has general reserves equal to at least 5% of the association's savings liability or that at least 20% of the loan is insured by a reputable insurer licensed to do business in this state.
- (g) The association's aggregate investment in loans made under this section at the time of any disbursement on any such loan does not exceed 20% of the association's savings liability. Loans insured under the provisions of section 369d shall not be subject to the aggregate 20% of savings liability limitation.

HISTORY: Add. 1967, p. 117, Act 96, Imd. Eff. Jun. 21.

489.770 Real estate land contracts; purchase and sale, conditions.

Sec. 370. An association may purchase and sell real estate land contracts. Any real estate land contract purchased by an association exceeding in net investment amount 80% of the appraised value of the real estate shall be subject to the following conditions:

- (a) The real estate is improved by a single family residence only and is located within the authorized lending area.
- (b) Construction has been completed prior to the date of the final 10% disbursement of the land contract proceeds.
- (c) Certification in writing has been made by the vendor that no lien or charge upon such property exists, or has been agreed to, other than the lien of the association or liens or charges which will be discharged from the proceeds of the land contract.
- (d) The association at the time of any disbursement on the land contract has general reserves equal to at least 5% of the association's savings liability or that at least 20% of the land contract is insured by a reputable insurer licensed to do business in this state.
- (e) The association's aggregate investment in noninsured purchased land contracts exceeding in net investment amount 80% of the appraised value of the real estate shall not exceed 20% of the association's savings liability. Purchased land contracts insured

under the provisions of section 369d shall not be subject to the aggregate 20% of savings liability limitation.

HISTORY: Add. 1967, p. 118, Act 96, Imd. Eff. Jun. 21.

489.770a Foreign associations doing business in state.

Sec. 370a. Any foreign savings and loan association, through any other person, firm or corporation legally entitled to engage in business in this state, may acquire loans, participations or interests therein, which are secured in whole or in part by mortgages on real property located in this state, without qualifying or maintaining authority to carry on, do or transact business within this state under this act or any other law of this state relating to such qualification or authority and without paying fees with respect thereto. Neither the failure, heretofore or hereafter, of any such foreign savings and loan association to qualify or maintain authority to carry on, do or transact business within this state under this act or any such other law of this state nor its failure, heretofore or hereafter, to pay fees with respect thereto shall in any manner affect or impair its ownership of such loans, or participations or interests therein whether heretofore or hereafter acquired, or its right to collect and service the same through any other person, firm or corporation legally entitled to engage in business in this state, or its right to enforce the same or to acquire, hold, protect, convey, lease and otherwise contract and deal with respect to the property mortgaged as security therefor.

HISTORY: Add. 1967, p. 118, Act 96, Imd. Eff. Jun. 21.

489.770b Loans on condominium dwellings.

Sec. 370b. An association may make loans on condominium dwelling units conforming to the laws of this state.

HISTORY: Add. 1967, p. 118, Act 96, Imd. Eff. Jun. 21.

489.770c Sale, exchange, lease or mortgage of real estate in which association has interest.

Sec. 370c. An association may purchase at any sale, public or private, any real estate upon which it may have a mortgage, judgment, lien or other encumbrance, or in which it may have an interest, and may sell, exchange, lease or mortgage same at pleasure to any person or persons, notwithstanding any other provisions of this act.

HISTORY: Add. 1967, p. 119, Act 96, Imd. Eff. Jun. 21.

489.770d Loans beyond regular lending area authorized in emergency; approval.

Sec. 370d. An association, with the approval of the supervisory authority, may make loans beyond its regular lending area within this state in the event of an emergency resulting in the destruction of the home financing facilities in any community in this state.

HISTORY: Add. 1967, p. 119, Act 96, Imd. Eff. Jun. 21.

489.770e Property improvement and educational loans.

Sec. 370e. (1) An association may invest in secured or unsecured property improvement loans to home owners and other real property owners for maintenance, repair, modernization, alteration, landscaping or improvement, including new construction, furnishing and equipping, of their properties. Unsecured loans made under section 370e (1) shall not exceed \$10,000.00 to any one borrower.

(2) An association may invest in unsecured loans, obligations and advances of credit, all of which are hereinafter referred to as "educational loans" made for the payment of expenses of business, vocational, professional, college or university education.

(3) An association and any federal savings and loan association, except as federal laws or regulations provide otherwise, may charge interest added in advance on any property improvement loan or educational loan at the rate of 8% per annum, or less,

on the entire amount of such loan from the date of disbursement thereof to the date of maturity thereof, or to the date of the last maturing installment thereof, and may receive uniform weekly, semimonthly or monthly repayment installments of the entire amount of the loan and interest thereon, but no such loan shall be made for a longer period than may be established by the supervisory authority from time to time. If necessary, the amount of the final installment may be less than the amount of any previous installment. Notwithstanding any provision to the contrary in any agreement under which a home improvement or educational loan is made under this section 370e, the borrower may repay the entire unpaid balance of the loan at any time prior to maturity. If the contract is prepaid in full, by cash, renewal or refinancing, or a new loan, a portion of this charge shall be rebated. The rebate shall be that proportion of the original charge for the loan which the sum of the monthly balances scheduled to follow such prepayment in full bears to the sum of all the monthly balances, both sums to be determined according to the payment schedule originally contracted for.

HISTORY: Add. 1967, p. 119, Act 96, Imd. Eff. Jun. 21;—Am. 1969, p. 540, Act 293, Imd. Eff. Aug. 11.

489.771-489.773 Repealed. 1967, p. 122, Act 96, Imd. Eff. Jun. 21.

Sections related to real estate loans and restrictions.

489.774 Real estate loans; payment, application to interest and principal.

Sec. 374. Payments on real estate loans shall be applied first to the payment of interest on the unpaid balance of the loan and the remainder to the reduction of principal. If the loan is in default in any manner, payments may be applied as determined by the mortgagee.

HISTORY: New 1964, p. 169, Act 156, Eff. Jan. 1, 1965.

489.775 Loans; note of evidence, contents; security instruments.

Sec. 375. (1) Every loan shall be evidenced by a note for the amount of the loan. The note shall specify the amount, rate of interest, terms of repayment, and may contain all other terms of the loan contract.

(2) Every real estate loan shall be secured by a mortgage or other security instrument constituting a first lien upon the real estate securing the loan. Such security instrument shall provide specifically for full protection to the association with respect to such loan and additional advances and the usual insurance risks, taxes, assessments, other governmental levies, maintenance and repairs. It may provide for an assignment of rents, which assignment shall be absolute upon the borrower's default, becoming operative upon written demand made by the association. All such security instruments shall be recorded in accordance with the law of this state.

HISTORY: New 1964, p. 169, Act 156, Eff. Jan. 1, 1965.

489.776 Real estate loans; taxes, assessments, insurance premiums, life insurance; payment by associations.

Sec. 376. An association may pay taxes, assessments, insurance premiums and other similar charges for the protection of its real estate loans. All such payments shall be added to the unpaid balance of the loan and shall be equally secured by the first lien on the property as provided above. An association may require life insurance to be assigned as additional collateral upon any real estate loan. In such event, the association shall obtain a first lien upon the policy and may advance premiums thereon, which premium advances shall be added to the unpaid balance of the loan and shall be equally secured by the first lien on the property.

HISTORY: New 1964, p. 170, Act 156, Eff. Jan. 1, 1965.

489.777 Real estate loans; taxes, assessments, insurance premiums, life insurance; payment by borrower.

Sec. 377. An association may require the borrower to pay monthly in advance, in addition to interest or interest and principal payments, the equivalent of 1/12 of the estimated annual taxes, assessments, insurance premiums, and other charges upon the real estate securing a loan, or any of such charges, so as to enable the association to pay such charges as they become due from the funds so received. The amount of the monthly charges may be increased or decreased so as to provide reasonably for the payment of the estimated annual taxes, assessments, insurance premiums, and other charges. The association may carry such funds in trust in an account or may credit the same to the indebtedness and advance the money for taxes, insurance or other charges. Every association shall keep a record of the status of taxes, assessments, insurance, and other charges on all real estate securing its loans and on all real and other property owned by it.

HISTORY: New 1964, p. 170, Act 156, Eff. Jan. 1, 1965.

489.778 Default by borrower; enforcement of payment.

Sec. 378. Whenever a borrowing member is in arrears in the payment of principal or interest for 2 months or more, the board of directors may declare the loan in default and the whole amount of the loan due and payable, and its collection, together with the arrears of interest and other legal charges, may be enforced by proceedings upon the security held by the association, in accordance with law except an insured loan under the provisions of the national housing act of 1934 and any amendments thereof, in which case forfeiture, collection and settlement of such insured loan may be made in accordance with the terms of the national housing act or any amendments thereof. The withdrawal value of a pledged savings account at the time of foreclosure proceedings, shall be credited upon the loan.

HISTORY: New 1964, p. 170, Act 156, Eff. Jan. 1, 1965.

489.779 Loan expenses, fees and charges; loan settlement statement.

Sec. 379. (1) Every association and every federal savings and loan association, except as federal laws or regulations provide otherwise, may require borrowing members to pay all reasonable and necessary charges incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of real estate loans, property improvement loans and educational loans.

(2) The charges authorized by this section shall be in addition to interest authorized by law, and shall not be deemed to be a part of the interest collected or agreed to be paid on such loans within the meaning of any law of this state which limits the rate of interest which may be exacted in any transaction.

(3) The association shall furnish a loan settlement statement to each borrower upon the closing of the loan, indicating in detail the charges the borrower has paid or obligated himself to pay the association or to any other person in connection with the loan. A copy of the statement shall be retained in the records of the association.

HISTORY: New 1964, p. 170, Act 156, Eff. Jan. 1, 1965;—Am. 1965, p. 163, Act 118, Imd. Eff. Jul. 8.

489.781 Securities; investments authorized.

Sec. 381. An association may invest in securities as follows; but the total investments under subdivisions (f), (g), (h) and (i) in the aggregate shall be limited to 10% of the investing association's savings liability:

(a) Obligations of the United States, or any of its agencies or instrumentalities, or those for which the full faith and credit of the United States is pledged to provide for the payment of the interest and principal, or those for which annual contributions to be paid pursuant to contract by the United States government or any of its instrumen-

talities in accordance with the housing act of 1949, are pledged as security for the payment of the interest and principal.

(b) Obligations of any state of the United States, or any of its instrumentalities, issued pursuant to the authority of any law of that state, for which the full faith and credit is pledged to provide for the payment of the interest and principal and revenue bonds issued by an instrumentality of this state or any political subdivision thereof.

(c) In stock of a federal home loan bank of which it is eligible to be a member, and in any obligations or consolidated obligations of any federal home loan bank.

(d) In stock or obligations of the federal savings and loan insurance corporation.

(e) In demand, time or savings deposits with any bank or trust company the deposits of which are insured by the federal deposit insurance corporation and bankers acceptances eligible for purchase by federal reserve banks.

(f) In stock or obligations of any corporation or agency of the United States or this state, or in deposits therewith to the extent that the corporation or agency so requires in furthering or facilitating the association's purposes or powers.

(g) In savings accounts of any association whose accounts are insured by the federal savings and loan insurance corporation.

(h) In stocks, bonds or investment certificates in any organization that assists in furthering or facilitating the association's purposes, including business development credit corporations, urban renewal corporation bonds and redevelopment corporation bonds.

HISTORY: New 1964, p. 170, Act 156, Eff. Jan. 1, 1965;—Am. 1969, p. 541, Act 293, Imd. Eff. Aug. 11.

489.782 Real estate; investments authorized.

Sec. 382. An association may invest in real estate as follows:

(a) An amount not exceeding the sum of its undivided profits and legal reserve accounts, or an association having assets of \$500,000.00 or more, may invest in land and buildings an amount not to exceed 5% of its assets, in such real estate as may be or reasonably anticipated to be necessary or convenient for the transaction of its business, from portions of which a revenue may be derived by rentals or otherwise.

(b) In real estate purchased at sheriff's sale or any other sale, public or private, judicial or otherwise, upon which the association has a lien or claim, legal or equitable.

(c) In real estate accepted by the association in satisfaction of any obligation.

(d) In the purchase and development of real estate for sale, or for improvement thereof by the erection thereon of residential units for sale or rental purposes. The total amount thus invested, including other real estate owned, excluding office building and real estate sold on land contract, shall not exceed 10% of mortgage loan balances and any subsequent reduction in mortgage loan balances shall not affect the aforesaid ratio.

HISTORY: New 1964, p. 171, Act 156, Eff. Jan. 1, 1965.

489.785 Association; borrowing power, collateral.

Sec. 385. (1) An association may borrow money upon resolution adopted by a vote of a majority of its board of directors. If an association is not a member of a federal home loan bank, it may borrow not more than an aggregate amount equal to 1/4 of its savings liability on the date of borrowing and such additional sums as the supervisory authority may approve. If an association is a member of a federal home loan bank, it may secure advances of not more than an aggregate amount equal to 1/2 of its savings liability. Within the amount equal to 1/2 of its savings liability, the association may borrow from sources other than the federal home loan bank an aggregate amount not in excess of 20% of its savings liability. A subsequent reduction of savings liability shall not affect in any way outstanding obligations for borrowed money. All borrowings and

advances may be secured by property of the association and may be evidenced by such notes, bonds, debentures or other obligations or securities, except capital stock, as the supervisory authority may authorize. Authorization by the supervisory authority shall not be required in the case of securities guaranteed pursuant to section 306 (g) of the national housing act of 1934, as amended.

(2) An association may borrow from and lend to like associations upon the approval of the board of directors of both the borrowing and lending associations when approved by the supervisory authority. It may pledge or assign at the discretion of its board of directors, notes, mortgages, and other assets as collateral for borrowed money.

HISTORY: New 1984, p. 171, Act 156, Eff. Jan. 1, 1985;—Am. 1989, p. 541, Act 293, Imd. Eff. Aug. 11.

489.786 Fiscal agent of United States; member of federal home loan bank.

Sec. 386. If an association is a member of a federal home loan bank, it may act as fiscal agent of the United States, and, when so designated by the secretary of the treasury, it shall perform, under such regulations as he may prescribe, all reasonable duties as fiscal agent of the United States as he may require, and may act as agent for any instrumentality of the United States and as agent of this state or any instrumentality thereof.

HISTORY: New 1984, p. 172, Act 156, Eff. Jan. 1, 1985.

489.787 False, malicious, and derogatory statements injuring reputation or business; penalty.

Sec. 387. Whoever wilfully and knowingly makes, issues, circulates, transmits or causes or knowingly permits to be made, issued, circulated or transmitted, any statement or rumor, written, printed, reproduced in any manner, or by word of mouth, which is untrue in fact and is directly or by inference false, malicious in that it is calculated to injure reputation or business, or derogatory to the reputation, financial condition or standing of any association, federal association, federal home loan bank, the federal home loan bank board or the federal savings and loan insurance corporation, shall be fined not more than \$1,000.00 or imprisoned for not more than 1 year, or both.

HISTORY: Add. 1989, p. 542, Act 293, Imd. Eff. Aug. 11.

489.791 Conversion into federal association; procedure.

Sec. 391. (1) An association conducting a savings and loan business under this act may convert itself into a federal savings and loan association, or similar mutual savings institution authorized by the United States government, upon a vote of 51% or more of the votes of the members at an annual meeting or at any special meeting called to consider such action, notice of which, giving the time, place and purpose thereof shall have been mailed at least 30 days prior thereto to the supervisory authority and to each member at the member's last address as shown on the books of the association. A copy of the minutes of the proceedings of the meeting of the members, verified by the affidavit of the secretary or an assistant secretary, shall be filed in the office of the supervisory authority within 10 days after the date of the meeting. A sworn copy of the proceedings of the meeting, when filed, is presumptive evidence of the holding and action of the meeting. Within 3 months after the date of the meeting, the association shall take such action in the manner prescribed and authorized by the laws of the United States as shall make it a federal savings and loan association. There shall be filed with the supervisory authority 3 copies of the charter issued to the federal savings and loan association by the federal home loan bank board or a certificate showing the organization of the association as a federal savings and loan association, certified by the secretary or assistant secretary of the federal home loan bank board. Upon the payment of the fees prescribed by law, the supervisory authority shall note the filing

upon each of the copies and retain 1 copy in his office, file 1 copy in the office of the county clerk in the county in this state in which the principal office of the association is located and return 1 copy to the association for its files. Failure to file any such instruments with the supervisory authority shall not affect the validity of such conversion. Upon the grant to any association of a charter by the federal home loan bank board, the association receiving the charter ceases to be an association incorporated under this act and is no longer subject to the supervision and control of the supervisory authority.

(2) Upon the conversion of an association into a federal savings and loan association, the legal existence of the association does not terminate, but the federal association is deemed a continuation of the entity of the converted association and all property of the converted association, including its rights, titles and interests in and to all property of whatever kind, whether real, personal, or mixed, and things in action, and every right, privilege, interest and asset of every conceivable value or benefit then existing, or pertaining to it, or which would inure to it, immediately by act of law and without any conveyance or transfer and without any further act or deed remains and vests in the federal association into which the state association has converted itself, and the federal association shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by the converting association. The federal association as of the time and the taking effect of the conversion shall continue to have and succeed to all the rights, obligations and relations of the converting association. All pending actions and other judicial proceedings to which the converting state association is a party shall not be abated or discontinued by reason of the conversion, but may be prosecuted to final judgment, order or decree in the same manner as if the conversion had not been made and the federal association resulting from the conversion may continue such action in its corporate name as a federal association. Any judgment, order or decree may be rendered for or against it which might have been rendered for or against the converting state association theretofore involved in the judicial proceedings.

(3) Any association or corporation which has heretofore converted itself into a federal savings and loan association under the provisions of the laws of the United States, and has received a charter from the federal home loan bank board, is recognized as a federal savings and loan association, and its federal charter shall be given full credence by the courts of this state to the same extent as if the conversion had taken place under the provisions of this section if there has been compliance with the foregoing requirements with respect to the filing with the supervisory authority 3 copies of the federal charter or a certificate showing the organization of the association as a federal savings and loan association. All such conversions are ratified and confirmed and all the obligations of such association which has so converted shall continue as valid and subsisting obligations of such federal savings and loan association and the title to all of the property of such an association shall be deemed to have continued and vested, as of the date of the issuance of such federal charter in such federal savings and loan association as fully and completely as if such conversion had taken place since the enactment of this act pursuant to this section.

HISTORY: New 1964, p. 172, Act 156, Eff. Jan. 1, 1965;—Am. 1967, p. 119, Act 96, Imd. Eff. Jun. 21;—Am. 1969, p. 542, Act 293, Imd. Eff. Aug. 11;—Am. 1970, p. 547, Act 185, Imd. Eff. Aug. 3.

489.792 Federal savings and loan association; conversion into state association, procedure.

Sec. 392. (1) A federal savings and loan association may convert itself into an association under this act upon a vote of 51% or more of the votes of members of the federal savings and loan association cast at an annual meeting or at any special meeting called to consider such action. Copies of the minutes of the proceedings of the meeting

of members, verified by the affidavit of the secretary or assistant secretary, shall be filed in the office of the supervisory authority and mailed to the federal home loan bank board within 10 days after the meeting. The verified copies of the proceedings of the meeting when so filed are presumptive evidence of the holding and action of the meeting. At the meeting at which conversion is voted upon, the members shall also vote upon the directors who shall be the directors of the state chartered association after conversion takes effect. The directors shall execute 3 copies of the petition for certificate of charter provided for in this act and 3 copies of the bylaws as provided in this act. The supervisory authority may insert in the charter certificate, at the end of the paragraph preceding the testimonium clause, the following:

“This association is organized by conversion from a federal savings and loan association.”

Continuation of legal existence of converted association.

(2) Each of the directors chosen for the association shall sign and acknowledge the petition for certificate of charter as subscribers thereto and the proposed bylaws as organizers of the association. The provisions of this act so far as applicable shall apply to the conversion under this act. The supervisory authority may provide, by regulation, for the procedure to be followed by a federal savings and loan association converting into an association under this act. All the provisions regarding property and other rights contained in section 391 shall apply, in reverse order, to the conversion of a federal savings and loan association into an association organized under this act, so that the state chartered association shall be a continuation of the association entity of the converting federal association and continue to have all of its property and rights.

HISTORY: New 1964, p. 173, Act 156, Eff. Jan. 1, 1965.

489.793 Merger of associations; procedure, approval.

Sec. 393. At the annual meeting, or at any special meeting called for that purpose, any 2 or more savings and loan associations situated in this state upon a vote of 51% or more of the votes of the members of each of the associations cast at such meetings may resolve to merge into 1 upon terms as shall be mutually agreed upon by the directors of the associations. Notice of the time, place and purpose of either the annual meeting or a special meeting shall be given either by mailing such notice by ordinary mail to the last known post office address of the savings account members as shown by the books of the merging associations, postmarked at least 10 days prior to the date of the meeting, or by publishing the notice at least 2 times before the meeting, the first of the publications to be at least 10 days prior to the meeting date, and the second, 1 week later, in any newspaper published that has general circulation in the city and county in which the home offices of the merging associations are located. Any savings account holder not consenting to the merger shall be entitled to receive the withdrawal value of his account in settlement or, if a borrower, the association may apply such value towards the payment of his loan. The merger shall not take effect until the terms and conditions have been approved by the supervisory authority, and a copy of the resolution certified by a majority of the directors of each association is filed with the supervisory authority.

HISTORY: New 1964, p. 173, Act 156, Eff. Jan. 1, 1965;—Am. 1967, p. 120, Act 96, Imd. Eff. Jun. 21;—Am. 1970, p. 548, Act 185, Imd. Eff. Aug. 3.

489.801 Liquidation or dissolution of association; procedure.

Sec. 401. At the annual meeting, or at any special member's meeting called for the purpose of voting on liquidation and dissolution, any savings and loan association of this state, by the affirmative vote of 51% or more of the outstanding voting units, may resolve to liquidate and dissolve the association, if a notice clearly stating the purpose of the meeting has been mailed at least 30 days prior to the meeting date to all mem-

bers of the association and a certified copy of the notice sent by certified mail to the supervisory authority. Before the resolution shall have effect, a copy thereof shall be filed with the supervisory authority. The copy of the resolution shall be certified by the president and secretary of the association, and shall be accompanied by an itemized statement of its assets and liabilities, and an itemized list including the name of each member, last known address and the value of voting units in force, designating those members voting for dissolution, sworn to by a majority of the board of directors. The member's meeting proceedings shall set forth that members owning at least 51% of the voting units voted in favor of placing the association in liquidation, and shall also set forth the reasons for placing the association in liquidation.

HISTORY: New 1964, p. 174, Act 156, Eff. Jan. 1, 1965.

489.802 Liquidation or dissolution of association; cessation of new business; continuance of association existence.

Sec. 402. After filing a copy of the resolution the association shall not carry on the business of accepting savings account payments or the making of any new loans. All of its income and receipts in excess of actual expenses of management shall be retained pending an examination by the supervisory authority. The association existence shall be retained for the sole purpose of paying, satisfying, and discharging existing liabilities and obligations, collecting and distributing assets and doing all other acts required to adjust and dissolve its business and affairs.

HISTORY: New 1964, p. 174, Act 156, Eff. Jan. 1, 1965.

489.803 Liquidation or dissolution; examination by supervisory authority, determination of fraud or defeat.

Sec. 403. After certified copies of the proceedings have been filed with the supervisory authority, he shall make an examination of the association for the purpose of determining whether or not its savings members and creditors will be defeated and defrauded in the collection of their claims against the association by the liquidation.

HISTORY: New 1964, p. 174, Act 156, Eff. Jan. 1, 1965.

489.804 Liquidation or dissolution; transfer of assets; application of income and receipts.

Sec. 404. In order to facilitate the dissolution, the board of directors, upon receipt of written approval from the supervisory authority, may sell and transfer the mortgage securities and other property of the association to another corporation or persons, subject however, to the vested and accrued rights of the mortgagors, and begin applying its income and receipts, in excess of the expenses of dissolution, to the discharge of its liabilities.

HISTORY: New 1964, p. 174, Act 156, Eff. Jan. 1, 1965.

489.805 Liquidating agent or committee; publication of notice to creditors.

Sec. 405. The members shall designate 1 or more persons to act as a liquidating agent or committee, who shall be approved by the supervisory authority, and shall require a suitable bond to be given by the agent or committee. The liquidating agent or committee shall publish a notice in a newspaper within the county of the home office once in each week for 8 successive weeks, informing creditors to present their claims against the association for payment. The provisions of this section with respect to publication of notice shall not apply to any association in voluntary liquidation which disposes of sufficient of its assets to a state or federally chartered association to pay its creditors in full, or in case all of the liabilities are assumed by the state or federally

chartered association. The agent or committee so designated shall conduct the liquidation in accordance with law, such regulations as prescribed by the supervisory authority and under the supervision of the board of directors.

HISTORY: New 1964, p. 174, Act 156, Eff. Jan. 1, 1965.

489.806 Liquidation; reports required.

Sec. 406. Any savings and loan association operating under sections 401 to 409 shall make the same reports to the supervisory authority as are required of solvent and going savings and loan associations. The liquidating agent or committee shall render semi-annual reports to the supervisory authority not later than July 30 and January 30 of each year, and at such other times as the supervisory authority may require, showing the progress of the liquidation until the same is completed. The reports shall be in such form and contain such information as the supervisory authority shall require. The liquidating agent or committee shall also make an annual report to a meeting of the members to be held on the date as provided for in the bylaws of the association for the annual meeting.

HISTORY: New 1964, p. 175, Act 156, Eff. Jan. 1, 1965.

489.807 Liquidating agent or committee; removal, approval.

Sec. 407. At the annual meeting, or special meeting called at any time in the same manner as if the association continued as an active association, the members by vote representing a majority of the outstanding voting units of the association, after approval of the supervisory authority, may remove the liquidating agent or committee and appoint, subject to the approval of the supervisory authority, a new agent or new members of the committee.

HISTORY: New 1964, p. 175, Act 156, Eff. Jan. 1, 1965.

489.808 Liquidation or dissolution; certified copies of proceedings filed with supervisory authority.

Sec. 408. Certified copies of all proceedings under sections 401 to 409 had by the directors and members of such association shall be filed with the supervisory authority and with the county clerk of the county in which the association is located.

HISTORY: New 1964, p. 175, Act 156, Eff. Jan. 1, 1965.

489.809 Liquidation; examination by supervisory authority; appointment of conservator.

Sec. 409. (1) The supervisory authority may examine into the affairs of the liquidating association at any time for the purpose of determining that the rights of the creditors and members are being properly served. The expenses of any such examination shall be paid by the association to the state, but shall not exceed \$50.00 per day for each examiner, and actual expenses incurred while making the examination.

(2) Whenever from the reports from the examiners or valid complaints from members or creditors it appears to the supervisory authority that the liquidation is not proceeding in a lawful, safe or equitable manner, he shall appoint a conservator as provided for in sections 426 to 430, but without the power of performing any acts inconsistent with the liquidation of the association.

HISTORY: New 1964, p. 175, Act 156, Eff. Jan. 1, 1965.

489.811 Offices; agencies, approval.

Sec. 411. (1) Each association shall be operated from the home office. All branch offices and agencies shall be subject to direction from the home office.

(2) No association shall establish an agency for the transaction of business until prior application has been made to and approved by the supervisory authority. At any agency savings accounts and loan payments may be received solely for transmission to

the home office or a branch office of the association. No agency shall be authorized to issue account books and membership certificates.

HISTORY: New 1964, p. 175, Act 156, Eff. Jan. 1, 1965.

489.812 Branch office; application for establishment; notice.

Sec. 412. (1) No association shall establish a branch office for the transaction of business until prior application has been made to and approved by the supervisory authority. Within 10 days following receipt of application the supervisory authority shall send written notice by mail to the home office of all associations who have offices within a radius of 25 miles of the proposed new branch office location.

Examination, hearing, determination.

(2) The supervisory authority shall make an independent examination or investigation of the applications as the circumstances require.

The supervisory authority may call a hearing concerning such application if the supervisory authority receives objections in writing from any party to whom notice is required to be sent within 15 days from the time such notice is sent. The supervisory authority shall announce his decision concerning such application within 60 days after receipt thereof and file in his office a written memorandum stating the reasons supporting his decision, which memorandum shall be available for public inspection.

Approval.

(3) If it appears that the establishment of the branch office has a reasonable probability of success and that the branch office will be in the public interest and public need, that it will benefit the members of the association, and that the general operating policies and financial condition of the association fulfill the standards of eligibility established by the supervisory authority, including the ratio of loss reserves to total assets, the supervisory authority shall then approve and file the application with the date of filing indorsed thereon.

Extension of time.

(4) If the branch office authorized by the supervisory authority is not established within 6 months from the date when authority is granted to do so, the approval is revoked, unless a written request for an extension is made to the supervisory authority at least 10 days prior to the termination of the 6 months' period. The supervisory authority may issue 6-month extensions.

Moving; approval.

(5) No office of any association shall be moved without prior written approval from the supervisory authority.

HISTORY: New 1964, p. 176, Act 156, Eff. Jan. 1, 1965;—Am. 1967, p. 121, Act 96, Imd. Eff. Jun. 21;—Am. 1969, p. 543, Act 244, Imd. Eff. Aug. 11.

489.815 Annual reports; time; penalty for delay.

Sec. 415. (1) Every association on or before March 1 of each year shall file with the supervisory authority a full and detailed statement of its financial condition on the preceding December 31 and the business transacted during the preceding year. The statement shall set forth the amount and character of its assets and liabilities and shall contain such other information and be in such form as the supervisory authority may prescribe. Every report shall be subscribed and sworn to by the president and secretary of the association. An association refusing or neglecting to file the required annual statement within the prescribed period shall forfeit \$10.00 per day for each day the statement is withheld and the supervisory authority may maintain an action in the name of the state to recover the penalty, which upon its collection shall be paid into the state treasury.

Other reports.

(2) Every association shall make such other reports as the supervisory authority may require from time to time.

Officers, penalty for failure to make required reports.

(3) Any officer failing to make the reports required by this act is guilty of a misdemeanor, and shall be fined not less than \$100.00 nor more than \$500.00 or imprisoned for not less than 1 month or more than 6 months or both.

HISTORY: New 1964, p. 176, Act 156, Eff. Jan. 1, 1965.

489.821 Supervision and regulation of associations; director; articles of association and bylaws; rules, notice.

Sec. 421. (1) The supervisory authority has supervision over all associations subject to the provisions of this act. He shall enforce the purposes of this act by use of the powers herein conferred and by reference to the courts when required. Every approval granted, every regulation adopted or order issued by the supervisory authority pursuant to the provisions of this act shall be in writing and shall be addressed to the association's board of directors, or an officer thereof, at the home office of the association.

(2) The supervisory authority shall designate a person to be known as the director of savings and loan and employ the necessary assistants, clerks and examiners to assist him in the discharge of the duties imposed upon him. He shall require that persons employed in the savings and loan division be bonded by a surety company for the faithful discharge of the duties. He shall prescribe the duties of the director, assistants, clerks and examiners. The salaries, premiums on bonds and the actual and necessary traveling expenses of the director, assistants, clerks and examiners and all other expenses incurred by the supervisory authority in the performance of the duties imposed upon him by law shall be paid out of the appropriations made by the legislature in accordance with the accountancy laws of the state.

(3) The supervisory authority may prescribe the form and content of uniform articles of association and bylaws to be adopted by all associations.

(4) The supervisory authority, after giving notice of intent 15 days in advance, may adopt rules not inconsistent with the provisions of this act deemed necessary to enable savings and loan associations to properly carry on the activities authorized under this act. All rules shall be in accordance with the provisions of Act No. 88 of the Public Acts of 1943, as amended, being sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to Act No. 197 of the Public Acts of 1952, as amended, being sections 24.101 to 24.110 of the Compiled Laws of 1948.

HISTORY: New 1964, p. 177, Act 156, Eff. Jan. 1, 1965;—Am. 1967, p. 121, Act 96, Imd. Eff. Jun. 21;—Am. 1968, p. 98, Act 60, Eff. Nov. 15.

489.822 Supervisory authority; annual examination of association.

Sec. 422. (1) The supervisory authority, at least once each year, without previous notice, shall examine into the affairs of every association subject to this act.

Federal examinations; reports.

(2) In lieu of such examination, the supervisory authority may accept any examination made by a federal home loan bank, the federal home loan bank board or by the federal savings and loan insurance corporation. Two copies of any examination report, signed and certified by the examiner making the examination, shall be filed promptly with the supervisory authority.

Extra examinations, reports.

(3) Whenever, in the judgment of the supervisory authority, the condition of any association renders it necessary or expedient to make an extra examination or to devote any extraordinary attention to its affairs, the supervisory authority shall cause

such work to be done. A report of all examinations conducted by the supervisory authority shall be furnished to the association examined. The report of examination shall be presented by the president to the board of directors at its next regular or special meeting.

Access to records.

(4) The supervisory authority, any deputy or his examiners or auditors shall have free access to all books and papers kept by any officer, agent or employee relating to or upon which any record of its business is kept, and may summon witnesses and administer oaths or affirmations in the examination of the directors, officers, agents, or employees of any such association or any other person in relation to the affairs, transactions and conditions and may compel the production of records, books, papers, contracts, or other documents by court order, if not voluntarily produced.

HISTORY: New 1964, p. 177, Act 156, Eff. Jan. 1, 1965.

489.823 Supervisory authority; annual report to governor, printing.

Sec. 423. The supervisory authority annually, at the earliest possible date after the statements required of each association are received, shall make a report to the governor of the general conduct and condition of all associations operating under this act, including the information contained in the statements arranged in tabular form and any suggestions he may deem expedient. There shall be printed as many copies of this report as the supervisory authority shall deem necessary.

HISTORY: New 1964, p. 178, Act 156, Eff. Jan. 1, 1965.

489.824 Supervisory authority, assistants and employees; divulgence of information; penalty.

Sec. 424. The supervisory authority, his assistants and employees shall not divulge any information acquired by them in the discharge of their duties as prescribed by this act, except insofar as the same may be rendered necessary by law or under order of court. The supervisory authority may furnish information as to the condition of any association to the federal home loan bank board, the federal savings and loan insurance corporation, any federal home loan bank, or to the savings association departments of other states. Any person appointed or acting under the provisions of this act who fails to keep secret any adverse facts or information concerning the association obtained in the course of an examination or by reason of his official business, except when the legal duty of the officer requires him to report upon or take official action regarding the affairs of the association so examined, or who wilfully makes a false official report as to the condition of such association, is guilty of a misdemeanor and shall be fined not less than \$100.00 nor more than \$500.00 or imprisoned for not less than 1 month nor more than 6 months, and his conviction shall automatically remove him from his position or office.

HISTORY: New 1964, p. 178, Act 156, Eff. Jan. 1, 1965.

489.825 Violation of articles, bylaws, statutes, regulations; impaired condition; report to directors.

Sec. 425. If the supervisory authority, as a result of any examination or from any report made to him, finds that any association appears to be violating the provisions of its articles of association, charter or bylaws, or the laws of this state or of the United States, or any lawful regulation or order of the supervisory authority, or that its financial stability is impaired or it is conducting its business in an unsafe, unsound or inequitable manner, he shall state by a formal written report to the association board of directors any alleged violation or detrimental condition deemed to exist and direct discontinuance of such violation, or order the correction of such detrimental condition.

HISTORY: New 1964, p. 178, Act 156, Eff. Jan. 1, 1965.

489.826 Conservator; appointment, duration of operation; return to directors; liquidation.

Sec. 426. If the board of directors fails to correct the impaired financial stability, or ceases to conduct its business in an unsafe, unsound and inequitable manner as may be satisfactory to the supervisory authority, then the supervisory authority at once may appoint an examiner as conservator and order the conservator to take possession of all books, records and assets of every description of the association and hold and retain possession of them pending further proceedings specified in this act. If the board of directors, secretary or person in charge of the association refuses to permit the examiner to take possession, the supervisory authority shall communicate such fact to the attorney general, who shall institute at once such proceedings as may be necessary to place the examiner in immediate possession of the property of the association. Upon taking possession of the effects of the association, the examiner shall prepare a full and true statement of the affairs and conditions of the association, including an itemized statement of its assets and liabilities, and shall file the report with the supervisory authority. The conservator shall endeavor promptly to remedy the situations complained of by the supervisory authority. Within 6 months after the date of the appointment of the conservator, or within 12 months if the supervisory authority extends the 6 months' period, the association shall be returned to its board of directors and thereafter shall be managed and operated as if no conservator had been appointed. If the situations complained of have not been remedied, the supervisory authority shall proceed in accordance with the provisions of sections 431 to 433 toward the liquidation and dissolution of the association.

HISTORY: New 1964, p. 178, Act 156, Eff. Jan. 1, 1965.

489.827 Conservator; rights, powers, privileges.

Sec. 427. Any conservator appointed shall have all rights, powers and privileges possessed by the officers, board of directors and members of the association.

HISTORY: New 1964, p. 179, Act 156, Eff. Jan. 1, 1965.

489.828 Conservator; special counsel and expenses, approval.

Sec. 428. The conservator shall not retain special counsel or other experts, incur any expense other than normal operating expenses or liquidate assets except with the approval of the supervisory authority.

HISTORY: New 1964, p. 179, Act 156, Eff. Jan. 1, 1965.

489.829 Conservator; removal of directors or officers, approval.

Sec. 429. The directors and officers shall remain in office and employees shall remain in their respective positions, but the conservator may remove any director, officer, or employee, if the order of removal of a director or officer is approved in writing by the supervisory authority, specifying the reasons therefor.

HISTORY: New 1964, p. 179, Act 156, Eff. Jan. 1, 1965.

489.830 Conservator; operation of business; segregation of payments; expenses and compensation of conservator.

Sec. 430. While the association is in charge of a conservator, the members of the association shall continue to make payments to the association in accordance with the terms and conditions of their contracts, and the conservator, subject to such rules and regulations as the supervisory authority may prescribe, may permit members to withdraw their savings accounts from the association pursuant to the provisions of this act. The conservator may accept payments on savings accounts, but any payments upon such accounts shall be segregated if the supervisory authority so orders in writing, and if so ordered, such payments shall not be subject to offset in any manner and shall not

be used to liquidate any indebtedness of the association existing at the time of the appointment of the conservator or any indebtedness subsequently incurred while the association is in the possession of the conservator or a receiver subsequently appointed pursuant to sections 431 to 433. Any member whose payments have been so segregated may request the return of such payments, and the conservator shall repay the same without interest or dividends. Before delivery of the association or its assets to any liquidators or to a receiver, the conservator shall return the money so collected from members and so segregated. The supervisory authority may revoke an order of segregation whenever it appears that the condition of an association justifies such action. In such event the association may exercise all the powers it could have exercised prior to the issuance of the order. It shall treat all payments on savings accounts, or otherwise, made by savings account members during the period of segregation, and all segregated credits, in the same manner as all other payments on savings accounts whenever made. All expenses of the operation of the association by the conservator shall be paid by the association including a per diem fee for the special services of the conservator, the amount of such fee to be established by the supervisory authority. The examiner appointed as conservator shall receive his ordinary compensation as examiner from the state.

HISTORY: New 1964, p. 179, Act 156, Eff. Jan. 1, 1965.

489.831 Receiver; appointment; dissolution of association.

Sec. 431. If irregularities complained of in an order of the supervisory authority, as provided in section 425 are not corrected or if any irregularities complained of in a report of a conservator are not corrected, or whenever from the report of the examiner it appears to the supervisory authority that the association (a) is impaired or insolvent, (b) is pursuing a course which threatens to result in imparity or insolvency, (c) is in violation of any valid and applicable law or regulation, or lawful order of the supervisory authority, or (d) is concealing any of its assets, books or records and that it will be for the best interest of the members and creditors that the association should liquidate and be dissolved, he shall communicate such fact, together with a copy of the examiner's report to the attorney general, who shall institute the necessary proceedings to enjoin the association from doing any further business, for the appointment of a receiver therefor and for the dissolution of the association.

HISTORY: New 1964, p. 179, Act 156, Eff. Jan. 1, 1965.

489.832 Receiver; appointment; expenses; possession of records.

Sec. 432. The supervisory authority, with the attorney general representing him, shall apply to the circuit court for the county in which the association is located, or to the circuit court for the county of Ingham, for the appointment of a receiver for the association. The court may appoint as receiver 1 of the examiners of the supervisory authority or some other competent and disinterested person who shall have the recommendation of the supervisory authority. The supervisory authority shall be reimbursed out of the assets of the receivership for all sums expended by him in connection with the receivership as expenses, compensation of his examiners, or otherwise. All expenses of any receivership, including those incurred by the supervisory authority in connection therewith, shall be paid out of the assets of the association upon the approval of the supervisory authority and upon order of the appointing court. The expenses shall be a first charge upon the assets and shall be fully paid before any final distribution or payment of liquidation dividends to creditors and members. The supervisory authority, pending action on its application to the court, if he deems it necessary, forthwith may take possession of the books, records and assets of every description of the association and hold the same, and the books, records and assets shall not

be subject to any levy, attachment, execution or other process available to creditors of the association. The receiver shall make a report to the supervisory authority of all of his acts and proceedings.

HISTORY: New 1964, p. 180, Act 156, Eff. Jan. 1, 1965.

489.833 Liquidation and dissolution; procedure.

Sec. 433. The sole and exclusive procedures for the liquidation and dissolution of an association to which this act is applicable shall be the procedures prescribed in this act, and no receiver or other liquidating agent shall be appointed for such purpose or for any such association or its assets and property except as expressly provided in this act.

HISTORY: New 1964, p. 180, Act 156, Eff. Jan. 1, 1965.

489.841 Federal savings and loan associations; provisions applicable.

Sec. 441. Federal savings and loan associations, incorporated pursuant to the laws of the United States, with principal offices located within this state, are not foreign corporations. Unless federal laws or regulations provide otherwise, federal savings and loan associations with principal offices located within this state and the members and savings account holders thereof shall possess all of the rights, powers, privileges, benefits, immunities and exemptions that are now provided or that may be hereafter provided by the laws of this state for associations organized under the laws of this state and for the members and savings account holders thereof. This provision is additional and supplemental to any provision which, by specific reference, is applicable to federal savings and loan associations and the members thereof.

HISTORY: New 1964, p. 180, Act 156, Eff. Jan. 1, 1965;—Am. 1969, p. 544, Act 293, Imd. Eff. Aug. 11.

489.842 Federal savings and loan associations; annual reports; annual privilege fee.

Sec. 442. (1) Every federal savings and loan association located within this state shall file a report annually on or before March 1 of each year covering the year ended the previous December 31, with the supervisory authority which report shall contain the information required by federal regulation to be submitted to the members of such association, and such other information as may be required by the supervisory authority for the computation of the tax; and, for the privilege of transacting its business within the state, shall pay to the supervisory authority, an annual fee of 1/4 mill upon each dollar of its capital and legal reserve and other loss reserves.

(2) If the fee is for a period of less than a full calendar year it shall be prorated for the applicable months. In the event this act takes effect prior to July 1 of any year the annual report and privilege fee due for the fiscal year ending on June 30 of such year shall be payable pursuant to Act No. 180 of the Public Acts of 1954, and such act shall continue in full force and effect for the determination and settlement of any fees due pursuant to its provisions. The amount paid as an annual fee under subsections (1) or (2) shall be allowed as a credit against but not in excess of a state income tax levied for the taxable year in which the annual fee is paid.

(3) Every federal savings and loan association at the time of filing its annual report herein shall pay a filing fee of \$2.00. All such privilege fees and filing fees shall when collected be paid into the treasury of the state and credited to the general fund.

(4) Any association refusing or neglecting to file the required annual report within the prescribed period shall forfeit \$10.00 per day for each day the report is withheld and the supervisory authority may maintain an action in the name of the state to recover such penalty, which upon its collection shall be paid into the state treasury.

HISTORY: New 1964, p. 180, Act 156, Eff. Jan. 1, 1965;—Am. 1967, p. 528, Act 272, Eff. Jan. 1, 1968.

489.851 Organization or chartering fee; examination fee; expenses.

Sec. 451. Every association organized under this act shall be subject to and pay to the supervisory authority the following fees, which shall be paid into the state treasury and credited to the general fund:

(a) Simultaneously with the filing with the supervisory authority of articles of association, every organization committee shall pay as an organization or chartering fee, the sum of \$500.00.

(b) For making the annual examination provided in this act the association shall pay an examination fee to be determined by the supervisory authority to meet the expenses of the field examination, except that in any case the fee for any annual examination shall not be less than \$300.00. The expenses incurred and services, other than examinations performed especially for the association, shall be paid in full by the association.

HISTORY: New 1964, p. 181, Act 156, Eff. Jan. 1, 1965;—Am. 1966, p. 77, Act 52, Imd. Eff. Jun. 7.

489.852 Annual privilege fee; prorated fee.

Sec. 452. (1) Every association at the time of filing its annual report as required by section 415 for the privilege of exercising its franchise and of transacting its business within this state shall pay an annual fee of 1/4 mill upon each dollar of its capital and legal reserve and any other loss reserves.

(2) If the privilege fee is for a period of less than a full calendar year it shall be prorated for the applicable months. If this act takes effect prior to July 1 of any year the annual report and privilege fee due for the fiscal year ending on June 30 of such year shall be payable pursuant to Act No. 50 of the Public Acts of 1887, as amended, and such act shall continue in force and effect for the determination and settlement of any fees due pursuant to its provisions. The amount paid as an annual fee under subsections (1) or (2) shall be allowed as a credit against but not in excess of a state income tax levied for the taxable year in which the annual fee is paid.

HISTORY: New 1964, p. 181, Act 156, Eff. Jan. 1, 1965;—Am. 1967, p. 529, Act 272, Eff. Jan. 1, 1968.

489.853 Branch office permit fee.

Sec. 453. There shall accompany each application to the supervisory authority for permission to establish a branch office, a fee of \$25.00.

HISTORY: New 1964, p. 181, Act 156, Eff. Jan. 1, 1965.

489.854 Merger proposal fee.

Sec. 454. At the time of filing with the supervisory authority any merger agreement, the association proposing to so merge shall submit therewith a fee of \$200.00 which fee shall be paid in equal parts by the associations parties to the proposed merger.

HISTORY: New 1964, p. 182, Act 156, Eff. Jan. 1, 1965.

489.855 Reorganization plan, bulk asset transfer, and certificate of dissolution fees.

Sec. 455. There shall accompany every proposed plan of reorganization, every proposal for the transfer of assets in bulk, and every certificate of dissolution filed with the supervisory authority for approval, a fee of \$50.00.

HISTORY: New 1964, p. 182, Act 156, Eff. Jan. 1, 1965.

489.856 Conversion to federal association charter filing fee.

Sec. 456. A fee of \$10.00 shall accompany each copy of the charter of a federal savings and loan association or certificate showing such organization by conversion, filed with the supervisory authority.

HISTORY: New 1964, p. 182, Act 156, Eff. Jan. 1, 1965.

489.857 Miscellaneous fees.

Sec. 457. In addition to other fees, the following fees shall be paid by the association at the time of filing or when the service is rendered:

- (a) For examining, filing and certifying articles of domestic associations, \$10.00.
- (b) For examining, filing and certifying any amendment to the articles of association, \$5.00.
- (c) For examining, filing and certifying original bylaws, \$10.00.
- (d) For certifying any amendment to bylaws, \$5.00.
- (e) For examining, and filing of any annual or special report required by law, \$2.00.
- (f) For certifying any part of the files or records pertaining to such association for which no other provision is herein made, a minimum charge of \$2.00 for each certificate and 75 cents per folio or photostatic page so certified to.
- (g) For furnishing copies of examination reports to other governmental supervisory agencies, 10 cents per page per copy but not less than \$5.00.

HISTORY: New 1964, p. 182, Act 156, Eff. Jan. 1, 1965.

489.858 Tax exemptions.

Sec. 458. (1) All mortgages or other securities held by associations, are exempt from all municipal or other taxes under the laws of this state and all personal property owned by associations is exempt from taxation.

(2) Federal savings and loan associations and their members shall be subject to the same taxation and upon the same basis as state associations and their members.

HISTORY: New 1964, p. 182, Act 156, Eff. Jan. 1, 1965.

489.861 Exemptions from blue sky law.

Sec. 461. The sale of savings accounts of an association or federal savings and loan association is exempt from all provisions of law of this state which provide for the supervision and regulation of the sale of securities, and the sale of any such accounts shall be legal without any action or approval whatsoever on the part of any official authorized to license, regulate and supervise the sale of securities.

HISTORY: New 1964, p. 182, Act 156, Eff. Jan. 1, 1965.

489.862 Acknowledgments or proofs of written instruments; validity.

Sec. 462. No public officer qualified to take acknowledgments or proofs of written instruments shall be disqualified from taking acknowledgment or proof of any instrument in writing in which an association is interested by reason of his membership in or employment by an association so interested, and any such acknowledgment or proofs heretofore taken are hereby validated.

HISTORY: New 1964, p. 182, Act 156, Eff. Jan. 1, 1965.

489.863 Construction of act; avoidance of loss.

Sec. 463. Nothing in this act shall be construed as denying to an association the right to invest its funds, operate a business, manage or deal in property, or take any other action over whatever period of time may reasonably be necessary to avoid loss on a loan or investment theretofore made or an obligation created in good faith.

HISTORY: New 1964, p. 182, Act 156, Eff. Jan. 1, 1965.

489.864 Violation of act; penalty.

Sec. 464. Any person who violates any provision of this act for which specific punishment is not provided under any other provision of this act or of other laws applicable to such violation, is guilty of a misdemeanor, and shall be fined not less than \$100.00 nor more than \$500.00 or imprisoned not more than 6 months, or both.

HISTORY: New 1964, p. 183, Act 156, Eff. Jan. 1, 1965.

489.865 Conformity to act; impairment of contract.

Sec. 465. The name, rights, powers, privileges and immunities of every savings and loan association heretofore incorporated in this state shall be governed, controlled, construed, extended, limited and determined by the provisions of this act to the same extent and effect as if the association had been chartered pursuant hereto and the articles of association or charter, however entitled, bylaws and constitution, or other rules of every such corporation heretofore made or existing are hereby modified, altered and amended to conform to the provisions of this act and the same are declared void to the extent that they are inconsistent with the provisions of this act; except that the obligations of any such existing associations, whether between such association and its members, or any of them, or any other person or persons, or any valid contract between the members of such association, or between such association and any other person or persons, existing at the time this act takes effect, shall not be in any way impaired by the provisions of this act, and, with such exceptions, every such association shall possess the rights, powers, privileges and immunities and shall be subject to the duties, liabilities, disabilities and restrictions conferred and imposed by this act, notwithstanding anything to the contrary in its articles of association, bylaws, constitution or rules.

HISTORY: New 1964, p. 183, Act 156, Eff. Jan. 1, 1965.

489.866 Enforcement of prior obligations.

Sec. 466. All obligations to an association heretofore contracted shall be enforceable by it and in its name, and demands, claims, and rights of action against any such association may be enforced against it as fully and completely as they might have been enforced heretofore.

HISTORY: New 1964, p. 183, Act 156, Eff. Jan. 1, 1965.

489.867 Provisions governing.

Sec. 467. Insofar as the provisions of this act are inconsistent with the provisions of any other law affecting savings and loan associations, the provisions of this act shall control.

HISTORY: New 1964, p. 183, Act 156, Eff. Jan. 1, 1965.

489.868 Advertising insurance of savings accounts or certificates.

Sec. 468. No savings and loan association shall make any oral or written statement in or from this state, or to any person in this state, that any of its savings or certificate accounts are insured or guaranteed, unless the savings or certificate accounts are insured or guaranteed by an instrumentality of this state or of the United States or by a commercial company authorized by the law of this state to write such insurance or guaranty. If any representation is made directly by an association or indirectly through brokers or agents, it shall include the name of the insurer or guarantor. If the insurer or guarantor is a commercial company, any representation made shall include the phrase "a commercial company", and the name and address of the home office of the commercial company, and if in writing it shall be of a size and prominence at least equal to that in which the representation is made. Any broker or agent advertising for or soliciting savings accounts in this state for investing in a foreign savings and loan association shall designate in writing whether or not the savings accounts or certificates of the foreign associations are insured and if insured, such advertising and representation shall be in conformity with the provisions of this section. Violation of this section may be enjoined at the suit of any savings and loan association doing business

in this state or of the attorney general of this state. Any association, broker or agent violating this section is guilty of a misdemeanor. Each day's violation is a separate offense.

HISTORY: New 1964, p. 183, Act 156, Eff. Jan. 1, 1965.

489.871 Foreign associations; conduct of business.

Sec. 471. The foreign savings and loan associations or their agents, whether chartered by another state or federally chartered to do business in another state, doing business in this state shall conduct the same in accordance with the laws of this state governing domestic savings and loan associations, and shall comply with all the requirements of the laws, except as provided in this act.

HISTORY: New 1964, p. 184, Act 156, Eff. Jan. 1, 1965.

489.872 Foreign associations; certificate of authority; procedure to acquire; service of process; insurance.

Sec. 472. No foreign savings and loan association shall do any business or advertise to do business in this state, directly or indirectly, except under the provisions of section 357, until it shall procure from the supervisory authority a certificate of authority to do so. To procure a certificate of authority the foreign association shall comply with the following provisions:

(a) It shall file with the supervisory authority a certified copy of its articles of incorporation or charter, a copy of its bylaws and rules governing it, and all amendments thereto, together with a statement of its financial condition, such as is required annually from all associations organized under the laws of this state.

(b) It shall file with the supervisory authority a written instrument properly executed agreeing that any summons or process of any court in this state may issue against it from any county in this state, and when served upon the supervisory authority, shall be accepted irrevocably as a valid service upon the foreign association. The supervisory authority shall mail a copy of any legal process served upon him to the home office of the foreign association and within 6 days shall certify to the court from which the summons or process issued, the fact of the mailing. The plaintiff for each process so served shall pay to the supervisory authority, at the time of service, a fee of \$3.00, which shall be recovered by the plaintiff as a part of the taxable costs if he prevails in the suit.

(c) It shall file with the supervisory authority a copy of the certificate evidencing that its savings accounts are insured by the federal savings and loan insurance corporation.

HISTORY: New 1964, p. 184, Act 156, Eff. Jan. 1, 1965.

489.873 Foreign associations; certificate of authority, issuance, renewal.

Sec. 473. Whenever a foreign association has complied with the provisions of section 472, and the supervisory authority is satisfied that it is in sound financial condition, and upon payment by such foreign association of the admission fee as provided in section 478, the supervisory authority shall issue his certificate of authority to the foreign association to do business in this state until the following March 1. Annually thereafter, upon the filing of an annual report as is required from domestic savings and loan associations, and if the supervisory authority is satisfied that the foreign association is conducting its business in accordance with the laws of this state, and regards it as safe, reliable and entitled to public confidence, he shall issue a renewal of the certificate of authority.

HISTORY: New 1964, p. 184, Act 156, Eff. Jan. 1, 1965.

489.874 Foreign associations; examinations, expense; certified annual report.

Sec. 474. Every foreign savings and loan association doing business in this state shall be subject to the same examinations as are savings and loan associations organized under the laws of this state. The expense of all examinations of foreign associations shall be paid by the association examined and the moneys so received shall be paid into the state treasury. In lieu of such examination, the supervisory authority may accept a certified annual report from any association which is subject to periodic examination conducted by a duly constituted state or federal supervisory authority.

HISTORY: New 1964, p. 184, Act 156, Eff. Jan. 1, 1965.

489.875 Foreign associations; certificate of authority, revocation, notice, effect.

Sec. 475. If the supervisory authority finds, upon examination or investigation that a foreign association or its agent does not conduct its business in accordance with law, or that the affairs of the foreign association are in an unsound condition, or if the foreign association refuses to permit examinations to be made, or it fails to file an annual report as herein provided, he may revoke the certificate of authority granted the foreign association or its agent to do business in this state. Upon the revocation of the certificate of authority, the supervisory authority shall mail a notice thereof to the home office of the foreign association, and publish a similar notice in at least 1 newspaper published in the city of Lansing. After the publication of the notice, any agent of the foreign association shall not receive any further payments on savings accounts from residents of this state.

HISTORY: New 1964, p. 184, Act 156, Eff. Jan. 1, 1965.

489.876 Foreign associations; compliance with act; default, void contracts; violation of act, penalty.

Sec. 476. No foreign savings and loan association shall be permitted to do business in this state unless the provisions of this act are fully complied with, and all contracts made by a foreign association while in default are void. Any foreign association violating any of the provisions of this act, or failing to comply with any of its provisions, is subject to a fine of not less than \$100.00, nor more than \$1,000.00, such fine to be recovered by an action in the name of the people of the state, in any court of competent jurisdiction and upon the collection thereof, the same shall be paid into the state treasury.

HISTORY: New 1964, p. 185, Act 156, Eff. Jan. 1, 1965.

489.877 Agent for unauthorized association; penalty.

Sec. 477. Any person who acts as agent for any savings and loan association not authorized to do business in this state, or solicits, sells, or disposes of any savings account of any unauthorized association; and any person acting for any unauthorized association, or in any manner aiding in the transaction of the business of the association in this state, except under the provisions of section 357 is guilty of a misdemeanor, and shall be fined not less than \$50.00, nor more than \$500.00, for each offense, and in default of payment of such fine shall be imprisoned for a period not to exceed 1 year. All fines collected under the provisions of this section shall be paid into the state treasury.

HISTORY: New 1964, p. 185, Act 156, Eff. Jan. 1, 1965.

489.878 Foreign associations; admission fee.

Sec. 478. Every foreign savings and loan association applying for admission to do business within this state, at the time of filing its certified copy of articles or charter and applying for admission shall pay to the supervisory authority, as an admission fee and for the privilege of exercising its authority to transact business within this state, a sum of \$500.00.

HISTORY: New 1964, p. 185, Act 156, Eff. Jan. 1, 1965.

489.879 Foreign associations; certificate of authority, renewal fee.

Sec. 479. Every foreign savings and loan association at the time of filing its annual report for the annual renewal of certificate of authority to transact business within this state, shall pay to the supervisory authority an annual fee of 1/4 mill of that portion of its total savings accounts and statutory loss reserves that the savings account balances owned by residents of this state bears to the total savings account balances of the association or that portion of its total savings accounts and statutory loss reserves that the outstanding loans secured by properties in this state, bears to the total outstanding real estate loans of such association, whichever is greater. The amount paid as an annual fee under this section shall be allowed as a credit against but not in excess of a state income tax levied for the taxable year in which the annual fee is paid.

HISTORY: New 1964, p. 185, Act 156, Eff. Jan. 1, 1965;—Am. 1967, p. 529, Act 272, Eff. Jan. 1, 1968.

489.880 Foreign associations; miscellaneous fees.

Sec. 480. In addition to the admission and annual renewal fees, the following fees shall be paid by the foreign association at the time of filing or when the service is rendered:

- (a) For examining and filing any amendment to the articles or charter, \$5.00.
- (b) For examining and filing any amendment to bylaws, \$5.00.
- (c) For examining and filing any annual or special report required by law, \$2.00.
- (d) For examining and filing any notice of final dissolution, merger agreement, or change of attitude, \$10.00.
- (e) For certifying any part of the files or records pertaining to such association, for which no other provision is herein made, a minimum charge of \$2.00 for each certificate and 75 cents per folio or photostatic page for the matters so certified to.

HISTORY: New 1964, p. 185, Act 156, Eff. Jan. 1, 1965.

489.897 Subsequent legislation; construction of statutes.

Sec. 497. This act, being a general act intended as a comprehensive coverage of its subject matter, shall not be deemed to be impliedly repealed in whole or in part by subsequent legislation not specifically repealing it if such construction can be avoided.

HISTORY: New 1964, p. 186, Act 156, Eff. Jan. 1, 1965.

489.898 Repeal.

Sec. 498. The following acts are repealed:

- (a) Act No. 206 of the Public Acts of 1877, as amended, being sections 491.1 to 491.21 of the Compiled Laws of 1948.
- (b) Act No. 50 of the Public Acts of 1887, as amended, being sections 489.1 to 489.40 of the Compiled Laws of 1948.
- (c) Act No. 14 of the Public Acts of 1901, as amended, being sections 489.201 to 489.210 of the Compiled Laws of 1948.
- (d) Act No. 77 of the Public Acts of 1939, being sections 489.351 to 489.352 of the Compiled Laws of 1948.
- (e) Act No. 78 of the Public Acts of 1939, being section 489.361 of the Compiled Laws of 1948.

(f) Act No. 180 of the Public Acts of 1954, as amended, being sections 489.371 to 489.372 of the Compiled Laws of 1948.

(g) Act No. 102 of the Public Acts of 1959, being sections 489.401 to 489.402 of the Compiled Laws of 1948.

HISTORY: New 1964, p. 186, Act 156, Eff. Jan. 1, 1965.

489.899 Effective date of act.

Sec. 499. This act shall become effective January 1, 1965.

HISTORY: New 1964, p. 186, Act 156, Eff. Jan. 1, 1965.

CHAPTER 490. CREDIT UNIONS

	CREDIT UNIONS				Reorganization; continuation of business.
	Act 285 of 1925				
490.1	Credit unions; organization, procedure, approval of commissioner; certificate of organization, bylaws.	490.21	Change in place of business or name of treasurer; filing with commissioner of banking.		
490.2	Amendments to bylaws.	490.22	Taxation.		
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490.4	Credit unions; powers.	490.24	Repealed.		
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490.5a	Credit unions; termination of membership; escheat of shareholders.				
490.6	Credit unions; supervision; reports; examination, fees; delinquency.				MULTIPLE-PARTY ACCOUNTS
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490.8	Credit unions; board of directors; credit committee; supervisory committee; elections; appointments; qualifications; records.	490.51	Credit unions; multiple-party accounts; definitions.		
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490.18	Dividends; schedule of payment.	490.62	Trust accounts; payments.		
490.19	Expulsion; withdrawal.	490.63	Payments; effect; notice of change.		
490.20	Dissolution; reorganization.	490.64	Right to set-off or lien.		
	Involuntary dissolution.	490.65	Repeal.		

Act 285, 1925, p. 410; Eff. Aug. 27.

AN ACT to provide for the organization, operation and supervision of credit unions; and to provide for the conversion of a state credit union into a federal credit union and for the conversion of a federal credit union into a state credit union. Am. 1955, p. 469, Act 268, Imd. Eff. Jun. 29.

The People of the State of Michigan enact:

490.1 Credit unions; organization, procedure, approval of commissioner; certificate of organization, bylaws.

Sec. 1. Any 7 residents of this state may apply to the commissioner of the state banking department for permission to organize a credit union. A credit union is a cooperative society, incorporated for the twofold purpose of promoting thrift among its mem-

bers and creating a source of credit for them at legitimate rates of interest for provident purposes. A credit union is organized in the following manner:

(a) The applicants execute in duplicate a certificate of organization by the terms of which they agree to be bound. The certificate shall state:

(1) The name and location of the proposed credit union.

(2) The names and addresses of the subscribers to the certificate and the number of shares subscribed by each.

(3) The par value of the shares of the credit union which shall not exceed \$10.00 each.

(b) They next prepare and adopt bylaws for the general government of the credit union consistent with the provisions of this act, and execute the same in duplicate.

(c) The certificate and the bylaws shall be forwarded to the said commissioner of the state banking department, together with the sum of \$10.00, which sum shall be paid into the state treasury to the credit of the general fund.

(d) The said commissioner of the state banking department shall, within 30 days of the receipt of said certificate and bylaws, determine whether they conform with the provisions of this act, and whether or not the organization of the credit union in question would benefit the members of it and be consistent with the purposes of this act. The granting of a certificate of organization shall in each and every case be discretionary with the commissioner of the state banking department.

(e) Thereupon the said commissioner shall notify the applicants of his decision. If it is favorable he shall issue a certificate of approval, attached to the duplicate certificate of organization and return the same, together with the duplicate bylaws, to the applicants.

(f) The applicants shall thereupon file the said duplicate of the certificate of organization, with the certificate of approval attached thereto, with the clerk of the county within which the credit union is to do business.

(g) Thereupon the applicants shall become and be a credit union, incorporated in accordance with the provisions of this act.

In order to simplify the organization of credit unions the said commissioner of the state banking department shall, upon the passage of this act, cause to be prepared an approved form of certificate of organization and a form of bylaws, consistent with this act, which may be used by credit union incorporators for their guidance, and on written application of any 7 residents of the state, shall supply them without charge with a blank certificate of organization and a copy of said form of suggested bylaws.

HISTORY: Am. 1929, p. 773, Act 303, Imd. Eff. May 23;—CL 1929, 12091;—Am. 1941, p. 281, Act 185, Eff. Jan. 10, 1942;—CL 1949, 490.1;—Am. 1955, p. 469, Act 268, Imd. Eff. Jun. 29.

490.2 Amendments to bylaws.

Sec. 2. Amendments. Any and all amendments to the by-laws must be approved by the said commissioner of the state banking department before they become operative.

History: CL 1929, 12092;—CL 1948, 490.2.

490.3 Credit union; use of name, restriction.

Sec. 3. Restriction. It shall be a misdemeanor for any person, association, copartnership or corporation (except corporations organized in accordance with the provisions of this act) to use the words "credit union" in their name or title.

HISTORY: CL 1929, 12093;—CL 1948, 490.3.

490.4 Credit unions; powers.

Sec. 4. A credit union shall have the following powers:

(a) To receive the savings of its members either as payment on shares or as deposits.

including the right to conduct Christmas clubs, vacation clubs and other such thrift organizations within the membership.

(b) To make loans to members for provident or productive purposes.

(c) To make loans to a cooperative society or other organization having membership in the credit union.

(d) As authorized by its board of directors or executive committee, to deposit in state and national banks and, to an extent which shall not exceed 25% of its capital, invest in savings share accounts of federal or state chartered savings and loan associations doing business in Michigan and deposit with or invest in shares of or loans to other credit unions. A credit union may not receive a total of deposits from other credit unions in excess of 50% of its unimpaired share capital. The amount deposited with, invested in or loaned to any one credit union or invested in any one savings and loan association shall not exceed 25% of the capital of said credit union.

(e) To invest in any investment legal for state banks, subject to the same limitations based on capital as applicable to state banks; to invest in the common or preferred stock of any state or national bank doing business in the state. The investment in any one bank stock shall not exceed 5% of the capital of the credit union. No individual credit union may hold more than 15% of the capital stock of any one state or national banking corporation or association. The aggregate investment in bank stocks shall not exceed 25% of the capital of the credit union.

(f) To borrow money as hereinafter indicated.

(g) To purchase at a cost not to exceed 20% of the capital of the credit union land and buildings for the purpose of providing adequate facilities for the transaction of its business including in addition to the space and facilities occupied by the credit union or its service centers other space and facilities in the same building to be rented as a source of income. A credit union shall depreciate or appreciate its buildings, fixtures, furniture and equipment in such manner and at such rates as the banking commissioner may prescribe from time to time.

(h) To purchase at the discretion of its board of directors share and loan insurance on the lives of its members, the proceeds of such insurance to be payable with respect to joint accounts in accordance with section 24.

(i) To make loans in aggregate not exceeding 1% of the capital of the credit union to any credit union league of which the credit union is a member. Such loans may be made on secured or unsecured credit, with interest and with such maturity dates and on such other terms and conditions as the board of directors shall authorize.

(j) To purchase the notes receivable of credit unions which are in liquidation or receivership in Michigan.

(k) To disburse from the share or deposit account of the member such funds as the member may direct in writing for insurance premiums.

(l) To disburse from the proceeds of a loan as the borrower directs in writing.

HISTORY: CL 1929, 12094;—CL 1948, 490.4;—Am. 1955, p. 470, Act 288, Imd. Eff. Jun. 29;—Am. 1966, p. 84, Act 61, Imd. Eff. Jun. 9;—Am. 1967, p. 548, Act 280, Imd. Eff. Jul. 20;—Am. 1969, p. 356, Act 176, Imd. Eff. Aug. 5.

490.4a Credit unions; definitions; cooperative housing, investments, acquisition of realty, consultants, appraisers.

Sec. 4a. (1) As used in this section:

(a) "Credit union" may include more than 1 credit union acting in combination.

(b) "Housing cooperative" means a nonprofit housing cooperative corporation.

(2) By action of its board of directors, a credit union may:

(a) Assist in providing cooperative housing and related facilities for its members.

A credit union shall not invest more than 5% of its unimpaired share capital in pro-

grams authorized by this section. Nothing in this section shall be construed to authorize a credit union to invest in the stock of a housing cooperative.

(b) Assist in creating a housing cooperative for its members.

(c) Assist a housing cooperative composed of its members in selecting a housing site.

(3) When authorized by its board of directors, a credit union may acquire any interest in real property that would be suitable for a housing cooperative and related facilities for its members, and dispose of its interest in the property to a housing cooperative within 3 years. No real property shall be acquired at a purchase price in excess of the appraised value of the property as determined by a competent disinterested appraiser retained by the credit union. Where state or federal assistance is contemplated, prior to acquisition of any interest in real property for cooperative housing, the credit union shall obtain the approval where possible of the state or federal agency that will assist the housing cooperative in determining the acceptability to that agency of the property for use as a cooperative housing site. If it develops within a reasonable time following the acquisition of the interest in the property that it cannot be used for cooperative housing for its members, the credit union shall dispose of its interest in the manner most advantageous to the credit union.

(4) In carrying out the purpose of this section, a credit union may employ consultants, appraisers or other persons or organizations qualified by experience and training to provide advice and assistance in the acquisition of cooperative housing sites, the creation of housing cooperatives, the processing of applications for state or federal assistance, the development of plans for the housing and financing, and any other action required to carry out the purpose of this section.

HISTORY: Add. 1967, p. 548, Act 280, Imd. Eff. Jul. 20;—Am. 1969, p. 356, Act 176, Imd. Eff. Aug. 5.

490.5 Credit unions; membership.

Sec. 5. Credit union membership shall consist of the incorporators and such other persons as may be elected to membership and subscribe to at least 1 share, pay the initial installment thereon and the entrance fee. Organizations (incorporated or otherwise) composed for the most part of the same general group as the credit union membership may be members. Credit union organization shall be limited to groups (of both large and small membership) having a common bond of occupation, or association or to groups within a well-defined neighborhood, community or rural district and 1 or more credit unions may be organized to serve such groups.

HISTORY: CL 1929, 12095;—CL 1948, 490.5;—Am. 1955, p. 470, Act 268, Imd. Eff. Jun. 29.

490.5a Credit unions; termination of membership; escheat of shareholders.

Sec. 5a. The shareholdings of a member who fails to complete payment of 1 share within 2 years of his admission to membership, or of a member who reduces his share balance below \$5.00 and does not increase the balance to at least \$5.00 within 2 years of the reduction, may be escheated, subject to the provisions of Act No. 63 of the Public Acts of 1949, being sections 567.201 to 567.206 of the Compiled Laws of 1948, and the membership shall be terminated.

HISTORY: Add. 1965, p. 45, Act 30, Eff. Mar. 31, 1966;—Am. 1967, p. 234, Act 171, Imd. Eff. Jun. 30.

490.6 Credit unions; supervision; reports; examination, fees; delinquency.

Sec. 6. Credit unions shall be under the supervision of the commissioner of the state banking department. They shall report to him at least annually on or before December 31 on blanks supplied by him for that purpose. Additional reports may be required. Credit unions shall be examined at least annually by the commissioner except that he may accept the audit of a certified public accountant in place of such examination. For each annual examination the credit union so examined shall pay into the state treasury to the credit of the general fund, a fee computed as follows: Nine and one-third cents per \$100.00 or fraction thereof on the first \$2,000,000.00 of its total assets.

six and two-thirds cents per \$100.00 or fraction thereof on the third \$1,000,000.00 of its total assets; five and one-third cents per \$100.00 or fraction thereof on the fourth \$1,000,000.00 of its total assets; four cents per \$100.00 or fraction thereof on the fifth \$1,000,000.00 of its total assets; two and two-thirds cents per \$100.00 or fraction thereof on the next \$5,000,000.00 of its total assets; one and one-third cents per \$100.00 or fraction thereof on all of its assets in excess of \$10,000,000.00; or \$10.00 per examiner-hour that must include 25% to cover fringe benefits, whichever is lower. Any credit union so examined shall pay a minimum examination fee of the sum of \$25.00, but no credit union shall be compelled to pay for more than 1 examination in any one year. No examination fee for the first year after issuance of its charter shall exceed \$10.00. For failure to file reports when due, unless excused for cause, the credit union shall pay to the treasurer of the state \$5.00 for each day of its delinquency. If the commissioner determines that the credit union is violating the provisions of this act, or is insolvent, the commissioner may serve notice on the credit union of his intention to revoke the certificate of approval. If, for a period of 15 days after the notice, the violation continues, the commissioner may revoke the certificate and take possession of the business and property of the credit union and maintain possession until such time as he shall permit it to continue business or its affairs are finally liquidated. He may take similar action if the report remains in arrears for more than 15 days.

HISTORY: CL 1929, 12096;—CL 1948, 490.6;—Am. 1955, p. 470, Act 268, Imd. Eff. Jun. 29;—Am. 1967, p. 549, Act 280, Imd. Eff. Jul. 20.

490.7 Credit unions; fiscal year; meetings.

Sec. 7. Fiscal year—Meetings. The fiscal year of all credit unions shall end December thirty-first. Special meetings may be held in the manner indicated in the by-laws. At all meetings a member shall have but a single vote whatever his share holdings. To amend the by-laws, the proposed amendment must be contained in the call for the meeting and it must be approved by 3/4 of the members then present (which number must constitute a quorum) and by the said commissioner of the state banking department. There shall be no voting by proxy, a member other than a natural person casting a single vote through a delegated agent.

HISTORY: CL 1929, 12097;—CL 1948, 490.7.

490.8 Credit unions; board of directors; credit committee; supervisory committee; elections; appointments; qualifications; records.

Sec. 8. At the annual meeting, the organization meeting shall be the first annual meeting, the credit union shall elect a board of directors of not less than 5 members, a credit committee of not less than 3 members and a supervisory committee of 3 members, all to hold office for such terms respectively as the bylaws provide and until successors qualify. The credit union at its option may provide in its bylaws for the election of supervisory and/or credit committees by its board of directors and may further provide for the appointment by the board, or by the membership, of 1 or more alternates for members of such committees. In no case shall a member of the supervisory committee be a director, officer, loan officer, credit committee member or other employee of the credit union while serving on the supervisory committee. A record of the names and addresses of the members of the board and committees and the officers shall be filed with the commissioner of banking, within 10 days of their election.

HISTORY: CL 1929, 12098;—CL 1948, 490.8;—Am. 1962, p. 73, Act 86, Eff. Mar. 28, 1963;—Am. 1967, p. 234, Act 171, Imd. Eff. Jun. 30.

490.9 Board of directors; officers; powers and duties; executive committee.

Sec. 9. (1) At their first meeting the directors shall elect from their own number a president, vice-president, treasurer and secretary, of whom the last 2 named may be the same individual. Henceforth any reference in the bylaws of a credit union to the position of clerk shall mean the secretary. The directors shall have general management of the affairs of the credit union, particularly:

- (a) To act on applications for membership.
- (b) To determine the interest rates on loans and on deposits.
- (c) To fix the amount of the surety bond which shall be required of all officers and employees handling money.
- (d) To declare dividends, and to transmit to the members recommended amendments to the bylaws.
- (e) To fill vacancies on the board and on the credit committee until successors are chosen and qualify.
- (f) To determine the maximum individual share holdings and the maximum individual loans which can be made with and without security, subject to such limitations upon loans as may have been placed upon them by the bylaws previously adopted and approved by the commissioner of the state banking department.
- (g) To have charge of investments other than loans to members.

(2) The duties of the officers shall be as determined in the bylaws. The board of directors may by resolution designate a general manager and define his duties. No member of the board or of either committee shall, as such, be compensated.

(3) The board may appoint an executive committee of not less than 3 directors to act for it in the purchase and sale of securities or the making of loans to or the deposits in other credit unions.

HISTORY: Am. 1929, p. 774, Act 303, Imd. Eff. May 23;—CL 1929, 12069;—CL 1948, 490.9;—Am. 1964, p. 67, Act 61, Eff. Aug. 25;—Am. 1967, p. 549, Act 280, Imd. Eff. Jul. 20.

490.10 Loans; supervision, applications, approval, security; credit committee meetings, quorum.

Sec. 10. The credit committee shall have the general supervision of all loans to members. Applications for loans shall be on a form, approved by the board of directors, and all applications shall set forth the purpose for which the loan is desired, the security, if any, offered, and such other data as may be required. Within the meaning of this section an assignment of shares or deposits or the indorsement of a note may be deemed security. Approvals and rejections of loans and all other business of the committee shall be considered at meetings at which a quorum is present. The number of committee members necessary to constitute a quorum shall be as provided in the bylaws, but shall be not less than 2 members. All committee decisions shall be by the vote of those present and voting. The board of directors may authorize the credit committee, subject to the approval of the commissioner of banking, to appoint loan officers. The loan officers, subject to the supervision of the committee, may be delegated authority to act on all or some applications for loans and to approve them, reporting thereon to the credit committee within 15 days. The credit committee shall meet as often as may be necessary after due notice to each member.

HISTORY: CL 1929, 12100;—CL 1948, 490.10;—Am. 1961, p. 80, Act 80, Eff. Sep. 8;—Am. 1967, p. 235, Act 171, Imd. Eff. Jan. 30.

490.11 Supervisory committee; powers and duties.

Sec. 11. Supervisory committee. The supervisory committee shall—

- (a) Make an examination of the affairs of the credit union at least quarterly, including an audit of its books and, in the event said committee feels such action to be necessary, it shall call the members together thereafter and submit to them its report.
- (b) Make an annual audit and report and submit the same at the annual meeting of the members.
- (c) By unanimous vote, if it deem such action to be necessary to the proper conduct of the credit union, suspend any officer, director or member of committee and call the members together to act on such suspension. The members at said meeting may sustain such suspension and remove such officer permanently or may reinstate said officer.

By a majority vote the supervisory committee may call a special meeting of the members to consider any matter submitted to it by said committee. The said committee shall fill vacancies in its own membership.

HISTORY: CL 1929, 12101;—CL 1948, 490.11.

490.12 Capital; lien; entrance fee.

Sec. 12. The capital of a credit union shall consist of the payments that have been made to it by the several members thereof on shares. The credit union shall have a lien on the shares and deposits of a member in his individual, joint or trust account, for any sum due to the credit union from said member or for any loan endorsed by him. A credit union may charge an entrance fee as may be provided by the bylaws.

HISTORY: CL 1929, 12102;—CL 1948, 490.12;—Am. 1955, p. 471, Act 268, Imd. Eff. Jun. 29.

490.13 Minors; deposits and withdrawals.

Sec. 13. Shares may be issued to and deposits received from a minor who may withdraw the deposits or shares, including the dividends and interest thereon. Deposits and share investments made by a minor and withdrawals thereof by the minor shall be valid in all respects. For such purposes a minor is deemed of full age.

HISTORY: CL 1929, 12103;—CL 1948, 490.13;—Am. 1966, p. 85, Act 61, Imd. Eff. Jun. 9;—Am. 1968, p. 54, Act 25, Eff. Nov. 15.

490.14 Interest rates on loans.

Sec. 14. Rates. Interest rates on loans made by a credit union shall not exceed 1 per cent a month on unpaid balances.

HISTORY: CL 1929, 12104;—CL 1948, 490.14.

490.15 Credit unions; borrowing power.

Sec. 15. A credit union may borrow, at the discretion of its board of directors, from any source in total a sum which shall not exceed 50% of its paid-in and unimpaired capital, other than shares received from credit unions.

HISTORY: CL 1929, 12105;—CL 1948, 490.15;—Am. 1955, p. 471, Act 268, Imd. Eff. Jun. 29.

490.16 Credit unions; loans.

Sec. 16. A credit union may loan to members. Loans must be for a provident or productive purpose and are made subject to the conditions contained in the bylaws. A borrower may repay his loan in whole or in part any day the office of the credit union is open for business.

Except when the bylaws of a credit union shall otherwise provide, no director, officer, or member of the credit or supervisory committee may borrow from the credit union in which he holds office beyond the amount of his holdings in shares and deposits.

A credit union, through provision in its bylaws, at its option, may permit its directors, officers, and credit and supervisory committee members to borrow in excess of their share and deposit holdings on such terms and conditions and in such amounts as the bylaws may provide. No director, officer, or credit or supervisory committee member may act as a comaker or endorser for borrowers.

Loans to directors or committeemen shall be made in the same manner as are loans to other members, except that the applicant shall not pass on his own loan. The aggregate amount of loans to the directors and committeemen cannot exceed 10% of the share capital of a credit union, with share capital of \$25,000.00 or less. Loans to directors or committeemen shall be shown as a separate item in the balance sheet of the credit union, and in all reports rendered by the credit union.

HISTORY: CL 1929, 12106;—CL 1948, 490.16;—Am. 1966, p. 163, Act 139, Eff. Mar. 10, 1967.

490.17 Repealed. 1965, p. 78, Act 45, Imd. Eff. Jun. 8.

Section provided for reserve fund of credit unions.

490.17a Reserve fund; establishment; ratio of reserves to loans required.

Sec. 17a. All entrance fees, and fines as may be provided by the bylaws, and 20% of the net earnings of the credit union before declaration of a dividend, shall be set aside in a reserve fund. When the reserve fund equals 4% of outstanding loans to members, excluding loans to other credit unions, 15% of net earnings shall then be set aside in the reserve fund. When the reserve fund equals 5 ½% of the outstanding loans, then 10% of net earnings shall be set aside in the reserve fund. When the reserve fund equals 7% of the outstanding loans no further transfer of net earnings to the reserve fund shall be required. If the reserve fund becomes less than 7% of outstanding loans to members, then the schedule of allocation to the reserve fund shall apply, until the 7% ratio of reserves to loans outstanding to members is again established.

HISTORY: Add. 1985, p. 78, Act 45, Imd. Eff. Jun. 8.

490.18 Dividends; schedule of payment.

Sec. 18. (a) The board of directors may declare and pay a dividend from net earnings after provision for required reserves:

(1) Quarterly on all fully paid shares outstanding during and at the end of the period for which the dividend is declared or outstanding during and at the end of each calendar month.

(2) Semiannually on all fully paid shares outstanding during and at the end of the period for which the dividend is declared or outstanding during and at the end of the calendar month or quarter.

(3) Annually on all fully paid shares outstanding during and at the end of each calendar month or quarter or semiannual or annual period.

(b) Dividends may be paid on shares received during the first 10 days of any calendar month calculated from the first day of such calendar month and dividends may be paid on shares withdrawn during the last 3 business days of any calendar month ending a regular quarterly, semiannual or annual dividend period calculated to the end of such calendar month.

(c) After the effective date of this section, the board of directors of any credit union may declare and pay a dividend in accordance with the provisions of this section, the bylaws of any credit union to the contrary notwithstanding.

HISTORY: CL 1929, 12108;—CL 1948, 490.18;—Am. 1956, p. 236, Act 128, Eff. Aug. 11;—Am. 1965, p. 45, Act 30, Eff. Mar. 31, 1966.

490.19 Expulsion; withdrawal.

Sec. 19. Expulsion—Withdrawal. A member may be expelled by a 2/3 vote of the members present at a special meeting called to consider the matter but only after a hearing. Any member may withdraw from the credit union at any time but notice of withdrawal may be required. All amounts paid on shares or as deposits of an expelled or withdrawing member, with any dividends or interest accredited thereto, to the date thereof, shall, as funds become available and after deducting all amounts due from the member to the credit union, be paid to him. The credit union may require 60 days' notice of intention to withdraw shares and 30 days' notice of intention to withdraw deposits. Withdrawing or expelled members shall have no further rights in the credit union but are not, by such expulsion or withdrawal, released from any remaining liability to the credit union.

HISTORY: CL 1929, 12109;—CL 1948, 490.19.

490.20 Dissolution; reorganization.

Sec. 20. (a) The process of voluntary dissolution shall be as follows:

(1) The majority of the entire membership of the credit union, by ballot or written consent, may agree to a dissolution of the credit union.

(2) Thereupon they shall file with the commissioner of the state banking department a statement of their consent to dissolution, attested by a majority of the officers and including the names and addresses of the officers and directors.

(3) The commissioner of the state banking department shall determine whether the credit union is solvent. If such solvency is determined, he shall issue in duplicate a certificate to the effect that the provisions of this section relating to voluntary dissolution have been complied with.

(4) The certificate shall be filed with the county clerk of the county in which the credit union is located, whereupon the credit union shall be considered dissolved and shall cease to carry on business except for the purpose of liquidation.

(5) The credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets and doing all other acts required in order to wind up its business, and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted and wound up, for a period of 3 years.

Involuntary dissolution.

(b) The process for involuntary dissolution shall be as follows:

(1) In the event the commissioner of banking shall determine that the credit union is insolvent, the commissioner may take immediate possession of the assets of said credit union.

(2) Upon taking possession of the assets of said credit union, the commissioner may appoint a receiver for said credit union, which receiver may be an association of credit unions, or a person designated by the commissioner, and the commissioner may prescribe the amount of bond and such other terms and conditions with which the receiver must comply before entering upon his office.

(3) Upon qualifying the receiver shall take possession of said assets and proceed to liquidate the credit union, to collect all assets and distribute and pay all obligations, and distribute the remaining assets to the shareholders in accordance with their respective interests. The receiver, whether the banking commissioner or a receiver appointed by the banking commissioner, shall have full power and authority to sue and be sued, for the purpose of enforcing the debts and obligations due the credit union and do all things and perform all acts necessary to wind up the affairs of the credit union. The banking commissioner shall have power to issue such rules and regulations as he shall deem proper for the purpose of winding up the affairs of a credit union in involuntary dissolution.

(4) Upon commencement of the liquidation, a certificate shall be filed by the commissioner with the county clerk of the county in which the credit union is located indicating the commencement of liquidation, and upon the completion of the liquidation and dissolution of the credit union, the commissioner shall file with the county clerk of the county in which the credit union is located a certificate indicating that said liquidation and dissolution is complete and that the credit union has ceased to do business.

(5) A credit union shall be deemed insolvent when the share capital is 15% more than the value of the assets of the credit union as determined by an appraisal of assets made by the commissioner or other person authorized or directed by him to make such an appraisal.

(6) The powers of the commissioner under this section shall also apply to section 6 of this act.

Reorganization; continuation of business.

(c) The banking commissioner shall have the right to permit a credit union in either voluntary or involuntary dissolution because of insolvency to reorganize its affairs and continue in business, providing a majority of the members of the credit union approve a scale-down of their share balances in an amount sufficient to offset the deficit in as-

sets as determined by the commissioner, under such rules and regulations as the commissioner may establish not inconsistent with or contrary to law.

HISTORY: CL 1929, 12110;—CL 1948, 490.20;—Am. 1955, p. 471, Act 268, Imd. Eff. Jun. 29;—Am. 1965, p. 46, Act 30, Eff. Mar. 31, 1966.

490.21 Change in place of business or name of treasurer; filing with commissioner of banking.

Sec. 21. A credit union may change its place of business on written notice to said commissioner of the state banking department. Each credit union shall file with the commissioner of banking, on such forms as he shall prescribe, the address of the registered office and the name of the treasurer of the credit union, and at any time when the registered office or the name of the treasurer shall change the credit union shall immediately cause notification of this information to be filed with the banking commissioner.

HISTORY: CL 1929, 12111;—CL 1948, 490.21;—Am. 1955, p. 472, Act 268, Imd. Eff. Jun. 29.

490.22 Taxation.

Sec. 22. Taxation. A credit union shall be deemed an institution for savings and, together with all the accumulations therein, shall not be subject to taxation except as to real estate owned. The shares of a credit union shall not be subject to a stock transfer tax when issued by the corporation or when transferred from 1 member to another.

HISTORY: CL 1929, 12112;—CL 1948, 490.22.

490.23 Extension of corporate existence; procedure.

Sec. 23. In all instances where a credit union has completed or is about to complete the term of its corporate existence, the credit union may extend its corporate life by the affirmative vote of a majority of the members present at a duly constituted meeting called for the purpose and by delivery of a copy of the resolution certified by the secretary and attested by the president of the credit union to the banking commissioner. The banking commissioner shall thereupon authorize the credit union to continue its existence for the period of time stated in the resolution, or if no period is stated in the resolution, the banking commissioner shall authorize the credit union to continue its existence perpetually. The commissioner shall thereupon file a copy of his authorization for such extension of corporate existence with the county clerk of the county where the credit union is located. The commissioner shall by regulation determine the forms to be filed for the purpose of extending the charters of credit unions.

HISTORY: Add. 1955, p. 472, Act 268, Imd. Eff. Jun. 29;—Am. 1964, p. 68, Act 61, Eff. Aug. 28.

490.24 Repealed. 1968, p. 80, Act 41, Eff. Nov. 15.

Section related to joint tenancy shares and deposits in credit unions.

490.25 State credit union; conversion to federal credit union; property succession; transfer of rights, obligations, trusts, duties, liabilities.

Sec. 25. Any state chartered credit union, with the approval of the commissioner of the state banking department and upon the affirmative vote of 2/3 of the entire membership of the credit union, may be converted under the laws of the United States into a federal chartered credit union: Provided, however, That such conversion of the state credit union into a federal credit union shall not release such credit union from its obligations to pay and discharge all the liabilities created by law or incurred by it before becoming a federal credit union, or any tax imposed by the laws of this state up to the day of its becoming a federal credit union in proportion to the time which has elapsed since the last preceding payment therefor, or any assessment, penalty or forfeiture imposed or incurred under the laws of the state up to the date of its becoming a federal credit union. No conversion shall be made to defeat or defraud any of the creditors of such credit union. Certified copies of all proceedings had by the board of directors and members of such credit union shall be filed with the commissioner of banking of the

state of Michigan, and in addition, the credit union shall furnish a certified copy of consent or approval of the bureau of federal credit unions to such conversion if such consent or approval is required by the laws of the United States, relative to federal credit unions. One copy of such proceedings shall be filed in the office of the state banking department, and the commissioner shall certify and forward by registered mail 1 copy of the proceedings to the county clerk of the county in which such credit union is located.

When conversion becomes effective, all the property of the state credit union, including all its right, title and interest in and to all property of whatsoever kind, whether real, personal, or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, belonging or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer, and without any further act or deed, be vested in and become the property of the federal credit union, which shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by the state credit union; and the federal credit union shall be deemed to be a continuation of the entity of the state credit union. All the rights, obligations and relations of the state credit union to or in respect to any person, estate, creditor, member, depositor, trust, trustee, or beneficiary of any trust, or fiduciary function shall remain unimpaired; and the federal credit union shall succeed to all such rights, obligations, relations and trusts, and the duties and liabilities connected therewith, and shall execute and perform each and every such trust and relation in the same manner as if the federal credit union had itself assumed the trust or relation and the obligations and liabilities connected therewith.

HISTORY: Add. 1955, p. 473, Act 268, Imd. Eff. Jun. 29.

490.26 Federal credit union; conversion to state credit union; property succession; transfer of rights, obligations, trusts, duties, liabilities.

Sec. 26. Any federal credit union doing business in this state and meeting all requirements sufficient to entitle it to become a state credit union under the provisions of existing laws of this state may, with the approval of the commissioner of the state banking department and upon the affirmative vote of 2/3 of its entire membership, be converted into a state credit union: Provided, however, That such conversion shall not be in contravention of any laws of the United States. In such case the certificate of organization may be executed by a majority of the board of directors of the federal credit union and presented to the state banking department for appropriate examination and approval. A majority of the directors, but in no case less than 7, after executing the certificates of organization in triplicate, shall have the power to execute all other papers, including the adoption of bylaws for the general government of the credit union consistent with the provisions of the Michigan credit union act, and to do whatever may be required to complete its organization as a state credit union. The directors of the federal credit union may continue to be directors of the state credit union until others have been elected or appointed pursuant to the laws of this state. If the commissioner of the state banking department approves the certificate of organization as presented by the board of directors, he shall notify the applicants of his decision and shall forthwith issue a certificate of approval attached to the duplicate certificate of organization and return the same to the credit union, and such certificate shall indicate that the provisions of the laws of this state have been complied with and such credit union and all of its members, officers, and employees shall have the same rights, powers and privileges and be subject to the same duties, liabilities, and obligations in all respects, as shall be applicable to credit unions originally organized as state credit unions.

The approval of the state banking department shall be based on an examination of such credit union and the proceedings had by its directors and members with respect to such conversion and no conversion shall be made to defeat or defraud any of the creditors of such credit union. The expenses of such an examination shall be paid by the credit union, which shall be computed and paid in accordance with section 6 of this act.

When such conversion becomes effective, all the property of the federal credit union, including all its right, title, and interest in and to all property of whatsoever kind, whether real, personal or mixed, and things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, belonging or pertaining to it, or which would inure to it, shall immediately by act of law and without any conveyance or transfer and without any further acts or deeds, be vested in and become the property of the state credit union, which shall have, hold and enjoy the same in its own right as fully and to the same extent as the same was possessed, held and enjoyed by the federal credit union; and the state credit union shall be deemed to be a continuation of the entity of the federal credit union; all the rights, obligations and relations of the federal credit union to or in respect to any person, estate, creditor, depositor, member, trustee, or beneficiary of any trust, or fiduciary function, shall remain unimpaired; and the state credit union shall succeed to all such rights, obligations, relations and trusts and the duties and liabilities connected therewith, and shall execute and perform each and every such trust and relation in the same manner as if the state credit union had itself assumed the trust or relation and obligations and liabilities connected therewith.

HISTORY: Add. 1955, p. 474, Act 268, Imd. Eff. Jun. 29.

Act 41, 1968, p. 77; Eff. Nov. 15.

AN ACT to regulate credit union multiple-party accounts; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

490.51 Credit unions; multiple-party accounts; definitions.

Sec. 1. As used in this act:

(a) "Account" means a contract of deposit of funds between depositors and credit unions, and includes deposit accounts, members or share accounts and other like arrangements whether or not they may be characterized as refundable capital investments.

(b) "Beneficiary" means any person named a beneficial owner when an account provides that it is payable to a trustee for the beneficial owner.

(c) "Demand" means a request for withdrawal or for payment according to an order therefor in compliance with all conditions of the account and bylaws of the credit union.

(d) "Multiple-party account" means an account in the names of 2 or more persons, 1 or more or all of whom may make withdrawals, or an account in the name of 1 or more parties as trustee for 1 or more beneficiaries even though no mention is made of a right of withdrawal by a beneficiary. Accounts established for deposit of funds of a partnership, joint venture or other association or accounts controlled by 2 or more persons as the duly authorized agents or trustees for a corporation, unincorporated association, charitable or civic organization or any trust, except trusts of deposits evidenced only by the form of the deposit, are excluded from the meaning of the term and from the

provisions of this act. At least 1 party to a multiple-party account shall be a member of the credit union in which the account is established.

(e) "Net contribution" of a party to a multiple-party account as of any given time is the sum of all deposits made by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. It includes, in addition, any deposit life insurance proceeds added to the account by reason of the death of the party whose net contribution is in question.

(f) "Party" means a person who, alone or in conjunction with another, by the terms of the account or as a surviving beneficiary of a trust account, has a present right of withdrawal in a multiple-party account. Unless the context indicates otherwise, it includes a guardian, conservator-trustee, personal representative, or assignee, including an attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include any named beneficiary, unless he has a present right of withdrawal.

(g) "Payment" of sums on deposit includes withdrawal and payment on directive of a party.

(h) "Person" includes any person or entity capable of contracting.

(i) "Proof of death" includes a death certificate or other statement issued by an appropriate official which indicates that a named person is dead.

(j) "Sums on deposit" means the balance payable on a multiple-party account including interest, dividends, and in addition any deposit life insurance proceeds added to the account by reason of the death of a party.

(k) "Withdrawal" includes payment to a third person pursuant to directive of a party.

HISTORY: New 1968, p. 77, Act 41, Eff. Nov. 15.

490.52 Presumptions of ownership; credit unions liability and set-off rights.

Sec. 2. The presumptions created by sections 3 to 7 concerning beneficial ownership as between parties, or as between parties and beneficiaries, of multiple-party accounts are relevant only to controversies between these persons or their creditors and other successors, and shall have no bearing on the rights of withdrawal of such persons as determined by the terms of account contracts. The provisions of sections 11 to 16 govern the liability of credit unions who make payments pursuant thereto, and their set-off rights.

HISTORY: New 1968, p. 78, Act 41, Eff. Nov. 15.

490.53 Deposit or shares paid on demand.

Sec. 3. During the lifetime of all parties, a multiple-party account which provides that sums on deposit or in shares may be paid on the demand of either of 2 or more parties is presumed to belong to the parties in proportion to the net contributions by each to the sums on deposit.

HISTORY: New 1968, p. 78, Act 41, Eff. Nov. 15.

490.54 Equal undivided interests.

Sec. 4. In the absence of satisfactory proof of the net contributions, those who are parties from time to time shall be presumed to own a multiple-party account in equal undivided interests.

HISTORY: New 1968, p. 78, Act 41, Eff. Nov. 15.

490.55 Death of party; effect.

Sec. 5. The death of any party to a multiple-party account shall have no effect on the beneficial ownership of the account, other than to transfer the decedent's right to

his estate, unless the account is a survivorship account or trust account, as provided in sections 6 and 7.

HISTORY: New 1988, p. 78, Act 41, Eff. Nov. 15.

490.56 Survivorship account; death of party, ownership.

Sec. 6. A multiple-party account payable to 2 or more persons, jointly or severally, which does not expressly provide that there is no right of survivorship, though there is no mention of survivorship or joint tenancy, is presumed to be a survivorship account. At the death of a party, sums on deposit in a survivorship account belong to the surviving party or parties as against the estate of the decedent. Where there are 2 or more survivors, their respective ownerships shall be in proportion to their previous net contributions augmented by an equal share for each survivor of any interest the decedent may have owned in the account immediately before his death, plus the proceeds of insurance on decedent's life paid to the account. The right of survivorship continues between survivors.

HISTORY: New 1988, p. 78, Act 41, Eff. Nov. 15.

490.57 Trust account; beneficial ownership; death of trustee; survivorship.

Sec. 7. An account which states that a party is a trustee for 1 or more other identified persons, including but not limited to minors, is a trust account. Except where there is evidence of a trust other than as provided by the form of the account, the account and any sums withdrawn therefrom are presumed to belong beneficially to the trustee until his death. At the death of the trustee or surviving trustee any sums remaining on deposit are presumed to belong to the person or persons named as beneficiaries, if living, or to the survivor of them if 1 or more have died before the trustee. The death thereafter or any beneficiary has no effect on the equal ownership of all who survived the trustee, as no right of survivorship is presumed to attend the relationship of several beneficiaries who survive a trustee. If no beneficiary survives the trustee, the sums are presumed to belong to the estate of the last trustee to die. If 2 or more parties are named as trustees on the account, and there is no evidence of trust except as provided by the form of the account, the account is presumed to be a survivorship account as between trustees. It is presumed to be owned between trustees as provided by this act.

HISTORY: New 1988, p. 79, Act 41, Eff. Nov. 15.

490.58 Bases of presumptions; evidence to rebut; wills.

Sec. 8. The presumptions stated herein are based upon inferences of the intention of parties to multiple-party accounts arising from the form of the account and the usual expectations of people using these accounts. The presumptions are rebuttable by clear and convincing evidence of a different intention. The presumptions of survivorship are not subject to change by will but may be rebutted by a written order received by the credit union to change the form of account or directing that payment not be made in accordance with the account which is signed by a party and is received by the credit union during the party's lifetime.

HISTORY: New 1988, p. 79, Act 41, Eff. Nov. 15.

490.59 Effect of un rebutted presumptions; transfers, effect.

Sec. 9. Where not rebutted by clear and convincing evidence, the presumptions provided in this act are effective to establish beneficial ownership. Any transfers resulting from the application of these presumptions are effective by reason of the account contracts involved in this act and are not to be considered as testamentary or subject to the probate code.

HISTORY: New 1988, p. 79, Act 41, Eff. Nov. 15.

490.60 Multiple-party accounts; authority to enter; payment; inquiry; creation; joint tenant, rights.

Sec. 10. A credit union may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. Any multiple-party account may be paid, on demand, to any 1 or more of the parties unless the terms of the account expressly stipulate that joint signatures are required. No credit union shall be required to inquire as to the source of funds received for deposit to a multiple-party account or to inquire as to the proposed application of any sum withdrawn from an account. Such an account may be created with any person designated by the credit union member, but no joint tenant shall be permitted to vote, obtain loans or hold office unless he is within the field of membership and is a qualified member.

HISTORY: New 1968, p. 79, Act 41, Eff. Nov. 15.

490.61 Multiple-party accounts; withdrawals; survivorship accounts, proof of death.

Sec. 11. Any sums in a multiple-party account which does not include a stipulation requiring joint signatures for withdrawals may be paid, on demand, to any party without regard to whether any other party is incompetent or deceased at the time the payment is demanded, except, if the account is one presumed to be a survivorship account under section 6 or 7 payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the credit union showing that the decedent was the last surviving party.

HISTORY: New 1968, p. 79, Act 41, Eff. Nov. 15.

490.62 Trust accounts; payments.

Sec. 12. Any account payable to a trustee for another person may be paid on demand to the trustee. Unless the credit union has received written notice of the terms of any trust other than the form of the account, payment may be made to the personal representative or heirs of a deceased trustee if proof of death is presented to the credit union showing that his decedent was the survivor of all other persons named on the account either as trustee or beneficiary; and payment may be made, on demand, to the beneficiary upon presentation to the credit union of proof of death showing that the beneficiary or beneficiaries survived all persons named as trustees.

HISTORY: New 1968, p. 80, Act 41, Eff. Nov. 15.

490.63 Payments; effect; notice of change.

Sec. 13. Payment made pursuant to sections 10, 11 or 12 discharges the credit union from all claims for amounts so paid whether or not the payment is consistent with the beneficial ownership of the account as between parties, or beneficiaries, or their successors. The protection here given does not extend to payments made after a credit union has received written notice from any party who has a present right of withdrawal to the effect that withdrawals in accordance with the terms of the account should not be permitted. Unless the notice is withdrawn by the person giving it, the death of any party after notice has no effect on withdrawal rights, and the personal representative, or heirs, of the decedent must concur in any demand for withdrawal if the credit union is to be protected under this section. No other notice or any other information shown to have been available to a credit union shall affect its right to the protection provided here. The protection here provided shall have no bearing on the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of funds in, or withdrawn from, multiple-party accounts.

HISTORY: New 1968, p. 80, Act 41, Eff. Nov. 15.

490.64 Right to set-off or lien.

Sec. 14. Without qualifying any other statutory right to set-off or lien and subject to any contractual provision, when a party to a multiple-party account is indebted to a

credit union, the credit union has a right to set-off against the entire amount of the account.

HISTORY: New 1968, p. 80, Act 41, Eff. Nov. 15.

490.65 Repeal.

Sec. 15. Section 24 of Act No. 285 of the Public Acts of 1925, being section 490.24 of the Compiled Laws of 1948, is repealed.

HISTORY: New 1968, p. 80, Act 41, Eff. Nov. 15.

CHAPTER 491. COOPERATIVE SAVINGS ASSOCIATIONS

COOPERATIVE SAVINGS ASSOCIATIONS

Act 206 of 1877

491.1-491.21 Repealed.

491.1-491.21 Repealed. 1964, p. 186, Act 156, Eff. Jan. 1, 1965;—1964, p. 392, Act 256, Eff. Aug. 28.

Sections authorized incorporation of cooperative savings associations.

CHAPTER 492. FINANCE COMPANIES

FINANCE COMPANIES

Act 307 of 1925

492.1-492.17 Repealed.

MOTOR VEHICLE SALES FINANCE ACT

Act 27 of 1950 (Ex. Ses.)

- 492.101 Motor vehicle sales finance act; short title.
- 492.102 Motor vehicle sales finance act; definitions.
- 492.103 Installment seller of motor vehicles; sales finance company; licensing.
- 492.104 License; application, form, contents, filing; service of process; renewal.
- 492.105 Bond accompanying license application; form, renewal.
- 492.106 License; application; fee; expiration, renewal.
- 492.107 License; posting; amendment, fee; change in business location.
- 492.108 License; application, rejection, grounds, notice; retention of fee.
- 492.109 License; revocation or suspension; grounds; appeal.
- 492.110 Investigation and examination of records; access to place of business; required witness attendance; subpoena; forms, rules and regulations.
- 492.111 Books, accounts and records; maintenance.
- 492.112 Installment sale contract; contents, signatures, buyer's copy, notice, form, delivery acknowledgment, payment.
- 492.113 Installment sale contract; contents; collateral security; repayment, rebate, reinstatement; buyer's liability.
- 492.114 Installment sale contract; acceleration clause; provisions prohibited.
- 492.115 Installment sale contract; sale, transfer, assignment; notice to buyer; exception; assignment contracts.
- 492.116 Installment sale contract; insurance of vehicle, limitation, coercion prohibited; premium cost, buyer's certificate, terms of contract, cancellation.

- 492.116a Unexpired insurance premiums; crediting.
- 492.117 Installment sale contract; costs; fees.
- 492.118 Installment sale contract; finance charge; rates; computation, limitations.
- 492.119 Installment sale contract; extension, refinancing charges, rates; cash loans.
- 492.120 Installment sale contract; default charge, maximum, computation, collection.
- 492.121 Installment sale contract; prepayment of unpaid time balance; rebates.
- 492.122 Installment sale contract; payments.
- 492.122a Federal truth in lending act; effect of compliance as to insurance premium.
- 492.123-492.127 Repealed.
- 492.128 Installment sale contract; buyer furnished statement of account, contents; fee for additional statement.
- 492.129 Installment sale contract; receipt, contents; payment by mail.
- 492.130 Installment sale contract; payment in full, release, discharge, instruments delivered to buyer.
- 492.131 Installment sale contract; limitation on charges; charges prohibited.
- 492.132 Installment sale contract; waiver.
- 492.133 Installment sale contract; prior contracts.
- 492.134 Installment sale contract; expiration, surrender or revocation of license.
- 492.135 Installment sale contract; sales outside state.
- 492.136 Businesses excepted from act.
- 492.137 Violation of act; penalty.
- 492.138 Enforcement of act; administrative expense, limitation.
- 492.139, 492.140 Repealed.

INSURANCE ON FINANCED MOTOR VEHICLES

Act 217 of 1969

- 492.151 Installment sale contract; prepayment of time balance prior to insurance coverage expiration; notice to insurer; payment of unearned insurance premiums.

492.1-492.17 Repealed. 1964, p. 393, Act 256, Eff. Aug. 28.

Sections defined, licensed, and regulated finance companies, provided for disposition of their assets, and prescribed penalties for violations of the act.

Act 27, 1950 (Ex. Ses.), p. 43; Eff. Mar. 31, 1951.

AN ACT defining and regulating certain installment sales of motor vehicles; prescribing the conditions under which such sales may be made and regulating the financing thereof; regulating and licensing persons engaged in the business of making or financing such sales; prescribing the form, contents and effect of instruments used in connection with such sales and the financing thereof; prescribing certain rights and obligations of buyers, sellers, persons financing such sales and others; limiting charges in connection with such instruments and fixing maximum interest rates for delinquencies, extensions and loans; regulating insurance in connection with such sales; regulating reposessions, redemptions, resales and deficiency judgments and the rights of par-

ties with respect thereto; authorizing extensions, loans and forbearances related to such sales; authorizing investigations and examinations of persons engaged in the business of making or financing such sales; transferring certain powers and duties with respect to finance companies to the commissioner of the financial institutions bureau; and prescribing penalties. Am. 1970, p. 367, Act 114, Imd. Eff. Jul. 23.

The People of the State of Michigan enact:

492.101 Motor vehicle sales finance act; short title.

Sec. 1. This act shall be known and may be cited as the "Motor vehicle sales finance act."

HISTORY: New 1950, Ex. Ses., p. 43, Act 27, Eff. Mar. 31, 1951.

CITED IN OTHER SECTIONS: Sections 492.101 to 492.140 are cited in §§ 440.9203 and 500.1501.

492.102 Motor vehicle sales finance act; definitions.

Sec. 2. The following words, terms and phrases when used in this act shall have the meaning ascribed to them in this section, except where the context clearly indicates otherwise:

1. "Motor vehicle" shall mean any self-propelled devise [sic] in which, upon which, or by which any person or property is or may be transported or drawn upon a public highway, but excepting all tractors, motorcycles, all trailers, and semi-trailers, buses, trucks, power shovels, road machinery, agricultural machinery and other machinery not designed primarily for highway transportation, but which may incidentally transport persons or property on a public highway, and excepting such devices which move upon or are guided by a track or travel through the air.

2. "Person" includes an individual, partnership, association, business corporation, banking institution, national banking institution that elects to come under the provisions of this act, nonprofit corporation, common law trust, joint stock company or any other group of individuals however organized, and the officers, directors, employees and agents thereof.

3. "Installment buyer" or "buyer" shall mean the person who buys, hires or leases a motor vehicle under any installment sale contract or any legal successor in interest to such person, and shall continue to designate such person notwithstanding he may have entered into 1 or more extensions, deferments, renewals or other revisions of the original contract.

4. "Installment seller" or "seller" shall mean a person engaged in the business of selling, offering for sale or hiring or leasing motor vehicles under installment sale contracts or any legal successor in interest to such person. The term "business" as herein used shall not include an isolated sale.

5. "Holder" shall mean any person, including a seller, who is currently entitled to the rights of a seller under an installment sale contract.

6. "Sales finance company" shall mean a person engaged as principal, agent or broker in the business of financing or soliciting the financing of installment sale contracts made between other parties, including but not thereby limiting the generality of the foregoing, the business of acquiring, investing in or lending money or credit on the security of the retail seller's interest in such contracts whether by discount, purchase or assignment thereof, or otherwise. The term shall not include any person, banking institution or sales finance company that takes assignments of, or an interest in, an aggregation of installment sale contracts only as security for bona fide commercial loans under which, in the absence of default or other bona fide breach of the loan contract, ownership of such contracts remains vested in the assignor and collection of payments on such contracts is made by the assignor, nor any person who purchases installment

sale contracts from a sales finance company or a banking institution. The term shall include any person, whether or not licensed under this act, who as a seller finances installment sale contracts for other sellers or sales finance companies. The term shall include a banking institution.

7. "Banking institution" shall mean any bank, industrial bank, or trust company, organized and doing business under the provisions of any law of this state, or of any other state of the United States, or any national banking institution that elects to come under the provisions of this act.

8. "Retail sale" shall mean the sale of a motor vehicle for use by the buyer, or for the benefit or satisfaction which the buyer may derive from the use of the motor vehicle by another.

9. "Installment sale contract" or "contract" shall mean any contract for the retail sale of a motor vehicle, or which has a similar purpose or effect under which part or all of the price is payable in 2 or more scheduled payments subsequent to the making of such contract, or as to which the obligor undertakes to make 2 or more scheduled payments or deposits that can be used to pay part or all of the purchase price, whether or not the seller has retained a security interest in such motor vehicle or has taken collateral security for the buyer's obligation, and shall include any loan, any mortgage, any conditional sale contract, any purchase-money chattel mortgage, any hire-purchase agreement or any contract for the bailment or leasing of a motor vehicle under which the hire-purchaser, the bailee or lessee contracts to pay as compensation a sum substantially equivalent to or in excess of the value of the motor vehicle and any other form of contract which has a similar purpose or effect. The terms shall not include any sale or contract for sale upon an open book account, wherein the seller has not retained or taken any security interest in the motor vehicle sold or any collateral security for the buyer's obligation, and wherein the buyer is not required to pay any sum other than the cash price of the motor vehicle sold in connection with such sale or extension of credit, and wherein the buyer is obligated to pay for the motor vehicle in full within 90 days from the time the sale or contract for sale was made. These terms shall also mean and apply to any extension, deferment, renewal or other revision of such installment sale contract.

10. "Cash price" shall mean the price measured in dollars at which the seller would in good faith sell to the buyer or to any other buyer under like circumstances, and the buyer would in good faith buy from the seller, the motor vehicle which is the subject matter of the installment sale contract, if such sale were a sale for cash instead of an installment sale.

11. "Down payment" shall mean all partial payments whether made in cash, or otherwise, received by or for the benefit of the seller prior to or substantially contemporaneous with either the execution of the installment sale contract or the delivery of the goods sold thereunder, whichever occurs later.

12. "Principal amount financed" shall mean the unpaid cash price balance after deducting the down payment, adding the cost of any insurance premiums required or obtained as security for or by reason of the sale of a motor vehicle under an installment sale contract, and adding other costs necessary or incidental to the sale of the motor vehicle under such contract, which the seller contracts to pay on behalf of the buyer, and for the amount of which the seller agrees to extend credit to the buyer, and for which the buyer contracts voluntarily.

13. "Finance charge" shall mean the amount of the consideration in excess of the cash price which the buyer is required to pay to the seller for the credit extended by the seller to the buyer in conjunction with the sale of a motor vehicle under an installment sale contract, or it shall mean the differential between the cash sale price of the

motor vehicle and the installment sale price, exclusive of insurance premium costs and other costs necessary or incidental to an installment sale, which are specifically authorized by this act to be included in an installment sale contract.

14. "Time balance" shall mean the sum of the principal amount financed and the finance charge.

15. "Security interest" shall mean any property right in the motor vehicle which is the subject of an installment sale contract, whenever such right is retained, to secure performance of any obligation of the buyer under such contract, any extension, deferment, renewal or other revision thereof and the term shall include any lien or encumbrance against such motor vehicle, any mortgage interest in such motor vehicle, and any reservation of title to such motor vehicle, whether or not expressed to be absolute, whenever such title is in substance retained for security only.

16. "Collateral security" shall mean any security, other than a security interest in a motor vehicle, which is the subject of an installment sale contract, which is given to secure performance of any obligation of the buyer or of any surety or guarantor for him under an installment sale contract, extension, deferment, renewal or other revision thereof, and the term shall include the undertakings of any surety or guarantor for the buyer and any interest in encumbrance on or pledge of real or personal property other than the motor vehicle which is the subject of the installment sale contract.

17. "Administrator" shall mean the commissioner of the financial institutions bureau.

18. "Licensee" shall mean a person to whom has been issued a license under this act as an installment seller, or as a sales finance company, which license has not expired, has not been surrendered or revoked, and in the plural shall mean any or all persons so licensed under any or all of these 2 classifications. The term shall include any banking institution as herein defined.

19. "Public sale" shall mean a public sale after the advertising of each motor vehicle in at least 2 successive publications in a newspaper having general circulation in the village, city or township in which the sale is to be held; and such advertisement shall disclose the place at which the motor vehicle is stored and may be inspected, the date, time and place of sale, and make, model and serial number of such vehicle.

HISTORY: New 1950, Ex. Ses., p. 44, Act 27, Eff. Mar. 31, 1951;—Am. 1951, p. 218, Act 171, Imd. Eff. Jun. 8;—Am. 1952, p. 114, Act 105, Eff. Jul. 1;—Am. 1970, p. 367, Act 114, Imd. Eff. Jul. 23.

492.103 Installment seller of motor vehicles; sales finance company; licensing.

Sec. 3. On and after the effective date of this act no person shall engage or continue to engage in this state either as principal, employee, agent or broker:

1. In the business of an installment seller of motor vehicles under installment sale contracts, except as authorized in this act, under license issued by the administrator, or

2. In the business of a sales finance company, except as authorized in this act, under license issued by the administrator.

HISTORY: New 1950, Ex. Ses., p. 46, Act 27, Eff. Mar. 31, 1951.

492.104 License; application, form, contents, filing; service of process; renewal.

Sec. 4. (a) Applications for licenses under this act shall be in writing, under oath, and in the form prescribed by the administrator.

(b) The application shall contain the name under which the business is conducted, the address of the principal place of business and of each other place of business, if more than 1; the date and place of incorporation, if the applicant is a corporation; the name and residence address of the owner, if the applicant is an individual owner or

operating under an assumed name; the name and residence address of all owners, partners, or members, if the applicant is a partnership or association; the name and address of all officers and directors, if the applicant is a corporation; and such other information as the administrator may require.

(c) All applications filed by associations or corporations shall be accompanied by a power of attorney showing the name and address of the authorized agent in the state of Michigan upon whom all judicial and other process or legal notice may be served, and in the case of the death, removal from the state or any legal disability or disqualification of such agent, service of such process or notice upon the administrator shall be authorized.

(d) A separate application, on the prescribed form, shall be filed for each place of business conducted by or to be established by a licensee within the state of Michigan.

(e) All applications for renewal of existing licenses shall be filed at least 15 days prior to July first annually.

HISTORY: New 1960, Ex. Ses., p. 46, Act 27, Eff. Mar. 31, 1961.

492.105 Bond accompanying license application; form, renewal.

Sec. 5. (a) A bond, in the form prescribed by the administrator, in the penal sum of \$5,000.00 shall accompany every application for license as a sales finance company. Such bond shall be executed by a surety company authorized by the laws of Michigan to transact business within this state: Provided, That the bond accompanying an application for license as a sales finance company, filed by a banking institution located within this state, may be executed by such banking institution on its own behalf, in lieu of a bond executed by a surety company. The bond shall be executed to the state of Michigan and shall be for the use of the state and for any person or persons. The condition of the bond shall be that the licensee will comply with and abide by all the provisions of this act, and all the rules and regulations of the administrator lawfully issued, and that the licensee will pay to the state, to the administrator or to any person or persons, any and all moneys that may become due to the state, to the administrator or to any person or persons from the said licensee under and by virtue of the provisions of this act. If any person shall be aggrieved by the misconduct of a licensee and shall recover judgment against such licensee, and if such judgment shall not be satisfied within 30 days after it becomes final, such person may maintain an action upon the bond of the licensee in any court having jurisdiction of the amount claimed, and process may be served anywhere within this state.

(b) A bond in the form prescribed shall be filed for each licensed place of business conducted by a sales finance company.

(c) A new bond or renewal certificate shall accompany every application for renewal license and shall be filed at least 15 days prior to July first annually.

HISTORY: New 1960, Ex. Ses., p. 46, Act 27, Eff. Mar. 31, 1961.

492.106 License; application; fee; expiration, renewal.

Sec. 6. (a) Each application for license shall be accompanied by a license fee in the amount of:

1. \$20.00 for license as an installment seller of motor vehicles, permitting such installment seller to finance installment sales contracts made between such installment seller and an installment buyer.

2. \$100.00 for the first license as a sales finance company, except banking institutions, which shall pay a fee of \$25.00 for each office licensed as a sales finance office.

(b) A separate license fee of \$50.00 shall be paid by each sales finance company, except banking institutions, for each additional place of business conducted by such sales finance company within the state.

(c) No abatement in the amount of the said license fee shall be made if the license is issued for less than 1 year, or if the license is surrendered, cancelled or revoked prior to the expiration of the license year for which issued.

(d) All licenses under this act shall expire on July 1 annually. A renewal license fee in the same amount as that paid for the original license shall be paid annually for each respective type of license and for each licensed place of business.

(e) All license fees and fines received by the administrator under this act shall be deposited in the state treasury to the credit of the general fund of the state.

HISTORY: New 1950, Ex. Ses., p. 47, Act 27, Eff. Mar. 31, 1951;—Am. 1952, p. 116, Act 103, Eff. Jul. 1;—Am. 1970, p. 370, Act 114, 1st Eff. Jul. 23.

492.107 License; posting; amendment, fee; change in business location.

Sec. 7. (a) The administrator, if he approves an application for license, shall issue to the applicant a license certificate showing the name of the person authorized to do business thereunder and the business address of the licensee. Such license certificate when issued to a licensee shall be posted in a conspicuous place in the place of business of the licensee, so that it will be in full view of the public at all times.

(b) A license shall not be transferable or assignable.

(c) A licensee may change his place of business to another location within the same municipality for which the license certificate was issued. A licensee desiring to change the address of his place of business shall give prior written notice thereof to the administrator and shall return the license certificate to the administrator for amendment. The administrator shall amend the license certificate to show the new address and the date thereof, which shall thereafter be the authorized address of the licensee. A licensee shall be required to pay a charge of \$5.00 for amendment of a license certificate to effect change of address.

(d) Only 1 place of business may be operated under the same license. A licensee may operate more than 1 place of business by filing application on the prescribed form for each additional place of business and complying with the bond and license fee provisions of this act: Provided, That in the case of installment sellers only, where every place of business is conducted in 1 city under 1 name and all business records are continuously kept in 1 place, only 1 license shall be required for all places of business conducted in such city.

HISTORY: New 1950, Ex. Ses., p. 47, Act 27, Eff. Mar. 31, 1951.

492.108 License; application, rejection, grounds, notice; retention of fee.

Sec. 8. (a) The administrator may reject any application for license or any application for renewal of a license if he is not satisfied that the financial responsibility and the general fitness of the applicant and of the owners, partners or members thereof, if the applicant be a partnership or association, and of the officers and directors, if the applicant be a corporation, are such as to warrant the belief that the business for which application for license is filed will be operated in accordance with the provisions of this act.

(b) Whenever the administrator rejects an application for license he shall mail a notice of such action to the applicant and the applicant may, within 30 days of the date of such notice, appeal from such action to the circuit court in the manner provided for in section 9, subsection (d) of this act.

(c) Whenever the administrator rejects an application for license, he shall retain the license fee which accompanied the application, to defray costs of investigation.

HISTORY: New 1950, Ex. Ses., p. 47, Act 27, Eff. Mar. 31, 1951.

492.109 License; revocation or suspension; grounds; appeal.

Sec. 9. (a) The administrator, upon 30 days written notice to the licensee, forwarded by registered mail to the place of business of such licensee, as shown in the application.

for license or as amended on the license certificate in case of change of address subsequent to issuance of the license certificate, may revoke or suspend any license if he finds that:

1. The licensee has made any material misstatement in the application for license, or that
2. The licensee has violated any provisions of this act, or that
3. The licensee refuses or has refused to permit the administrator or his designated representative to make examinations authorized by this act, or that
4. The licensee in the case of a sales finance company has failed to maintain in effect the bond required under the provisions of this act, or that
5. The licensee has failed to maintain satisfactory records required by this act, or that
6. The licensee has falsified any records required by this act to be maintained in connection with the business contemplated by this act, or that
7. The licensee has after proper notice failed to file any report with the administrator within the time stipulated in this act, or that
8. The licensee has failed to pay the fine required by this act for failure to file reports to the administrator within the time stipulated, or that
9. The licensee has defrauded any retail buyer to the buyer's damage or wilfully failed to perform any written agreement with any retail buyer, or that
10. Any fact or condition exists or is discovered which, if it had existed or had been discovered at the time of filing of the application for such license, would have warranted the administrator in refusing to issue such license.

(b) The administrator may revoke or suspend only the particular license with respect to which grounds for revocation may occur or exist, but if he finds that grounds for revocation are of general application to all places of business or to more than 1 place of business operated by a licensee, he may revoke all of the licenses issued to such licensee or those licenses to which grounds for revocation apply, as the case may be.

(c) Whenever a license has been revoked, the administrator shall not issue another license to the licensee pursuant to the provisions of this act until the expiration of at least 1 year from the effective date of revocation of said license.

(d) Appeals may be taken from the action of the administrator in accordance with procedure prescribed in section 30 of Act No. 319 of the Public Acts of 1969, being section 487.330 of the Compiled Laws of 1948.

HISTORY: New 1950, Ex. Ses., p. 47, Act 27, Eff. Mar. 31, 1951;—Am. 1970, p. 370, Act 114, Imd. Eff. Jul. 23.

492.110 Investigation and examination of records; access to place of business; required witness attendance; subpoena; forms, rules and regulations.

Sec. 10. (a) The administrator is authorized and empowered to investigate and examine at any time during regular business hours any and all books, accounts, papers, records, documents and files, to the extent that such investigation and examination pertain to matters regulated under the provisions of this act, of any licensee and of any person who shall be engaged in business contemplated by this act. For this purpose the administrator shall have free access to the offices and places of business and any and all books, accounts, papers, records, documents and files of all such persons. A person who is not licensed under this act shall be presumed to be engaged in business contemplated by this act, if he, as principal, agent or broker advertises or solicits business for which a license is required by the provisions of this act, and the administrator and any person designated by him for that purpose is, in such case, hereby empowered

to examine the books, accounts, papers, records, documents, files, safes and vaults of such persons for the purpose of discovering violations of this act.

(b) The administrator is empowered to require the attendance and testimony of witnesses and the production of any books, accounts, papers, records, documents and files relating to such business which the administrator has authority by this act to investigate, and for this purpose the administrator or his duly authorized representative may sign subpoenas, administer oaths and affirmations, examine witnesses and receive evidence. In case of disobedience of any subpoena or the contumacy of any witness appearing before the administrator, the administrator may invoke the aid of the circuit court of Ingham county, or any circuit court of the state, and such court shall thereupon issue an order requiring the person subpoenaed to obey the subpoena, or to give evidence, or to produce books, accounts, papers, records, documents and files relative to the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof.

(c) The administrator is hereby authorized and empowered to prescribe the various blank forms to be used by licensees in making reports, and to make rules and regulations relating to the enforcement of this act. A copy of every rule and regulation shall be mailed by the administrator to all licensees under this act at their respective licensed places of business at least 10 days before the effective date thereof.

HISTORY: New 1950, Ex. Ses., p. 48, Act 27, Eff. Mar. 31, 1951.

492.111 Books, accounts and records; maintenance.

Sec. 11. (a) Every licensee shall maintain, at the place of business designated in the license certificate, such books, accounts and records of the business conducted under the license issued for such place of business as will enable the administrator to determine whether the business of the licensee contemplated by this act is being operated in accordance with the provisions of this act.

(b) A licensee, operating 1 or more licensed places of business in this state, may maintain the general control records of all such offices at any 1 of such offices, or at any other office maintained by such licensee, upon the filing of a written request with the administrator designating therein the office at which such control records are maintained and upon approval of such request by the administrator.

(c) All books, accounts and records of licensee shall be maintained in the English language.

(d) All books, accounts and records of licensees, including any cards used in a card system, shall be preserved and available for examination by the administrator for at least 2 years after making the final entry therein.

HISTORY: New 1950, Ex. Ses., p. 49, Act 27, Eff. Mar. 31, 1951.

492.112 Installment sale contract; contents, signatures, buyer's copy, notice, form, delivery acknowledgment, payment.

Sec. 12. (a) Every installment sale contract shall be in writing and shall contain all of the agreements between the buyer and the seller relating to the installment sale of the motor vehicle sold and shall be signed by both the buyer and the seller.

(b) Every installment sale contract shall be completed as to all essential provisions prior to the signing of such contract by the buyer, and shall contain such minimum information as the administrator shall direct.

(c) An exact copy of the installment sale contract shall be furnished by the seller to the buyer at the time the buyer signs such contract. Such buyer's copy of the contract shall contain the signature of the seller identical with such signature on the original contract. Such copy shall be furnished to the buyer without charge.

(d) Every installment sale contract shall contain the following notice, printed promi-

nently and in the form indicated in 12 point type, or larger, directly above the space provided in the contract form for the signature of the buyer:

"Notice to buyer. Do not sign this contract in blank. You are entitled to 1 true copy of the contract you sign without charge. Keep it to protect your legal rights."

(e) The seller shall obtain from the buyer a written acknowledgment of the delivery of the copy of the contract to the buyer. Such acknowledgment shall be printed in 12 point type, or larger, and, if attached to the contract, it shall be printed below the buyer's signature to the contract and shall be independently signed.

(f) Every installment sale contract shall provide for weekly, semi-monthly or monthly payment of the time balance in substantially equal periods and in substantially equal amounts: Provided, That this subsection shall not apply to installment sale contracts made between an installment seller and an installment buyer who is an employee of such installment seller, nor shall it prohibit installment sales contracts that extend the time for making installment payments for a period of not to exceed 3 months for installment buyers engaged in seasonal occupations: Provided further, That this subsection shall not preclude the exceptional installment sale contract provided for in section 22 of this act.

HISTORY: New 1950, Ex. Ses., p. 49, Act 27, Eff. Mar. 31, 1951;—Am. 1954, p. 321, Act 132, Imd. Eff. Apr. 23.

492.113 Installment sale contract; contents; collateral security; repayment, rebate, reinstatement; buyer's liability.

Sec. 13. (a) Every installment sale contract shall state the full names and addresses of all the parties thereto, the date when signed by the buyer and shall contain a description of the motor vehicle sold which shall be sufficient for accurate identification.

(b) Every installment sale contract shall set forth the following separate items as such and in the following order:

1. Cash price of the motor vehicle. This amount may include any taxes and costs of agreed upon accessories and installation of same.

2. Down payment made by the buyer at the time of or prior to execution of the contract, indicating whether made in cash, or represented by the agreed value of a "trade-in" motor vehicle, or other goods, or both. The amount of cash and/or the value of any "trade-in" shall be shown separately. A description of the "trade-in", if any, sufficient for identification shall be shown.

3. Unpaid cash price balance, which shall be the difference between the cash price (item 1) and the down payment (item 2) above.

4. Insurance premiums and costs of travel emergency benefits pertaining to the operation of the automobile for the payment of which the seller agrees to extend credit to the buyer. The term of such insurance, a concise description of the coverage and such travel emergency benefits shall be set forth. If the precise cost of the insurance is not available at the time the contract is signed, an estimated amount, ascertained from the current published applicable manual of a recognized standard insurance rating bureau may be set forth in the contract. The seller shall, within 25 days after making the installment contract, mail or cause to be mailed to the buyer at his address as shown on the installment contract a certificate or policy of insurance and a statement, showing exact cost thereof. From and after January 1, 1958, all installment sale contracts shall contain the following warning, which shall be printed prominently in red ink and in 12-point type or larger, directly preceding the notice provided for in subdivision (d) of section 12 of this act, as amended, and shall be enclosed by a continuous heavy line:

Warning: The insurance afforded hereunder does not cover liability for injury to persons or damage to property of others unless so indicated hereon.

5. Other costs, necessary or incidental, which the seller contracts to pay on behalf of the buyer and for the amount of which the seller agrees to extend credit to the buyer as authorized by this act. Such costs shall be itemized in the contract as to nature and amount.

6. Principal amount financed, which shall be the total of the unpaid cash price balance (item 3) plus the insurance premium and travel emergency benefit costs (item 4) plus other costs (item 5) for which the seller agrees to extend credit to the buyer.

7. Finance charge, which is the consideration in excess of the cash price (item 1), excluding insurance premium and travel emergency benefit costs (item 4) and other costs (item 5), which the buyer agrees to pay to the seller for the privilege of purchasing the motor vehicle under the installment sale contract.

8. Time balance, which shall be the total of the principal amount financed (item 6) plus the finance charge (item 7) and which shall represent the total obligation of the buyer which he agrees to pay in 2 or more scheduled payments.

9. Payment schedule, which shall state the number of payments, the amount of the payments and the time of the payments required to liquidate the time balance.

(c) Every installment sale contract shall state clearly any collateral security taken for the buyer's obligation under the contract.

(d) Every installment sale contract shall contain a summary notice of the buyer's principal legal rights respecting prepayment of the contract and rebate of finance charge and reinstatement of the contract in the event of repossession.

(e) Every installment sale contract shall contain specific provisions as to the buyer's liability respecting default charges, repossession and sale of the motor vehicle, in case of default or other breach of contract, and respecting the collateral security, if any.

HISTORY: New 1950, Ex. Ses., p. 50, Act 27, Eff. Mar. 31, 1951;—Am. 1957, p. 30, Act 26, Eff. Sep. 27;—Am. 1968, p. 258, Act 165, Imd. Eff. Jun. 17.

492.114 Installment sale contract; acceleration clause; provisions prohibited.

Sec. 14. (a) No installment sale contract shall be signed by any party thereto unless it contains all of the information and statements required by this act.

(b) No installment sale contract shall contain any acceleration clause under which any part or all of the time balance represented by payments, not yet matured, may be declared immediately payable because the seller or holder deems himself to be insecure.

(c) No installment sale contract shall contain any provision authorizing any person acting on behalf of the seller or holder to enter upon premises of the buyer unlawfully, or to commit any breach of the peace in the repossession of the motor vehicle or collateral security.

(d) No installment sale contract shall contain any provision whereby the buyer waives any right of action against the seller, holder or other person acting on behalf of the holder for any illegal act committed in the collection of the payments under the contract or in the repossession of the motor vehicle or collateral security.

(e) No installment sale contract shall contain any provision whereby the buyer executes a power of attorney appointing the seller, the holder, or the agent of such licensee as the buyer's agent in collection of the payments under the contract or in repossession of the motor vehicle sold or collateral security.

(f) No installment sale contract shall contain any provision relieving the holder, or other assignee, from liability for any legal remedies which the buyer may have had against the seller under the contract or under any separate instrument executed in

connection therewith: Provided, That this subsection shall in no way impair or affect the rights and powers of a holder in due course of a negotiable instrument.

HISTORY: New 1950, Ex. Ses., p. 50, Act 27, Eff. Mar. 31, 1951.

492.115 Installment sale contract; sale, transfer, assignment; notice to buyer; exception; assignment contracts.

Sec. 15. (a) Whenever an installment sale contract is lawfully sold, transferred or assigned to a person who is licensed as a sales finance company, pursuant to the provisions of this act, such new holder shall furnish to the buyer in such contract a written notice of such sale, transfer or assignment, excepting when assignment is made only to secure a bona fide commercial loan or pursuant to a bulk sale of installment sale contracts. Such notices shall set forth the name and address of the new holder and shall notify the buyer of the name and address of the person authorized to receive future payments on such contract. If such notice has not been given, any payment or tender of payment made to and any service of notice on the last known holder by the buyer shall be binding upon any subsequent holder. No installment sales contract shall be sold to any person doing business in this state who is not licensed under the provisions of this act.

(b) The provisions of this section shall not apply to an assignment of an aggregation of installment sale contracts, which is executed by a seller or sales finance company in connection with a bulk sale or as collateral security for a bona fide commercial loan, obtained at lawful rates of interest from a person regularly engaged in the business of lending money on the security of such assigned collateral, and under which, in the absence of default or other bona fide breach of the loan contract, ownership of the assigned contracts remains vested in the assignor and collection of payments on such assigned contracts is made by the assignor: And provided, That such assignment and loan contracts are not for the purpose of evading or circumventing the provisions of this act.

HISTORY: New 1950, Ex. Ses., p. 51, Act 27, Eff. Mar. 31, 1951.

492.116 Installment sale contract; insurance of vehicle, limitation, coercion prohibited; premium cost, buyer's certificate, terms of contract, cancellation.

Sec. 16. (a) The buyer of a motor vehicle under an installment sale contract may be required to provide insurance on such motor vehicle at the buyer's expense for the protection of the seller or subsequent holder. Such insurance shall be limited to insurance against substantial risk of damage, destruction or theft of such motor vehicle: Provided, however, That the foregoing shall not interfere with the liberty of contract of the buyer and seller to contract for travel emergency benefits pertaining to the operation of the automobile or other or additional insurance as security for or by reason of the obligation of the buyer, and inclusion of the cost of such insurance premium and said travel emergency benefits in the principal amount advanced under the installment sale contract. Such insurance shall, if possible to obtain, be written for the dual protection of the buyer and of the seller, or subsequent holder, to the extent of his interest in the motor vehicle. Such insurance shall be for an amount, and period of time, and upon terms and conditions, which are reasonable and appropriate considering the type and condition of the motor vehicle, the amount of the time balance and the schedule of payments in the installment sale contract. In the event such insurance cannot be obtained for the dual protection of the buyer and the seller, or subsequent holder, or if obtained, is cancelled by the insurance company prior to expiration, the seller, or subsequent holder, may obtain insurance to protect his interest in the motor vehicle and the buyer may be required to pay the cost thereof. In such event, the seller, or subsequent holder, shall promptly notify the buyer that such insurance can-

not be obtained, or is cancelled, and credit to the buyer the difference between the amount charged by the seller for such dual protection insurance and the cost to the seller of such single interest insurance (less, in the event of cancellation, the earned premium on the dual interest insurance for the period it is in force): Provided, That whenever such insurance is written for the protection of the seller, or subsequent holder, only, neither the insurance company issuing the policy nor any other person shall be subrogated to the rights of the insured as against the buyer.

(b) The buyer of a motor vehicle under an installment sale contract shall have the privilege of purchasing such insurance from any insurance company, agent or broker authorized to do business in Michigan other than the installment seller. No installment seller shall coerce, threaten, or in any manner influence any installment buyer to purchase insurance from any insurance company, agent or broker designated by such seller: Provided, however, That the inclusion of the cost of the insurance premium in the installment sale contract, when the buyer selects the company, agent or broker, shall be optional with the seller.

(c) Whenever the seller contracts to purchase, at the buyer's expense, such insurance on a motor vehicle sold under an installment sale contract, such insurance shall be purchased through an agent and/or broker or other person, authorized to conduct business in Michigan, and such insurance shall be written by an insurance company qualified to do business in Michigan. The status of the buyer and seller or holder, as set forth in such insurance contract, shall conform to the status of these parties in the installment sale contract. The cost of the premium on such insurance to the buyer shall not be in excess of the amount of the premium which others are required to pay to such insurance company for similar coverage, and in no event in excess of rates established in the then current published applicable manual of a recognized standard insurance rating bureau, or the rates fixed by authority of the state of Michigan.

(d) Whenever the seller contracts to purchase, at the buyer's expense, such insurance on a motor vehicle sold under an installment sale contract, a certificate of insurance and a statement showing itemized cost of such insurance shall be delivered to the buyer within 25 days of the date of the buyer's signing of the installment sale contract.

(e) The insurance policy or certificate of insurance on the motor vehicle which is furnished to the buyer, when the insurance is placed by the seller or subsequent holder at the buyer's expense, shall set forth complete information as to the effective dates, amounts of premiums and coverage, and shall contain all the terms of the insurance contract.

(f) When the seller or subsequent holder has placed, at the expense of the buyer, insurance on a motor vehicle sold under an installment sale contract and the buyer pre-pays the time balance under the contract prior to the expiration date of the insurance, such insurance shall remain in force unless the buyer requests cancellation thereof. The seller or holder shall not cancel the insurance under such circumstances without the buyer's consent, nor shall the seller or holder coerce the buyer to cancel the insurance. Unexpired insurance premiums received by the seller or holder, resulting from cancellation of insurance which was originally placed at the buyer's expense, shall be used in procuring comparable insurance as in subsection (g) of this section provided, and if such insurance cannot be obtained, shall be paid to the buyer or credited to any matured unpaid installments under the contract.

(g) When the seller contracts to purchase insurance at the buyer's expense and such insurance is cancelled by the insurance company prior to expiration, the seller or subsequent holder shall attempt to place comparable insurance with another insurance company and furnish or cause to be furnished to the buyer a copy of the insurance policy or certificate of insurance, subject to the same requirements of this act applicable

to the original policy. In the event the holder is unable to obtain such insurance in another insurance company, he shall promptly notify the buyer by registered mail, addressed to the buyer at the address appearing upon the installment sale contract, unless the seller is in receipt of written notice of a change in the buyer's address, and in such event addressed to the buyer at such changed address. The buyer may then obtain such insurance from an insurance company, agent or broker of his own selection. The holder shall also be liable to the buyer for any loss suffered by the buyer through negligence on the part of the holder in promptly mailing notice to the buyer of his inability to obtain replacement insurance.

HISTORY: New 1950, Ex. Ses., p. 51, Act 27, Eff. Mar. 31, 1951.

492.116a Unexpired insurance premiums; crediting.

Sec. 16a. If unexpired insurance premiums received by the seller or holder resulting from the cancellation of insurance which was originally placed by the buyer's expense cannot be used in procuring comparable insurance as in section 16, subsection (g), such unexpired insurance premiums shall be credited to the last maturing installments under the contract.

HISTORY: Add. 1954, p. 322, Act 132, Imd. Eff. Apr. 23.

492.117 Installment sale contract; costs; fees.

Sec. 17. (a) In addition to the cost of insurance premiums and travel emergency benefits authorized in the preceding section of this act, the seller of a motor vehicle under an installment sale contract may require the buyer to pay certain other costs incurred in the sale of a motor vehicle under such contract as follows:

1. Fees, payable to the state of Michigan, for filing a lien or encumbrances on the certificate of title to a motor vehicle sold under an installment sale contract or collateral security thereto.

2. Fees, payable to a public official, for filing or recording and satisfying or releasing the installment sale contract or instruments securing the buyer's obligation.

3. Fees for notarization required in connection with the filing and recording or satisfying and releasing a mortgage, judgment lien or encumbrance.

(b) The seller of a motor vehicle under an installment sale contract may also contract with the buyer to pay, on behalf of the buyer, such other costs incidental to the sale of a motor vehicle and contracted for voluntarily by the buyer as follows:

Fees, payable to the state of Michigan, for registration of the motor vehicle and issuance or transfer of registration plates.

(c) The foregoing costs may be charged, contracted for, collected or received by the seller from the buyer independently of the installment sale contract, or the seller may extend credit to the buyer for the amount of such costs and include such amount in the principal amount financed under the installment sale contract.

(d) Such other costs paid or payable by the buyer shall not exceed the amount which the seller expends or intends to expend therefor. Any such costs which the seller has collected from the buyer, or which have been included in the buyer's obligation under the installment sale contract which are not disbursed by the seller, as contemplated, shall be immediately refunded or credited to the buyer.

HISTORY: New 1950, Ex. Ses., p. 53, Act 27, Eff. Mar. 31, 1951.

492.118 Installment sale contract; finance charge; rates; computation, limitations.

Sec. 18. (a) A seller licensed under the provisions of this act shall have the power and authority to charge, contract for, receive or collect a finance charge, as defined in this act, on any installment sale contract covering the retail sale of a motor vehicle in

this state which shall not exceed the rates indicated for the respective classification of motor vehicles as follows:

Class I. Any new or used motor vehicle designated by the manufacturer by a year model of the same or 1 year prior in which the retail sale, then being financed, is made, \$6.00 per \$100.00 per year.

Class II. New or used motor vehicles of a model designated by the manufacturer by a year not more than 2 years prior to the year in which the sale is made, \$9.00 per \$100.00 per year.

Class III. New or used motor vehicles of a model designated by the manufacturer by a year more than 2 years prior to the year in which the sale is made, \$12.00 per \$100.00 per year.

(b) Such finance charge shall be computed on the principal amount financed as determined under section 13(b)6 of this act.

(c) Such finance charge shall be computed at the annual rates permitted by section 18(a) on installment sale contracts which are payable by installment payments, extending for a period of 1 year. On installment sale contracts providing for installment payments, extending for a period which is less than or greater than 1 year, the finance charge shall be computed proportionately.

(d) Such finance charge may be computed on the basis of a full month for any fractional month period in excess of 10 days.

(e) A minimum finance charge of \$15.00 may be charged on any installment sale contract in which the finance charge, when computed at the rates indicated, results in a total charge of less than this amount.

HISTORY: New 1950, Ex. Ses., p. 53, Act 27, Eff. Mar. 31, 1951.

492.119 Installment sale contract; extension, refinance charges, rates; cash loans.

Sec. 19. (a) The holder of an installment sale contract may extend the scheduled due date, or defer payment or payments, or renew the unpaid time balance of such contract.

(b) The holder may contract for, receive and collect a refinance charge for such extension, deferment or renewal. Such refinance charge shall not exceed the amount ascertained under either of the following methods of computation at the respective rates indicated by—

1. In the event 1 or more installment payments are extended or deferred, computing the refinance charge on the amount of the installment payment or payments or part thereof which is refinanced, for the period of time for which each payment or part thereof is extended or deferred, at the following rates on contracts originally in the respective classification of motor vehicles set forth in the preceding section of this act:

Class I. One per cent per month.

Class II. One and one-half per cent per month.

Class III. Two per cent per month.

Such refinance charges may be computed on the basis of a full month for any fractional month period in excess of 10 days.

2. In the event the unpaid balance of the contract is refinanced or renewed, computing the refinance charge on the amount obtained by adding to the unpaid time balance of the contract, the insurance cost and other costs incidental to refinancing, by adding unpaid default charges, which may be accrued, and by deducting any rebate which may be due to the buyer for prepayment incidental to refinancing, at the rate of the finance charge specified in subsection (a) of section 18 and by reclassifying the motor vehicle by its then year model, for the term of the renewal contract, but otherwise

subject to the provisions of this act governing computation of the original finance charge. The provisions of this act governing minimum finance charges and minimum prepayment rebate shall not apply in calculating refinance charges on the contract renewed under this method of computation.

(c) The holder of an installment sale contract shall not include in any contract for refinancing such contract any cash loan to the buyer, nor any credit extended to the buyer incidental to the purchase of goods or services: Provided further, That the word loan herein shall not include, nor this act prohibit, a rearrangement of payments under the installment sale contract by a refinance transaction involving a restoration of certain installment payments made under the contract, but the refinance charge on such amount restored may not be more than 7% per annum, simple interest: And provided further, however, That the holder of such contract may embody in such refinance contract the cost of accessories, equipment and parts for the motor vehicle sold under such contract, and the cost of repairs and services to such motor vehicle including finance charges thereon.

HISTORY: New 1950, Ex. Ses., p. 54, Act 27, Eff. Mar. 31, 1951;—Am. 1957, p. 273, Act 216, Eff. Sep. 27.

492.120 Installment sale contract; default charge, maximum, computation, collection.

Sec. 20. A default charge may be collected on any installment payment or payments which are not paid on or before the due date of such payments. Such default charge shall not exceed the rate of 2 per cent per month on the amount of the payment or payments in arrears. Such default charge may be computed on the basis of a full calendar month for any fractional month period in excess of 10 days. Such default charges may be collected, when earned, during the term of the contract, or may be accumulated and collected at final maturity, or at the time of final payment under the contract. Such default charge shall not be collected on any payment in default because of any acceleration provision in the contract.

HISTORY: New 1950, Ex. Ses., p. 54, Act 27, Eff. Mar. 31, 1951.

492.121 Installment sale contract; prepayment of unpaid time balance; rebates.

Sec. 21. (a) The buyer, notwithstanding the provisions of any installment sale contract, shall have the privilege of prepaying at any time all or any part of the unpaid time balance under an installment sale contract.

(b) Whenever all of the time balance is liquidated prior to maturity by prepayment, refinancing or termination by surrender or repossession and resale of the motor vehicle, the holder of the installment sale contract shall rebate to the buyer immediately the unearned portion of the finance charge. Rebate may be made in cash or credited to the amount due on the obligation of the buyer.

(c) The unearned portion of the finance charge to be rebated to the buyer shall be at least as great a proportion of the original finance charge, as the sum of the periodical time balances, after the date of prepayment, bears to the sum of all the periodical time balances under the schedule of payments in the original contract. The holder shall not be required to rebate any portion of such unearned finance charge which results in a net minimum finance charge on the contract less than \$15.00. The holder shall not be required to rebate any unearned finance charge when the amount due, computed as herein set forth, is less than \$1.00.

HISTORY: New 1950, Ex. Ses., p. 54, Act 27, Eff. Mar. 31, 1951;—Am. 1957, p. 274, Act 216, Eff. Sep. 27.

492.122 Installment sale contract; payments.

Sec. 22. An installment sale contract may provide for a series of weekly, semi-monthly or monthly payments in substantially equal periods and amounts, followed by a single larger payment of the unpaid time balance, in which event the installment

buyer shall have the right to an option, at the time such larger payment shall become due, to make such payment or to enter into a second contract, which contract shall conform to all the provisions of this act except that the refinance charge provided for in such second contract shall not exceed the finance charge rate provided for in the first contract.

HISTORY: New 1950, Ex. Ses., p. 55, Act 27, Eff. Mar. 31, 1951.

492.122a Federal truth in lending act; effect of compliance as to insurance premium.

Sec. 22a. Compliance with the requirements of the consumer credit protection act, Public Law 90-321; 82 statute 146, et seq., commonly referred to as the federal truth in lending act is compliance with the disclosure provisions of subsection (b), subdivisions (1), (2), (3) and (4) as it relates to the amount of the insurance premium, (5), (6), (7), (8) and (9) of section 13 and the disclosure provisions of section 2 of Act No. 305 of the Public Acts of 1939, being section 566.302 of the Compiled Laws of 1948.

HISTORY: Add. 1960, p. 65, Act 35, Imd. Eff. Jul. 10.

492.123-492.127 Repealed. 1962, p. 317, Act 174, Eff. Jan. 1, 1964.

Sections related to "Motor vehicle sales finance act."

492.128 Installment sale contract; buyer furnished statement of account, contents; fee for additional statement.

Sec. 28. (a) At any time after execution of an installment sale contract and within 1 year after termination of such contract, the holder of such contract shall furnish the buyer, upon request, with a complete and detailed statement of account showing:

1. All amounts paid by the buyer on account of the obligation, dates of payment and the allocation of such payments to reduction of the time balance, refinance charges, default charges, court costs, attorney's fees, expenses of retaking, repairing, storing, or otherwise.

2. All amounts credited to the buyer as rebates for prepayment and unexpired premiums on insurance cancelled.

3. The amount of the installment payments, accrued charges and expenses incurred, if any, which are due and payable.

4. The number and amount of installment payments to become due and payable, if any, and the due dates thereof.

(b) The buyer shall be furnished with 1 such statement of account without charge during the term of the contract or within 1 year after termination, and the holder may require payment of a fee of 50 cents for any additional statements.

(c) The holder shall furnish the buyer, upon request and upon payment of a fee of 50 cents, with a duplicate copy of the installment sale contract to replace the buyer's copy of such contract which is required to be furnished to the buyer without charge at the time of execution of the contract.

HISTORY: New 1950, Ex. Ses., p. 57, Act 27, Eff. Mar. 31, 1951.

492.129 Installment sale contract; receipt, contents; payment by mail.

Sec. 29. (a) Whenever payment is made on account of any installment sale contract, the person receiving such payment shall, at the time of receiving such payment, furnish to the buyer or to the person making the payment on behalf of the buyer, a complete written receipt therefor, if requested. A receipt must be given if payment is made in cash.

(b) Such receipt shall show the date of payment, the amount of the payment, and shall identify the obligation to which such payment is applicable.

(c) When issued for payments made at any office of the holder or mailed to such office, which payments are applied to reduction of the time balance, such receipt shall

if requested by the buyer, also set forth the unpaid time balance remaining due after crediting such payment. If such payment includes default charges authorized by this act, the amount of such default charges shall be set forth on the receipt independently of the payment applied to reduction of the time balance.

(d) When the buyer elects to make such payments by mail, the holder may require the buyer to supply a self-addressed stamped envelope as a condition for mailing such receipt to him, if he has been previously notified of such condition.

HISTORY: New 1950, Ex. Ses., p. 57, Act 27, Eff. Mar. 31, 1951.

492.130 Installment sale contract; payment in full, release, discharge, instruments delivered to buyer.

Sec. 30. (a) Upon payment in full of the time balance and other amounts lawfully due under an installment sale contract, the holder shall, unless the buyer is otherwise indebted to the holder and has secured such debt by lien upon the motor vehicle:

1. Return to the buyer the original of all instruments evidencing indebtedness or constituting security under an installment sale contract, which were signed by the buyer or his sureties or guarantors in conjunction with such contract, excepting such instruments as are filed or recorded with a public official and retained in the files of such official, and

2. Release all security interest in the motor vehicle or in collateral security to the obligation of the buyer under such contract, and

3. Deliver to the buyer all documents of title obtained from him.

(b) When the final payment on an installment sale contract is made in cash, money order or equivalent tender, by the buyer or his authorized representative, at the office of the holder, a legal discharge of this encumbrance, shall be delivered at the time of such tender of payment, if demanded by the buyer; otherwise delivery may be made at a later date in person or by mail as may be arranged between buyer and holder. All other instruments referred to in this section shall be delivered or mailed to the buyer within 25 days of the date of final payment.

HISTORY: New 1950, Ex. Ses., p. 58, Act 27, Eff. Mar. 31, 1951.

492.131 Installment sale contract; limitation on charges; charges prohibited.

Sec. 31. (a) A licensee under this act shall not charge, contract for, collect, or receive from the buyer, directly or indirectly, any further or other amount for costs, charges, examination, appraisal, service, brokerage, commission, expense, interest, discount, fees, fines, penalties or other thing of value in connection with the retail sale of a motor vehicle under an installment sale contract in excess of the cost of insurance premiums, other costs, the finance charges, refinance charges, default charges, recording and satisfaction fees, court costs, attorney's fees and expenses of retaking, repairing and storing a repossessed motor vehicle which are authorized by the provisions of this act.

(b) A licensee under this act shall not collect any charge whatsoever in connection with a contemplated sale of a motor vehicle under an installment sale contract, if such contract is not consummated: Provided, however, That nothing contained herein shall affect the legal status of a deposit paid by a prospective buyer to a seller as a binder on the contemplated purchase of a motor vehicle.

(c) No holder, sales finance company or banking institution shall pay or cause to be paid, directly or indirectly, to any installment seller, nor shall any installment seller receive from any such holder, sales finance company or banking institution, or any other person, any sum of money or other consideration for any purpose, in connection with any installment sale transaction, other than a sum equal to the unpaid time balance reduced by the portion of the finance charge which is unearned at the time an install-

ment sale contract is acquired by such holder, sales finance company or banking institution: Provided, That if the seller prepares the credit information, contract, note, mortgage and application for title, the holder, finance company or banking institution may pay such seller a service fee of not more than 2% on the principal amount financed on all motor vehicles financed under class I of section 18, and not more than 3% on the principal amount financed on all motor vehicles financed under classes II and III of section 18, and an additional amount of not more than 1/12 of the amount so paid to the seller for each month the principal amount is financed in excess of 12 months but for not more than 24 months. Such service fee shall be paid from the finance charge authorized by this act and shall not be charged to the buyer in addition thereto.

No insurance company, agent or broker shall pay or cause to be paid, directly or indirectly, to any installment seller, nor shall any installment seller receive from any such insurance company, agent or broker, any portion of any insurance premium involved in the retail installment sale of a motor vehicle other than for the benefit of the installment buyer, and all such payments shall be held by the installment seller in trust for the benefit of the installment buyer and shall be paid to such installment buyer within 30 days, unless used in procuring comparable insurance or credited to matured unpaid installments under the contract as provided in section 16, subdivision (f) of this act.

(d) Whenever in any installment sale contract under this act the seller or any subsequent holder has charged, contracted for, collected or received from the buyer any prohibited costs or charges in connection with such contract, all the costs and charges in connection with such contract, other than for insurance, shall be void and unenforceable and any amounts paid by the buyer for any such costs and charges other than insurance, shall be applied on the principal of such contract.

HISTORY: New 1950, Ex. Ses., p. 58, Act 27, Eff. Mar. 31, 1951;—Am. 1951, p. 220, Act 171, Imd. Eff. Jun. 8;—Am. 1955, p. 153, Act 102, Imd. Eff. Jun. 2.

492.132 Installment sale contract; waiver.

Sec. 32. No act, agreement or statement of any buyer in any installment sale contract shall constitute a valid waiver of any provision of this act intended by the legislature for the benefit or protection of retail installment buyers of motor vehicles.

HISTORY: New 1950, Ex. Ses., p. 59, Act 27, Eff. Mar. 31, 1951.

492.133 Installment sale contract; prior contracts.

Sec. 33. The provisions of this act shall not apply to or affect the validity of any contract otherwise within the purview of this act which is made prior to the effective date of the respective provisions of this act governing such contracts.

HISTORY: New 1950, Ex. Ses., p. 59, Act 27, Eff. Mar. 31, 1951.

492.134 Installment sale contract; expiration, surrender or revocation of license.

Sec. 34. (a) The expiration, surrender or revocation of a license, issued pursuant to this act, shall not impair or affect the obligation of any motor vehicle installment sale contract entered into lawfully or lawfully acquired by a holder: Provided, however, That the holder of such contracts shall forfeit the right to charge, contract for, receive or collect refinance charges authorized by this act for renewal of a contract, if the license of such holder expired, was surrendered, or was revoked prior to the date of such renewal.

(b) A licensee whose license has expired, was surrendered or was revoked may thereafter sell, transfer or assign contracts entered into or acquired prior thereto to any licensed sales finance company or banking institution, and such sales finance com-

pany or banking institution acquiring such contracts may renew such contracts in accordance with the provisions of this act.

(c) A licensee whose license has expired, was surrendered or was revoked shall not thereafter enter into new contracts for the retail sale of motor vehicles under installment sale contracts, and shall not thereafter discount, purchase or otherwise acquire such contracts.

HISTORY: New 1950, Ex. Ses., p. 59, Act 27, Eff. Mar. 31, 1951.

492.135 Installment sale contract; sales outside state.

Sec. 35. Nothing in this act shall be construed to prevent the enforcement in the state of Michigan of an obligation arising from the sale of a motor vehicle made outside of the state of Michigan under an installment sale contract valid in such other state, entered into or executed by the buyer outside of the state of Michigan, whether or not such buyer was a resident of this state or the seller a licensee at the time they entered into such contract.

HISTORY: New 1950, Ex. Ses., p. 59, Act 27, Eff. Mar. 31, 1951.

492.136 Businesses excepted from act.

Sec. 36. This act shall not affect or impair any business conducted lawfully under Act No. 21 of the Public Acts of 1939, as amended, being sections 493.1 to 493.26 of the Compiled Laws of 1948, or Act No. 319 of the Public Acts of 1969, being sections 487.301 to 487.598 of the Compiled Laws of 1948.

HISTORY: New 1950, Ex. Ses., p. 59, Act 27, Eff. Mar. 31, 1951;—Am. 1970, p. 371, Act 114, Imd. Eff. Jul. 23.

492.137 Violation of act; penalty.

Sec. 37. (a) Any person, partner, association, business corporation, banking institution, nonprofit corporation, common law trust, joint stock company or any other group of individuals, however organized, or any owner, partner, member, officer, director, trustee, employee, agent, broker or representative thereof who or which shall wilfully or intentionally engage in this state in business as installment seller or sales finance company as defined in this act without having obtained a license, as required under this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not more than \$5,000.00, or to suffer imprisonment of not more than 3 years, or both, at the discretion of the court.

(b) Any licensee conducting business under this act as an installment seller, sales finance company or any owner, partner, member, officer, director, trustee, employee, agent, broker or representative thereof who shall wilfully or intentionally violate any provision of this act, or shall direct or consent to such violation, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not more than \$500.00 for the first offense; and for each subsequent offense a like fine and/or suffer imprisonment not to exceed 1 year in the discretion of the court.

HISTORY: New 1950, Ex. Ses., p. 59, Act 27, Eff. Mar. 31, 1951.

492.138 Enforcement of act; administrative expense, limitation.

Sec. 38. No expenses or costs shall be incurred by the administrator in the enforcement of this act in excess of the revenue received from fees under the provisions of this act, but the amount so expended shall not, in any event, exceed that amount appropriated by the legislature.

HISTORY: New 1950, Ex. Ses., p. 60, Act 27, Eff. Mar. 31, 1951.

492.139, 492.140 Repealed. 1964, p. 393, Act 256, Eff. Aug. 28.

Sections transferred administration of repealed sections 491.1-491.17 from state treasurer to state banking department and contained severability clause.

Act 217, 1969, p. 396; Eff. Mar. 20, 1970.

AN ACT to enable consumers to protect their insurable interest in motor vehicles in relation to the motor vehicle sales finance act.

The People of the State of Michigan enact:

492.151 Installment sale contract; prepayment of time balance prior to insurance coverage expiration; notice to insurer; payment of unearned insurance premiums.

Sec. 1. When the seller or subsequent holder has placed, at the expense of the buyer, insurance on a motor vehicle sold under an installment sale contract and the buyer prepays the time balance under the contract prior to the expiration date of the insurance, the seller or subsequent holder shall give or forward to the insurer notice of such prepayment, and shall not thereafter be a party to said insurance contract, nor request its cancellation. After such prepayment, any unearned insurance premiums received by the seller or holder, resulting from cancellation of insurance which was originally placed at the buyer's expense, shall be promptly paid to the buyer.

HISTORY: New 1969, p. 397, Act 217, Eff. Mar. 20, 1970.

CHAPTER 493. SMALL LOANS

SMALL LOANS Act 21 of 1939			
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		493.26	Repeal; saving clause.

Act 21, 1939, p. 33; Eff. Sep. 29.

AN ACT to define and regulate the business of making loans in the amount of \$1,000.00 or less; to permit the licensing of persons engaged in such business; to authorize such licensees to make charges at a greater rate than unlicensed lenders; to prescribe maximum rates of charge which licensees are permitted to make; to authorize credit life insurance and permit charges therefor; to regulate assignments of wages or salaries, earned or to be earned, when given as security for any such loan or as consideration for a payment of \$1,000.00 or less; to provide for the administration of this act and for the issuance of rules and regulations therefor; to authorize the making of examinations and investigations and the publication of reports thereof; to provide for a review of decisions and findings of the commissioner of the state banking department under this act; and to prescribe penalties. Am. 1947, p. 171, Act 130, Eff. Oct. 11;—Am. 1963, p. 123, Act 103, Eff. Sep. 6.

The People of the State of Michigan enact:

493.1 Small loans; license requirement; regulatory loan act, definitions.

Sec. 1. (a) No person, co-partnership, association, or corporation shall engage in the business of making loans of money, credit, goods, or things in action in the amount or of the value of \$1,000.00 or less and charge, contract for, or receive on any such loan a greater rate of interest, discount, or consideration therefor than the lender would be permitted by law to charge if he were not a licensee hereunder except as authorized by this act and without first obtaining a license from the commissioner of the state banking department, hereinafter called the commissioner, for each location at which such business is to be conducted.

Definitions.

(b) The word "person" when used in this act, shall include individuals, co-partnerships, associations, and corporations unless the context requires a different meaning. The word "licensee" when used in this act shall mean a person, co-partnership, association, or corporation to whom or which 1 or more licenses have been issued. The word "license" when used in this act shall mean a single license issued with respect to a single place of business. The term "liquid assets", as used in sections 2 and 4 of this act, shall mean and include cash, unrestricted deposits in banks, and readily marketable securities at their then market value. The word "assets", as used in sections 6 and 23 of this act, shall mean and include cash, unrestricted deposits in banks, readily marketable securities at their then market value, collectible loans made in accordance with this act, and personal property acquired in the general conduct of business transacted under this act.

HISTORY: Am. 1947, p. 171, Act 130, Eff. Oct. 11;—CL 1948, 493.1;—Am. 1963, p. 123, Act 103, Eff. Sep. 6.
CITED IN OTHER SECTIONS: Sections 493.1 to 493.26 are cited in §§ 440.9203 and 550.624.

493.1a Regulatory loan act of 1963; short title.

Sec. 1a. This act shall be known and may be cited as the "regulatory loan act of 1963".

HISTORY: Add. 1963, p. 123, Act 103, Eff. Sep. 6.

493.2 Licenses; application, contents, fee; required minimum assets.

Sec. 2. Application for each such license shall be in writing, under oath, and in the form prescribed by the commissioner, and shall contain the name and the address (both of the residence and place of business) of the applicant, and if the applicant is a co-partnership or association, of every member thereof, and if a corporation, of each officer and director thereof; also the county and municipality with street and number, if any, where the business is to be conducted and such further relevant information as the commissioner may require. Such applicant at the time of making each such application shall pay to the commissioner the sum of \$50.00 as a fee for investigating the application and the additional sum of \$150.00 as an annual license fee and in full payment of all expenses for examinations under and for administration of this act for a period terminating on the last day of the current calendar year: Provided, That if the application is filed after June thirtieth in any year such additional sum shall be only \$75.00 as such license fee in addition to the said fee for investigation.

Every applicant shall also prove, in form satisfactory to the commissioner, that he or it has available for the operation of such business at the location specified in the application, liquid assets of at least \$10,000.00, if the location specified in the application is in a city of more than 10,000 population according to the last United States census, or

at least \$7,500.00 if the location specified in said application is in a city of more than 5,000 population, but less than 10,000 population according to the last United States census, or at least \$5,000.00 if the location specified in the application is in a city or village of less than 5,000 population according to the last United States census.

HISTORY: CL 1948, 493.2.

493.3 Licenses; bond of applicant, approval, conditions.

Sec. 3. The applicant, at the time of filing each such application, shall also file when requested by the commissioner a bond in such amount and sureties to be approved by him, in which the applicant shall be the obligor and of which a surety company shall be the surety, if such a company shall be found qualified by law in this state and able and willing to write bonds required by this act. The said bond shall run to the people of the state of Michigan for the use of, and may be sued on by, the state or any person or persons who may have cause of action against the obligor of said bond under the provisions of this act. Such bond shall be conditioned that said obligor will faithfully conform to and abide by the provisions of this act and of all rules and regulations lawfully made by the commissioner hereunder, and will pay to the state and to any such person or persons any and all moneys that may become due or owing to the state or to such person or persons from said obligor under and by virtue of the provisions of this act.

HISTORY: Am. 1947, p. 172, Act 130, Eff. Oct. 11;—CL 1948, 493.3.

493.4 Licenses; investigation, issuance requirements; denial of application, filing of transcript and findings and service upon applicant.

Sec. 4. Upon the filing of such application and the payment of such fees and the approval of such bond the commissioner shall investigate the facts and if he shall find (a) that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant be a co-partnership or association, and of the officers and directors thereof if the applicant be a corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated lawfully, honestly, fairly, and efficiently within the purposes of this act, and (b) that allowing such applicant to engage in business will promote the convenience and advantage of the community in which the business of the applicant is to be conducted, and (c) that the applicant has available for the operation of such business at the specified location liquid assets in the amounts specified in section 2 hereof (the foregoing facts being conditions precedent to the issuance of a license under this act), he shall thereupon issue and deliver a license to the applicant to make loans in accordance with the provisions of this act at the location specified in the said application, which license shall remain in full force and effect until it is surrendered by the licensee or revoked or suspended as hereinafter provided; if the commissioner shall not so find he shall not issue such license and he shall notify the applicant of the denial and return to the applicant the bond and the sum paid by the applicant as a license fee, retaining the \$50.00 investigation fee to cover the costs of investigating the application. The commissioner shall approve or deny every application for license hereunder within 60 days from the filing thereof with the said fees and the said approved bond.

If the application is denied, the commissioner shall within 20 days thereafter file with the state banking department a written transcript of evidence and a decision and findings with respect thereto containing the evidence and the reasons supporting the denial, and forthwith serve upon the applicant a copy thereof.

HISTORY: CL 1948, 493.4.

493.5 Licenses; contents, posting, non-assignable.

Sec. 5. Such license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a co-partnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Such license shall be kept conspicuously posted in the place of business mentioned in the license, and shall not be transferable or assignable.

HISTORY: CL 1948, 493.5.

493.6 Additional bond; notice to licensee; minimum liquid assets.

Sec. 6. If the commissioner shall find at any time that any bond is insecure or exhausted or otherwise of doubtful validity or collectability, an additional bond to be approved by him, with 1 or more sureties to be approved by him and of the character specified in section 3 of this act in the sum of not more than \$1,000.00, shall be filed by the licensee within 10 days after written demand upon the licensee by the commissioner.

Every licensee shall maintain at all times assets in the amounts specified in section 2 hereof for each licensed place of business either in liquid form available for the operation of or actually used in the conduct of such business at the location specified in the license.

HISTORY: CL 1948, 493.6.

493.7 Separate license for each place of business; change of business location, notice, investigation, approval, attachment; notice of denial.

Sec. 7. Not more than 1 place of business shall be maintained under the same license, but the commissioner may issue more than 1 license to the same licensee upon compliance with all the provisions of this act governing an original issuance of a license, for each such new license.

Whenever a licensee shall wish to change a licensed place of business to a street address other than that designated in the license he shall give written notice thereof to the commissioner who shall investigate the facts and, if he shall find that allowing such licensee to engage in business in such new location will promote the convenience and advantage of the community in which the licensee desires to conduct his business, he shall attach to the license in writing his approval of the change and the date thereof which shall be authority for the operation of such business under such license at such new location: if the commissioner shall not so find he shall deny the licensee permission so to change the location of such place of business, in the manner specified and subject to the provisions contained in the last paragraph of section 4 of this act. No change in a place of business of a licensee to a location outside of the original county shall be permitted under the same license.

HISTORY: CL 1948, 493.7.

493.8 Licenses; annual fee, date of payment; filing of bond.

Sec. 8. Every licensee shall, on or before the twentieth day of each December, pay to the commissioner the sum of \$150.00 for each license held by him, as an annual license fee and in full payment of all expenses for examinations under and for administration of this act for the next succeeding calendar year and shall at the same time file with the commissioner a bond for each license held by him in the same amount and of the same character as required by section 3 of this act: Provided, That this section shall not apply to any licensee who shall surrender his license and discontinue the business of making loans as authorized by this act.

HISTORY: CL 1948, 493.8.

493.9 Licenses; revocation, grounds, notice to licensee, hearing; effect of surrender; reinstatement; filing of transcript of evidence and service upon licensee.

Sec. 9. The commissioner shall, upon 10 days' written notice to the licensee stating the contemplated action and the grounds therefor, and upon reasonable opportunity to be heard, revoke any license issued hereunder if he shall find that:

(a) The licensee, with respect to such license, has failed, after 5 days' written notice of default, to pay the annual license fee or to maintain in effect the bond or bonds required under the provisions of this act or to comply with any demand, ruling, or requirement of the commissioner lawfully made pursuant to and within the authority of this act; or that

(b) The licensee either knowingly or without the exercise of due care to prevent the same, has violated any provision of this act or any rule or regulation lawfully made by the commissioner under and within the authority of this act; or that

(c) Any fact or condition exists which, if it had existed at the time of the original application for such license, clearly would have warranted the commissioner in refusing originally to issue such license.

If the commissioner shall find that probable cause for revocation of any license exists and that the enforcement of the act requires immediate suspension of such license pending investigation, he may, upon 3 days' written notice and a hearing, suspend any license for a period not exceeding 30 days.

The commissioner may revoke or suspend only the particular license with respect to which grounds for revocation or suspension may occur or exist, or, if he shall find that such grounds for revocation or suspension are of general application to all offices, or to more than 1 office, operated by such licensee, he shall revoke or suspend all of the licenses issued to said licensee or such licenses as such grounds apply to, as the case may be.

Any licensee may surrender any license by delivering to the commissioner written notice that he thereby surrenders such license, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

No revocation or suspension or surrender of any license shall impair or affect the obligation of any pre-existing lawful contract between the licensee and any borrower.

Every license issued hereunder shall remain in force and effect until the same shall have been surrendered, revoked, or suspended in accordance with the provisions of this act, but the commissioner shall have authority on his own initiative to reinstate suspended licenses or to issue new licenses to a licensee whose license or licenses shall have been revoked if no fact or condition then exists which clearly would have warranted the commissioner in refusing originally to issue such license under this act.

Whenever the commissioner shall revoke or suspend a license issued pursuant to this act, he shall forthwith file with the state banking department a written transcript of evidence and an order to that effect and findings with respect thereto containing the evidence and the reasons supporting the revocation or suspension, and forthwith serve upon the licensee a copy thereof.

HISTORY: CL 1948, 493.9.

493.10 Commissioner of state banking department; authority to investigate business and examine records; witnesses; annual examination of licensee.

Sec. 10. For the purpose of discovering violations of this act or securing information lawfully required by him hereunder, the commissioner may at any time, either personally or by a person or persons duly designated by him, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee

and of every person who or which shall be engaged in the business described in section 1 of this act, whether such person shall act or claim to act as principal or agent, or under or without the authority of this act. For that purpose the commissioner and his duly designated representatives shall have and be given free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The commissioner and all persons duly designated by him shall have authority to require the attendance of and to examine under oath all persons whomsoever whose testimony he may require relative to such loans or such business or to the subject matter of any examination, investigation, or hearing.

At least once a year the commissioner shall make such an examination of the affairs, business, office, and records of each licensee insofar as they pertain to any business licensed under this act.

HISTORY: CL 1948, 493.10.

493.11 Records of licensee; annual report, form and contents; publication of recapitulation of reports by commissioner.

Sec. 11. The licensee shall keep and use in his business such books, accounts, and records as the commissioner may require in order to determine whether such licensee is complying with the provisions of this act and with the rules and regulations lawfully made by the commissioner hereunder. Every licensee shall preserve within the state of Michigan and accessible to the commissioner, such books, accounts, and records, including cards used in the card system, if any, for at least 2 years after making the final entry on any loan recorded therein.

Each licensee shall annually on or before the fifteenth day of February file a report with the commissioner giving such relevant information as the commissioner reasonably may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by such licensee within the state of Michigan. Such report shall be made under oath and shall be in the form prescribed by the commissioner, who shall make and publish annually an analysis and recapitulation of such reports.

HISTORY: CL 1948, 493.11.

493.12 False statements by licensee or other person prohibited.

Sec. 12. No licensee or other person shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner whatsoever any false, misleading or deceptive statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action in the amount or of the value of \$1,000.00 or less at a greater rate of charge than lenders not licensed hereunder would be permitted by law to make; or, in the case of a licensee, any statement or representation which refers to the supervision of such business by the state of Michigan or any department or official thereof except with the approval of the commissioner. The commissioner may order any licensee to desist from any conduct which he shall find to be a violation of the foregoing provisions.

Rates of charge.

The commissioner may require that rates of charge, if stated by a licensee, be stated fully and clearly in such manner as he may deem necessary to prevent misunderstanding thereof by prospective borrowers.

Real estate lien restriction.

No licensee shall take a lien upon real estate as security for any loan made under this act, except such lien as may be acquired by execution or otherwise after the entry of a judgment.

Conduct with other business.

No licensee shall conduct the business of making loans under this act within any office, room, suite or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, if the commissioner shall find, after 5 days' written notice and after a hearing that the other business is of such nature that such conduct has concealed or facilitated evasion of this act or of the general rules and regulations lawfully made hereunder, and shall order such licensee in writing to desist from such conduct, but no such order shall be made by the commissioner unless he shall find that such other business has been so conducted at that particular location that it has concealed or facilitated evasion of this act.

Licensee's conduct of business at licensed location.

No licensee shall transact such business or make any loan provided for by this act under any other name or at any other place of business within this state than that named in the license, except it be also an office of such licensee duly licensed under this act.

Confession of judgment or power of attorney prohibited; contents of notes.

No licensee shall take any confession of judgment or any power of attorney to appear or to confess judgment on behalf of any borrower. No licensee shall take any note or evidence of indebtedness that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of charge, nor any instrument in which blanks are left to be filled in after execution.

HISTORY: Am. 1947, p. 173, Act 130, Eff. Oct. 11;—CL 1948, 493.12;—Am. 1963, p. 123, Act 103, Eff. Sep. 6.

493.13 Loans; interest rates; limitations.

Sec. 13. (a) Every licensee hereunder may lend any sum of money not to exceed \$1,000.00 in amount and may contract for and receive thereon charges at a rate not exceeding 2 ½% per month on that part of the unpaid principal balance of any loan not in excess of \$300.00, and 1 ¼% per month on any remainder of such unpaid principal balance.

Splitting loans.

(b) No licensee shall induce or permit any borrower to split up or divide any loan. No licensee shall induce or permit any person, nor any husband and wife jointly or severally, to become obligated to him, directly or contingently or both, under more than 1 contract of loan at the same time, for the purpose or with the result of obtaining a higher rate of charge than would otherwise be permitted by this section.

Advances; compounding; computation of charges.

(c) No charges on loans made under this act shall be paid, deducted, or received in advance, or compounded. All charges on loans made under this act (a) shall be computed and paid only as a percentage per month of the unpaid principal balance or portions thereof, and (b) shall be so expressed in every obligation signed by the borrower, and (c) shall be computed on the basis of the number of days actually elapsed, for the purpose of which computations a month shall be any period of 30 consecutive days.

Additional fees permitted.

(d) In addition to the charges provided for in this act, no further or other amount whatsoever shall be directly or indirectly charged, contracted for, or received, except the lawful fees, if any, actually and necessarily paid out by the licensee to any public officer, for filing, or recording, or releasing in any public office, any instrument securing the loan, and for noting and releasing a lien or transferring a certificate of title under act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 257.923 of the Compiled Laws of 1948, which fees may be collected when the loan is made, or at any time thereafter.

Excess charges to void contract of loan.

If any amount other than or in excess of the charges permitted by this act is charged, contracted for, or received, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, charges or recompense whatsoever.

HISTORY: Am. 1947, p. 173, Act 130, Eff. Oct. 11;—CL 1948, 493.13;—Am. 1963, p. 124, Act 103, Eff. Sep. 6.

493.13a Credit life insurance on life of one borrower.

Sec. 13a. At the option of the borrower, a licensee may obtain or provide life insurance on the life of 1 borrower, but only 1 of them if there are 2 or more obligors, pursuant to the provisions of Act No. 173 of the Public Acts of 1958, being sections 550.601 to 550.624 of the Compiled Laws of 1948, and may deduct from the principal of a loan and retain an amount equal to the premium lawfully charged by the insurance company. The insurance shall be in force when the loan is made. If the borrower obtains the insurance from or through a licensee, the statement required by section 14 shall show the cost thereof, and the licensee shall cause to be delivered to the borrower a copy of the policy, certificate or other evidence of the insurance. Nothing in this act shall prohibit the licensee or any employee, affiliate, subsidiary or associate of the licensee from collecting the premium or identifiable charge for life insurance permitted by this section and from receiving and retaining any gain or other benefit resulting from the insurance. All additional requirements of Act No. 173 of the Public Acts of 1958 shall apply to transactions under this sub-section. A licensee shall not require the purchase of such insurance as a condition precedent to the making of a loan.

HISTORY: Add. 1963, p. 125, Act 103, Eff. Sep. 6.

493.14 Requirements upon licensee.

Sec. 14. Every licensee shall:

Statement to borrower, contents.

Deliver to the borrower, or to 1 of them if there are 2 or more, at the time any loan is made a statement (upon which there shall be printed a copy of section 13 of this act) in the English language showing in clear and distinct terms the amount and date of the loan and of its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, and the agreed rate of charge;

Receipt for payments, contents; temporary receipt.

Give to the borrower a plain and complete receipt for all payments made on account of any such loan at the time such payments are made, specifying the amount applied to charges and the amount, if any, applied to principal, and stating the unpaid principal balance, if any, of such loan, an unitemized receipt may be given temporarily and within 10 days a receipt as prescribed above delivered or mailed;

Payments in advance.

Permit payment to be made in advance in any amount on any contract of loan at any time during regular business hours, but the licensee may apply such payment first to all charges in full at the agreed rate up to the date of such payment;

Payment in full, cancellation of obligation and collateral, return of assignment.

Upon repayment of the loan in full, mark plainly every obligation and security signed by the borrower with the word "Paid" or "Cancelled", and release any mortgage, restore any pledge, cancel and return any note, and cancel and return any assignment given to the licensee by the borrower;

Display of charges.

Display in each licensed place of business a full and accurate schedule of the maximum charges authorized by this act to be made upon loans of all classes and the method of computing the same.

HISTORY: CL 1948, 493.14;—Am. 1963, p. 125, Act 103, Eff. Sep. 6.

493.15 Loans in excess of one thousand dollars; discount to licensee from obligee of purchaser.

Sec. 15. No licensee shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than the lender would be permitted by law to charge if he were not a licensee hereunder upon any part or all of any aggregate indebtedness of the same borrower, or upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit, of the amount or value of more than \$1,000.00. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower or as endorser, guarantor, or surety for any borrower, or otherwise, or any husband and wife jointly or severally, to owe directly or contingently or both to the licensee at any time a sum of more than \$1,000.00 for principal. If a licensee shall acquire, directly or indirectly, by purchase or discount the bona fide obligation of a purchaser of goods or services from the person selling the goods or rendering the services, then the amount of such purchased or discounted indebtedness to the licensee shall not be included in computing the aggregate indebtedness of such borrower to the licensee for the purposes of the foregoing prohibition.

HISTORY: Am. 1947, p. 173, Act 130, Eff. Oct. 11;—CL 1948, 493.15;—Am. 1963, p. 126, Act 103, Eff. Sep. 6.

493.16 Sale or assignment of wages deemed loan.

Sec. 16. The payment of \$1,000.00 or less in money, credit, goods, or things in action, as consideration for any sale or assignment of, or order for, the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, shall for the purposes of regulation under this act be deemed a loan secured by such assignment, and the amount by which such assigned compensation exceeds the amount of such consideration actually paid shall for the purposes of regulation under this act be deemed interest or charges upon such loan from the date of such payment to the date such compensation is payable. Such transaction shall be governed by and subject to the provisions of this act.

HISTORY: Am. 1947, p. 174, Act 130, Eff. Oct. 11;—CL 1948, 493.16;—Am. 1963, p. 126, Act 103, Eff. Sep. 6.

493.17 Assignment of salary; requirements; chattel mortgage.

Sec. 17. No assignment of or order for payment of any salary, wages, commissions, or other compensation for services, earned or to be earned, given to secure any loan made by any licensee under this act, shall be valid unless the amount of such loan is paid to the borrower simultaneously with its execution; nor shall any such assignment or order, or any chattel mortgage or other lien on household goods then in the possession and use of the borrower, be valid unless it is in writing, signed in person by the borrower, nor if the borrower is married unless it is signed in person by both husband and wife, provided that written assent of a spouse shall not be required when husband and wife have been living separate and apart for a period of at least 5 months prior to the making of such assignment, order, mortgage, or lien.

Notwithstanding the provisions of any other act, a valid assignment or order for the payment of future salary, wages, commissions, or other compensation for services, may be given as security for a loan made by any licensee under this act, and under such assignment or order a sum not to exceed 10 per centum of the borrower's salary, wages, commissions, or other compensation for services shall be collectible from the employer of the borrower by the licensee at the time of each payment to the borrower of such salary, wages, commissions, or other compensation for services, from the time that a

copy of such assignment, verified by the oath of the licensee or his agent, together with a similarly verified statement of the amount unpaid upon such loan and a printed copy of section 17 of this act, is served upon the employer.

HISTORY: CL 1948, 493.17.

493.18 Unlicensed persons; rate of interest; enforceability of loans.

Sec. 18. No person, except as authorized by this act, shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than the lender would be permitted by law to charge if he were not a licensee hereunder upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit of the amount or value of \$1,000.00 or less.

The foregoing prohibition shall apply to any person who or which, by any device, subterfuge, or pretense whatsoever shall charge, contract for, or receive greater interest, consideration, or charges than is authorized by this act for any such loan, use, or forbearance of money, goods, or things in action or for any such loan, use, or sale of credit.

No loan of the amount or value of \$1,000.00 or less for which a greater rate of interest, consideration, or charges than is permitted by this act has been charged, contracted for, or received, wherever made, shall be enforced in this state, and every person in anywise participating therein in this state shall be subject to the provisions of this act, provided that the foregoing shall not apply to loans legally made in any state or country by a licensee under an existing regulatory loan law similar in principle to this act.

HISTORY: Am. 1947, p. 174, Act 130, Eff. Oct. 11;—CL 1948, 493.18;—Am. 1963, p. 126, Act 103, Eff. Sep. 6.

493.19 Violation of act; penalties; forfeiture of loan.

Sec. 19. Any person and the several members, officers, directors, agents, and employes thereof, who shall violate or participate in the violation of any of the provisions of sections 1, 12, 13, 14, or 18 of this act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than \$500.00 or by imprisonment of not more than 6 months, or by both such fine and imprisonment in the discretion of the court.

Any contract of loan not invalid for any other reason, in the making or collection of which any act shall have been done which constitutes a misdemeanor under this section, shall be void and the lender shall have no right to collect or receive any principal interest, or charges whatsoever.

HISTORY: CL 1948, 493.19.

493.20 Businesses exempt from act.

Sec. 20. This act shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, industrial banks, trust companies, building and loan associations, or credit unions, nor to any business transacted under any pawnbroker's license.

HISTORY: CL 1948, 493.20.

493.21 Enforcement of act; rules and regulations; filing and mailing of copies; fees.

Sec. 21. The commissioner is hereby authorized and empowered to make general rules and regulations and specific rulings, demands, and findings for the enforcement of this act, in addition hereto and not inconsistent herewith. All general rules and regulations shall be filed by the commissioner with the state banking department in an indexed, permanent book, with the effective date thereof suitably indicated, and such book shall be a public record. A copy of every general rule and regulation shall be

mailed by the commissioner to all licensees under this act at their respective licensed places of business at least 10 days before the effective date thereof.

All fees received by the commissioner under this act shall be deposited in the state treasury to the credit of the general fund.

HISTORY: CL 1948, 493.21.

493.22 Amendments or repeals of act; impairment of obligation.

Sec. 22. This act or any part thereof may be modified, amended, or repealed so as to effect a cancellation or alteration of any license or right of a licensee hereunder, provided that such cancellation or alteration shall not impair or affect the obligation of any pre-existing lawful contract between any licensee and any borrower.

HISTORY: CL 1948, 493.22.

493.23 Licensees under former act; fee; minimum amount of assets; saving clause.

Sec. 23. Any person having, and operating under, a license under Act No. 317 of the Public Acts of 1921, as amended, in force on the effective date of this act, shall notwithstanding the repeal of the said Act No. 317 be deemed to have a license under this act for a period expiring December 31, 1939, if not sooner revoked, suspended, or surrendered, provided that such person shall have paid or shall pay to the commissioner as a license fee for such period the sum of \$100.00 and shall keep on file with the commissioner during such period the bond required either by this act or by the said Act No. 317. Any such license so continued in effect under the provisions of this act shall be subject to revocation, suspension, or surrender during such period as provided in section 9 of this act except that it may not be revoked or suspended prior to January 1, 1940, either upon the ground that such licensee has not the minimum amount of assets required in section 2 of this act or upon the ground that the convenience and advantage of such community will not be promoted by the operation therein of such business. All bonds filed by licensees under Act No. 317 of the Public Acts of 1921, as amended, shall remain in full force and effect in accordance with their respective terms notwithstanding the repeal of the said act.

HISTORY: CL 1948, 493.23.

NOTE: Act 317, 1921, above referred to, is repealed and superseded by this act.

493.24 Review of decisions and regulations; limitations; method; jurisdiction of courts.

Sec. 24. Any applicant under section 4 of this act or any licensee, being dissatisfied with any rule, regulation, order, demand, ruling, or finding (hereinafter in this section referred to as an order) whatsoever, made by the commissioner under and by virtue of the provisions of this act, may, within 30 days from the issuance of such order and the giving of notice thereof as required herein, commence an action in the circuit court in chancery for the county of Ingham, or in the chancery court of the county in which is located the place of business of such licensee or applicant concerning which such rule, regulation, order, demand, ruling or finding was made, against the commissioner as defendant to vacate and set aside such order on the ground that the same is unlawful or unreasonable or not correct as to the facts, or that any regulation or practice fixed in such order is unlawful or unreasonable. In such action the trial shall be de novo and the court shall not be bound by any finding of fact or law on the part of the commissioner, and the burden of proof shall be on the commissioner. The same shall proceed, be tried and determined as other chancery suits and appeal therefrom may be taken by any party to the supreme court in the same manner as from other chancery suits. Any party to such suit may introduce original evidence in addition to the transcript of evidence taken before the commissioner. The said circuit court in chancery is hereby given jurisdiction of such suits and empowered to affirm, modify, vacate, or set aside

the order of the commissioner in whole or in part and to make such other order or decree as the court shall decide to be proper and in accordance with the facts and the law. In all actions and proceedings in court arising under this section of this act, all process shall be served and the practice and rules of evidence shall be the same as in actions in equity except as otherwise herein provided.

HISTORY: CL 1948, 493.24.

493.25 Certified copies; admissible as evidence.

Sec. 25. On application of any person the commissioner shall furnish certified copies under the seal of the state banking department and signed by him or his deputy, of any order made by him, which shall be prima facie evidence in any court or proceeding of the fact of the making of such order.

HISTORY: CL 1948, 493.25.

493.26 Repeal; saving clause.

Sec. 26. Act No. 337 of the Public Acts of 1907, Act No. 105 of the Public Acts of 1911, Act No. 228 of the Public Acts of 1915, Act No. 317 of the Public Acts of 1921, Act No. 181 of the Public Acts of 1925, are hereby repealed and all acts and parts of acts whether general, special, or local, which relate to the same subject matter as this act, so far as they are inconsistent with the provisions of this act, are also hereby repealed.

Nothing herein contained shall be so construed as to impair or affect the obligation of any contract of loan between any licensee under any of the said acts and any borrower, which was lawfully entered into prior to the effective date of this act.

HISTORY: CL 1948, 493.26.

NOTE: Act 337, 1907, is CL 1929, 12219-12224; Act 317, 1921, is CL 1929, 12196-12216; Act 228, 1915, is a former act to Act 317, 1921; Act 181, 1925, amended Act 317, 1921.

Act 105, 1911, is a former unconstitutional act.

Sec. 27. (This was a severing clause section.)

HISTORY: Rep. 1945, p. 415, Act 267, Imd. Eff. May 25.

CHAPTER 494. INVESTMENT COMPANIES AND TONTINES

INSTALLMENT INVESTMENT SECURITIES

Act 166 of 1903

494.1-494.8 Repealed.

FOREIGN COMPANIES AND PARTNERSHIPS

Act 60 of 1903

494.101-494.109 Repealed.

494.1-494.8 Repealed. 1953, p. 21, Act 20, Eff. Oct. 2.

Sections regulated companies other than building and loan associations and life insurance companies, which sold investment securities on installment plan, prescribed conditions for permission to do business in state.

494.101-494.109 Repealed. 1953, p. 21, Act 21, Eff. Oct. 2.

Sections regulated foreign tontine, bond, certificate and investment companies and prescribed conditions upon which such companies could do business in state.



